

1994
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Skin Penetration Procedures Bill 1994

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1994
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(Minister for Health)

Skin Penetration Procedures Bill 1994

**A BILL
FOR**

**An Act to regulate practices that affect the integrity
of the human body**

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

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Skin Penetration Procedures Act 1994*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
- 10 (2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.
- (3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which

this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Interpretation

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

5 “appliance” means the whole or part of any utensil, machinery, instrument, device, apparatus or article used, or intended to be used, in or in connection with—

(a) the performance of a skin penetration procedure; or

(b) the cleaning or sterilisation of another appliance;

10 “authorised officer” means a person who is an authorised officer by virtue of subsection 5 (3);

“closed ear piercing” means a process of ear piercing that is carried out by means of an apparatus that—

(a) does not come in contact with the skin; and

15 (b) can be operated only by the use of sealed and pre-sterilised disposable fittings;

“code of practice” means a code of practice determined under subsection 7 (1);

20 “corresponding law” means a law of a State or another Territory that regulates the performance of skin penetration procedures;

“determined fee” means the fee determined by the Minister under section 55 for the purposes of the provision in which the expression occurs;

“improvement notice” means a notice given under section 50;

25 “licence” means a licence under this Act;

“licensee” means the holder of a licence;

“premises” means any premises in which a prescribed business is carried on, and includes—

(a) a structure, building, tent, stall, vehicle, aircraft or vessel;

30 (b) a place or land (whether enclosed or built upon or not); and

(c) a part of premises;

“prohibition notice” means a notice given under section 51;

“skin penetration procedure” means any process that involves—

- (a) the piercing, cutting, puncturing or tearing of the skin or any other part of a human body; or
 - (b) the administration of a dye or other substance for the purpose of colouring part of the skin of a human body;
- 5 and includes—
- (c) a process that is performed as part of therapeutic treatment;
 - (d) the cleaning, sterilisation or disinfection of any appliance or article used or intended to be used in connection with the performance of a skin penetration procedure; and
- 10 (e) any other process that is preparatory or ancillary to the performance of a skin penetration procedure;
- but does not include—
- (f) the cutting, shaving or dyeing of a person's hair; or
 - (g) closed ear piercing.

15 (2) In this Act, a reference to the skin or any other part of a human body shall be read as a reference to the skin or part of the body of a living person, other than the person who performs the skin penetration procedure in relation to which the reference occurs.

Interpretation—"prescribed business"

- 20 4. In this Act, "prescribed business" means—
- (a) a business or profession that involves or may involve the performance, whether by the person conducting the business or profession or another person, of skin penetration procedures;
- 25 (b) the provision to the public of a service, treatment or procedure that involves or may involve the performance, whether by the person providing the service, treatment or procedure or by another person, of skin penetration procedures, whether or not for fee, reward or other consideration; or
- 30 (c) the business of cleaning or sterilising appliances for another person.

PART II—ADMINISTRATION

Authorised officers

5. (1) There shall be 1 or more authorised officers for the purposes of this Act.

(2) The Chief Executive may create and maintain 1 or more offices in the Government Service the duties of which include performing the functions of an authorised officer.

(3) The following persons shall be authorised officers:

- 5 (a) any public servant for the time being performing the duties of a Government Service office referred to in subsection (2);
- (b) a person who is an Environmental Health Officer for the purposes of the *Public Health Act 1928*.

Identity cards

10 6. (1) The Chief Executive shall issue to each person who is an authorised officer by virtue of paragraph 5 (3) (a) an identity card that specifies the name and appointment of the person and on which appears a recent photograph of the person.

15 (2) A person to whom an identity card has been issued under subsection (1) shall not, without reasonable excuse, fail to return the card to the Chief Executive upon ceasing to occupy or act in an office referred to in paragraph 5 (3) (a).

Penalty: \$100.

PART III—CODES OF PRACTICE

20 Determination

7. (1) The Minister may determine a code of practice dealing with any matter—

- (a) required or permitted by this Act to be so dealt with; or
- 25 (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), a code of practice may include requirements, not inconsistent with this Act, relating to matters relevant to the health or safety of persons upon whom skin penetration procedures are performed.

30 Disallowance

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

Publication

9. (1) The Minister shall publish in the *Gazette* and in a daily newspaper printed and published in the Territory a notice of each determination under subsection 7 (1)—

- 5 (a) specifying the date on which the code of practice takes effect;
- (b) specifying the place or places at which copies of the code of practice may be purchased; and
- 10 (c) containing a statement to the effect that a copy of the code of practice may be inspected during office hours by members of the public at the place or places specified in the notice.

(2) The date specified under paragraph (1) (a) shall be a date that is subsequent to the date of publication of whichever of the notices referred to in subsection (1) is published later.

- 15 (3) The Minister shall ensure that a copy of each code of practice is made available for public inspection during office hours at the place or places specified in the notice under subsection (1).

(4) In this section—

“code of practice” includes any document (or part of a document) the provisions of which are applied by the code.

20 Failure to comply with code

10. A person shall not, without reasonable excuse, for fee or reward or as an employee, perform a skin penetration procedure, except in accordance with an applicable code of practice.

Penalty: \$5,000 or imprisonment for 6 months, or both.

25 False representation of compliance with codes

11. A person who—

- (a) carries on a prescribed business;
- (b) performs a skin penetration procedure; or
- 30 (c) holds himself or herself out as being willing to perform a skin penetration procedure;

shall not falsely represent to any other person that the business is being carried on, or the procedure has been, is being or will be performed (as the case requires) in accordance with an applicable code of practice.

Penalty: \$3,000.

PART IV—LICENCES**Requirement to obtain business licence**

12. (1) A person shall not, except in accordance with a business licence under this Part, carry on a prescribed business.

5 **Penalty:** \$5,000 or imprisonment for 6 months, or both.

(2) This section does not apply to a public authority.

(3) The regulations may—

(a) exempt a specified person or a person included in a specified class of persons from subsection (1); and

10 **(b)** specify the circumstances, whether generally or in a particular case, in which an exemption applies.

(4) In this section—

 “business licence” does not include a business licence that is under suspension;

15 “public authority” means—

(a) a body corporate, or an unincorporated body, established for a public purpose by, or in accordance with the provisions of an Act, other than an incorporated company or association;

20 **(b)** any other body, whether incorporated or unincorporated, that is declared by instrument by the Minister to be a public authority for the purposes of this Act, being—

(i) a body established by the Executive or by a Minister; or

25 **(ii)** an incorporated company or association over which the Territory is in a position to exercise control;

(c) a person holding an office established by or under an Act; or

30 **(d)** a person holding, or performing the duties of, an office declared by instrument by the Minister to be an office the holder of which is a public authority for the purposes of this Act, being an office created by the Executive or by a Minister otherwise than under an Act.

Requirement to obtain operator's licence

13. (1) Subject to this section, a person who does not hold an operator's licence under this Part shall not perform a skin penetration procedure for fee or reward or as an employee.

5 Penalty: \$5,000 or imprisonment for 6 months, or both.

(2) Subsection (1) does not apply to a person who is registered under—

- (a) the *Chiropractors and Osteopaths Act 1983*;
- 10 (b) the *Dental Technicians and Dental Prosthetists Registration Act 1988*;
- (c) the *Dentists Registration Act 1931*;
- (d) the *Medical Practitioners Act 1930*;
- (e) the *Nurses Act 1988*;
- (f) the *Optometrists Act 1956*;
- 15 (g) the *Pharmacy Act 1931*; or
- (h) the *Physiotherapists Act 1977*.

20 (3) An employee of a licensee is not, while subject to the supervision of his or her employer, required to hold an operator's licence for the purpose of cleaning, sterilising or disinfecting any appliance or article used or intended to be used in connection with the performance of a skin penetration procedure.

(4) The holder of an operator's licence shall not, without reasonable excuse, perform a skin penetration procedure except in accordance with the licence.

25 Penalty: \$5,000 or imprisonment for 6 months, or both.

(5) In this section—

“operator's licence” does not include a licence that is under suspension.

Application for business licence

30 14. (1) Application may be made to the Minister for a business licence.

(2) An application shall—

- (a) be in a form approved by the Minister;
- (b) be signed by the person who seeks to be licensed;

- (c) specify the premises on or from which the applicant intends to carry on the prescribed business in respect of which he or she seeks to be licensed;
- 5 (d) subject to subsection (3), in the case of existing premises, be accompanied by a sketch plan of the premises showing—
 - (i) the layout of all fixtures, fittings, appliances and any other equipment installed in the premises; and
 - 10 (ii) the area, or each area forming part of the premises that will be used for the purposes of a prescribed business, and the use to which it will be put;
- (e) in the case of premises that, at the date of the application, have not been completed or are being altered, be accompanied by a copy of the relevant plans and specifications; and
- (f) be accompanied by the determined fee.
- 15 (3) Paragraph (2) (d) does not apply where—
 - (a) another person named in the application is the holder of a business licence in relation to a prescribed business carried on at the premises;
 - 20 (b) the applicant intends to carry on the same prescribed business at those premises; and
 - (c) the applicant states that there has been no change in any matter required to be shown in a sketch plan by paragraph (2) (d) since—
 - (i) the last presentation of a sketch plan of the premises under that paragraph; or
 - 25 (ii) the last approval by the Minister of an alteration in relation to the premises under subsection 24 (5);

whichever last occurred.

Application for operator's licence

- 30 15. (1) Application may be made to the Minister for an operator's licence.
- (2) An application shall be—
- (a) in a form approved by the Minister;
 - (b) signed by the person who seeks to be licensed; and
 - (c) accompanied by the determined fee.

Further information on licence application

16. The Minister may, by written notice, require an applicant for a licence to provide in writing such further information relating to the application as is specified in the notice.

5 Grant or refusal of business licence

17. (1) Where an application for a licence has been made in accordance with section 14, the Minister shall, subject to section 18, by notice in writing given to the applicant—

- (a) grant the licence; or
- 10 (b) refuse to grant the licence.
- (2) A business licence may be granted subject to such conditions as are specified on it.
- (3) Without limiting the generality of subsection (2), a business licence is subject, by virtue of this subsection, to the condition that the licensee
- 15 comply with all applicable codes of practice.
- (4) For the purposes of making a decision under subsection (1) or (2), the Minister shall have regard to the following matters:
 - (a) the suitability of the premises for the purpose of performing skin
 - 20 penetration procedures of the kind that may be expected to be performed on the premises;
 - (b) the competence of the applicant to carry on the prescribed business specified in the application and his or her experience in that business;
 - 25 (c) the adequacy of the equipment for the performance in accordance with a code of practice of skin penetration procedures that may be expected to be performed in the course of the prescribed business specified in the application;
 - (d) any previous lack of compliance by the applicant with—
 - (i) this Act or the regulations;
 - 30 (ii) an improvement or prohibition notice under this Act;
 - (iii) a code of practice; or
 - (iv) a corresponding law;
 - (e) such other matters that, in the interests of public health, the Minister believes to be relevant.
 - 35 (5) A business licence shall—

(a) be in a form approved by the Minister; and

(b) specify—

(i) the name of the licensee;

(ii) the prescribed business that may be carried on;

5 (iii) the premises on or from which the licensee may carry on the prescribed business; and

(iv) any conditions to which the licence is subject.

(6) In subsection (4), a reference to the applicant includes a reference to—

10 (a) where the applicant employs a manager to conduct his or her prescribed business, or that part of the prescribed business that involves the performance of skin penetration procedures—the manager; and

15 (b) where the applicant is a body corporate—a director, secretary or manager of the applicant.

Business licence not to be granted while premises incomplete

18. A business licence shall not be granted in respect of premises that, at the date of the application, have not been completed or are being altered until the Minister is satisfied that the premises or alterations, as the case requires, have been completed.

Grant or refusal of operator's licence

19. (1) Where an application for a licence has been made in accordance with section 15, the Minister shall, by notice in writing given to the applicant—

25 (a) grant the licence; or

(b) refuse to grant the licence.

(2) The Minister shall not give a notice under paragraph (1) (b) unless he or she is satisfied, after taking into account the matters referred to in subsection (5), that the applicant is not suitable to hold an operator's licence.

30 (3) An operator's licence may be granted subject to such conditions as are specified on it.

(4) Without limiting the generality of subsection (3), an operator's licence is subject, by virtue of this subsection, to the condition that the licensee comply with all applicable codes of practice.

(5) For the purposes of making a decision under subsection (1) or (2), the Minister shall have regard to the following matters:

- (a) the competence and experience of the applicant;
 - (b) any previous lack of compliance by the applicant with—
 - 5 (i) this Act or the regulations;
 - (ii) a code of practice; or
 - (iii) a corresponding law;
 - (c) such other matters that, in the interests of public health, the Minister believes to be relevant.
- 10 (6) An operator's licence shall be in a form approved by the Minister.

Inspection of licences

20. (1) The holder of a business licence shall ensure that the licence is available for inspection at the premises specified on the licence upon request by an authorised officer at any reasonable time.

15 Penalty: \$500.

(2) The holder of an operator's licence shall ensure that the licence is available for inspection upon request by an authorised officer at any reasonable time.

Penalty: \$500.

20 **Duration**

21. (1) Subject to subsection (2), a licence remains in force until it is cancelled.

(2) A licence is not in force while it is suspended.

Surrender

25 22. (1) A licensee may surrender a licence by giving to the Minister—

- (a) a signed notice that the licence is being surrendered; and
- (b) the licence.

30 (2) A licence that is under suspension may be surrendered under this section.

(3) The Minister shall cancel a licence that has been surrendered under this section.

(4) Where a licence in respect of which all fees payable under subsection 23 (1) have been paid is surrendered under this section, the

Territory shall refund to the licensee an amount that bears to the amount of the last such fee paid the same proportion as the period from the date of the surrender to the date of the next ensuing anniversary of the grant of the licence bears to 12 months.

5 Annual fees

23. (1) A licensee shall, on or before the anniversary of the grant of the licence, pay to the Minister the determined fee.

(2) Where a fee payable under subsection (1) is not paid in accordance with that subsection, the licence is, by virtue of this subsection, suspended.

10 **(3)** A suspension under subsection (2)—

(a) takes effect on the day after the anniversary of the grant of the licence on or before which the fee should have been paid; and

(b) ceases when the determined fee is paid or the licence is cancelled under subsection (4), whichever first occurs.

15 **(4)** The Minister may cancel a licence that has been suspended by virtue of subsection (3) for a period of not less than 3 months.

20 **(5)** The Minister shall not cancel a licence under subsection (4) unless, at least 1 month before doing so, he or she gives to the licensee a written notice stating that unless the determined fee is paid, the licence may be cancelled on or after a specified day.

(6) A reference in this section to a licence shall be read as including a reference to a licence that is under suspension under another section of this Act.

25 **(7)** Where a licence that is under suspension by virtue of another section of this Act (in this subsection referred to as the "other suspension")—

(a) is also under suspension by virtue of subsection (2) (in this subsection referred to as "this suspension"); and

(b) this suspension ceases by virtue of paragraph (3) (b);

30 the cessation of this suspension does not affect the other suspension.

Alteration of premises and appliances

24. (1) A holder of a business licence shall not, without the approval of the Minister—

35 **(a)** structurally alter premises, including fixtures or fittings in those premises; or

- (b) alter any appliance used in connection with skin penetration procedures that is installed in, and attached to, premises.

Penalty: \$5,000.

- 5 (2) The Minister may, on application by a holder of a business licence, approve an alteration of a kind referred to in subsection (1).

(3) An application shall—

- (a) be in a form approved by the Minister;
- (b) be signed by the applicant;
- 10 (c) where it is proposed to alter premises, be accompanied by a copy of the relevant plans and specifications; and
- (d) be accompanied by the determined fee.

(4) The Minister may, by written notice, require the applicant to provide, in writing, such further information relating to the application as is specified in the notice.

- 15 (5) The Minister shall, if satisfied having regard to such of the matters referred to in subsection 17 (4) as he or she considers to be relevant to the circumstances of the application, by notice in writing given to the licensee—

- (a) approve the alteration; or
- (b) refuse to approve the alteration.

20 **Variation of licences**

25 **25. (1)** On application by a licensee, the Minister shall, if satisfied that it is not prejudicial to the interests of public health to do so, vary the licence accordingly.

- (2) The grant or refusal of an application under subsection (1) shall be by notice in writing given to the licensee.

(3) Where the Minister believes on reasonable grounds that it is desirable to vary a licence in the interests of public health, the Minister shall give the licensee a written notice—

- 30 (a) specifying the ground upon which the Minister intends to vary the licence;
- (b) stating the facts and circumstances that in the Minister's opinion, constitute that ground; and
- (c) informing the licensee that the licensee may, within a specified period, give a written response to the Minister in relation to the matters stated in the notice.

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(4) After the expiration of the period specified in a notice under paragraph (3) (c), and after taking into consideration any response given by the licensee, the Minister may, if satisfied on reasonable grounds that it is desirable to do so in the interests of public health, vary the licence, by notice in writing given to the licensee, by—

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

(5) 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.

(6) In this section—

“condition” does not include the condition referred to in subsection 17 (3) or 19 (4);

“licence” includes a licence that is suspended.

Suspension or cancellation of licences

26. (1) For the purposes of this section, a licence may be suspended or cancelled on any of the following grounds:

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

(2) Where the Minister believes on reasonable grounds that—

- (a) there exists a ground for the suspension or the cancellation of a licence; and
- (b) it is desirable in the interests of public health to suspend or cancel the licence;

the Minister shall give written notice to the licensee—

- (c) specifying the ground upon which the Minister intends to suspend or cancel the licence;
- (d) stating the facts and circumstances that, in the Minister’s opinion, constitute that ground; and

- (e) informing the licensee that the licensee may, within 28 days after the date of the notice, give a written response to the Minister in relation to the matters stated in the notice.

(3) The Minister may, by notice in writing given to the licensee—

- 5 (a) where the licensee gives a written response within 28 days after the date of a notice under subsection (2), after taking that response into consideration; or
- (b) where the licensee does not give a written response before the expiration of 28 days after the date of that notice, after the
- 10 expiration of that period;

if satisfied on reasonable grounds of the matters referred to in paragraphs (2) (a) and (b)—

- 15 (c) in the case of a notice of intention to suspend the licence for a specified period—suspend the licence for that period, or for such shorter period as the Minister thinks fit; or
- (d) in the case of a notice of intention to cancel the licence—cancel the licence or suspend it for such period as the Minister thinks fit.

(4) The suspension or cancellation of a licence takes effect on—

- 20 (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.

Emergency suspension of licences

27. (1) A licence may be suspended on any of the following grounds:

- 25 (a) contravention by the licensee of a condition to which the licence is subject;
- (b) subject to section 28, the giving of a prohibition notice to the licensee.

(2) Where the Minister believes on reasonable grounds that—

- 30 (a) there exists a ground for the suspension of a licence; and
- (b) it is necessary to suspend the licence in order to prevent or remove an imminent risk of injury to public health;

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

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

(4) The notice of suspension shall—

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

Automatic suspension of licence

28. (1) Where an authorised officer gives to a licensee a prohibition notice that contains a direction under paragraph 51 (1) (f) or (2) (a), the licensee's licence is, by virtue of this subsection, suspended.

(2) A suspension under this section—

(a) takes effect—

(i) at the expiry of any period specified in the prohibition notice under paragraph 51 (3) (f); or

(ii) if no such period is specified—when the notice is given; and

(b) ceases when the prohibition notice is revoked.

Return of licence

29. (1) A person whose licence has been varied, suspended or cancelled shall not, without reasonable excuse, fail to return the licence to the Minister within 7 days after the date of effect of the variation, suspension or cancellation, as the case requires.

Penalty: \$500.

(2) As soon as practicable after the return of a licence for variation, the Minister shall endorse the variation on the licence and return it to the licensee.

False representation of being licensed

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

Penalty: \$3,000.

False representation about suspended licence

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

Penalty: \$3,000.

PART V—INSPECTION

Division 1—Preliminary

Interpretation

32. (1) In this Part—

5 “identity card” includes, in the case of a person who is an authorised officer by virtue of paragraph 5 (3) (b), an identity card issued under the *Public Health Act 1928*.

(2) For the purposes of this Part, a thing is connected with a particular offence if—

- 10 (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 it is intended to be used, for the purpose of committing the offence.

15 (3) A reference in this Part to an offence shall be read as including a reference to an offence that there are reasonable grounds for believing is being or has been committed.

(4) Where an authorised officer enters premises in accordance with this Part, a reference to the occupier of the premises includes a reference to a person the authorised officer believes on reasonable grounds—

- 20 (a) to be the occupier of those premises; or
 (b) to be in charge of those premises.

Division 2—Powers of authorised officers

Entry to premises

25 (1) 33. (1) Where an authorised officer believes on reasonable grounds that it is necessary to do so for the purposes of this Act, he or she may, with such assistance and by such force as is reasonable, enter prescribed premises—

- (a) at any reasonable time;
 (b) with the consent of the occupier; or
 30 (c) if the authorised officer believes on reasonable grounds that the circumstances are of such seriousness and urgency as to require immediate entry to the premises.

(15) 4(2) Subject to section 34, an authorised officer who enters premises pursuant to subsection (1) is not entitled to remain on those premises if, on

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request by the occupier, the authorised officer does not produce his or her identity card to the occupier.

⁶(3) In this section, a reference to reasonable time in relation to entry to prescribed premises is—

- 5 (a) in the case of business premises—a reference to any hour of the day or night when the relevant prescribed business is being conducted at those premises; or
- (b) in the case of prescribed premises other than business premises—a reference to any time during normal business hours.

10 ⁶(4) In this section—

“business premises” means premises—

- (a) in respect of which a business licence is in existence; or
- (b) where a prescribed business is carried on or there are reasonable grounds for believing that a prescribed business is being carried on, whether or not by a licensee;

“prescribed premises” means premises that the authorised officer believes on reasonable grounds to be—

- (a) business premises; or
- (b) premises that contain records relating to—
 - 20 (i) the performance of skin penetration procedures;
 - (ii) the carrying on of a prescribed business; or
 - (iii) an appliance.

Consent to entry

25 34. (1) Before obtaining the consent of a person for the purposes of paragraph 33 (1) ⁽⁴⁾~~of~~, an authorised officer shall—

- (a) produce his or her identity card; ~~and~~ ^{or}
 - (b) inform that person that he or she may refuse to give consent ^{and}
 - ^(c) ~~give to that person a copy of section 35.~~
- 30 (2) Where an authorised officer obtains the consent of a person for the purposes of paragraph 33 (1) ~~of~~, the authorised officer shall ask the person to sign a written acknowledgment—

- (a) of the fact that the person has been informed that he or she may refuse to give consent;
- (b) of the fact that the person has voluntarily given consent; and

- (c) of the day on which, and the time at which, that consent was given.

5 (3) Where it is material in any proceedings for a court to be satisfied of the voluntary consent of a person for the purposes of paragraph 33 (1) and an acknowledgment, in accordance with subsection (2), signed by the person is not produced in evidence, the court shall assume, unless the contrary is proved, that the person did not voluntarily give such consent.

Powers of authorised officers

10 35. Subject to this Part, where an authorised officer enters any premises in accordance with this Part, he or she may—

- (a) inspect, examine, take measurements in relation to, or conduct tests concerning, the premises or any system of work, plant, substance or thing at the premises;
- 15 (b) inspect and test any container, equipment or appliance on the premises that the authorised officer believes on reasonable grounds to be used for the performance of skin penetration procedures;
- 20 (c) inspect and test any material or substance that the authorised officer believes on reasonable grounds to be connected with the performance of skin penetration procedures and take samples of any such material or substance;
- (d) open, or require a person to open, and examine any container or package that the authorised officer believes on reasonable grounds to be connected with the performance of skin penetration procedures;
- 25 (e) seize any appliance, equipment, article, substance or thing that the authorised officer believes, on reasonable grounds, to be connected with an offence against this Act or the regulations;
- 30 (f) take such photographs or make such video or sound recordings or films in connection with an inspection as the authorised officer believes on reasonable grounds to be necessary for the purposes of this Act;
- 35 (g) require the occupier of the premises to make available to the authorised officer any record, document, labelling or advertising material relating to the performance of skin penetration procedures or to an appliance;
- (h) where information relating to the performance of skin penetration procedures or to an appliance is stored on computer or other electronic equipment—require the occupier of the premises to produce the information in a visible or audible form;

- (i) inspect, make copies of and take extracts from any record, document or material, or of information referred to in paragraph (h);
- 5 (j) require the occupier of the premises to provide information or answer questions reasonably related to the use of those premises in connection with the performance of skin penetration procedures;
- (k) require the occupier of the premises to render such assistance to the authorised officer as is necessary and reasonable to enable the authorised officer to exercise his or her powers under this section;
- 10 and
- (l) stop, detain and inspect any vehicle that the authorised officer believes on reasonable grounds to have in or upon it anything connected with an offence against this Act or the regulations.

Obstruction of authorised officers

- 15 **36. (1)** A person shall not, without reasonable excuse—
 - (a) hinder or obstruct an authorised officer in the discharge of his or her functions under this Act or the regulations; or
 - (b) fail to comply with a requirement made of him or her by an authorised officer in the exercise of his or her powers under
- 20 section 35.

Penalty: \$5,000 or imprisonment for 6 months, or both.

- 25 **(2)** The fact that providing information or answering a question pursuant to a requirement under paragraph 35 (j) may tend to incriminate an occupier of premises is a reasonable excuse on the part of that occupier for the purposes of paragraph (1) (b).

False information

37. A person shall not knowingly provide false information to an authorised officer in relation to an offence against this Act or the regulations.

Penalty: \$5,000 or imprisonment for 6 months, or both.

30 *Division 3—Things seized by authorised officers*

Notice of seizure

38. An authorised officer who seizes anything under paragraph 35 (e) shall, ~~as soon as practicable~~, give—

- ^{within 24 hours} (a) to the owner of the thing seized; or

- (b) if the owner is not present or readily available, to the person who had possession, custody or control of the thing immediately before its seizure;

a notice in writing specifying—

- 5 (c) the thing seized, including any relevant quantity;
- (d) the date and place of seizure;
- (e) the location of the thing seized;
- (f) the reasons for the seizure;
- 10 (g) the procedure provided for by this Act for obtaining relief against the seizure; and
- (h) the name, address and telephone number of an authorised officer who may be contacted in relation to the seizure.

Storage of things seized

- 15 **39. (1)** Anything seized by an authorised officer in accordance with this Part may, at the option of the authorised officer, be detained on the premises where it was found and for that purpose it may—

- (a) be placed in a room, compartment, cabinet or an enclosed area;
- (b) be secured against interference; and
- 20 (c) be identified in a manner that makes it clear that the thing has been seized for the purposes of this Act.

(2) Where, in accordance with subsection (1), a thing has been detained on premises, the authorised officer responsible shall, as soon as practicable, give to the occupier of those premises a notice in writing specifying—

- 25 (a) the thing detained, including the relevant quantity (if any);
- (b) the manner and circumstances in which the thing has been detained;
- (c) the expected period of such detention;
- 30 (d) the liability of the occupier in respect of an offence under subsection 49 (2); and
- (e) the name, address and telephone number of an authorised officer who may be contacted in relation to the detention.

Access to seized records

- 35 **40.** Where a record or document is seized under this Part, the authorised officer shall permit the person otherwise entitled to possession of

it, or his or her agent, to inspect, make copies of or take extracts from the record or document.

Return of thing seized

5 41. (1) This section applies where a thing has been seized under this Part and—

- (a) at the expiration of the period of ²~~6~~ months commencing on the date of the seizure, no proceedings have been commenced in relation to any alleged offence under this Act or the regulations in respect of the thing;
- 10 (b) if such proceedings have been commenced within that period—the charge has been withdrawn or the proceedings (including any appeal in relation to those proceedings) have otherwise been determined with no conviction being recorded; or
- 15 (c) the Minister becomes satisfied that no contravention of this Act or the regulations has been committed in respect of the thing;

and the thing has not been—

- (d) destroyed or disposed of in a manner that would prevent it from being dealt with in accordance with this subsection; or
- (e) forfeited to the Territory under section 47.
- 20 (2) Where this section applies, the Minister shall cause the thing to be delivered to—
 - (a) the person from whom it was seized; or
 - (b) such other person as appears to the Minister to be entitled to it.

Application for relief against seizure

25 42. (1) A person claiming to be entitled to anything seized under this Part may apply to a court of competent jurisdiction for an order disallowing the seizure.

30 (2) An application under subsection (1) shall be made in accordance with any relevant Act and rules of court and shall not be heard unless the applicant has served a copy of the application on the authorised officer referred to in paragraph 38 (h).

Appearance to application

35 43. The authorised officer on whom an application under section 42 has been served is entitled to appear as respondent at the hearing of an application made under subsection 42 (1).

Order disallowing seizure

44. On the hearing of an application made under section 42, the court shall make an order disallowing the relevant seizure—

(a) if—

- 5 (i) it is proved by or on behalf of the applicant that the applicant would, but for the seizure, be entitled to the return of the thing seized; and
- 10 (ii) it is not proved that, at the time of the seizure, an offence was being or had been committed, being an offence with which the thing is connected; or

(b) if, in the opinion of the court, there are exceptional circumstances justifying the making of an order disallowing the seizure;

but otherwise the court shall refuse the application.

Ancillary orders

15 45. (1) In the event that the court makes an order disallowing the seizure of a thing, it shall also make 1 or both of the following orders, namely:

- 20 (a) an order directing the respondent to cause the thing to be delivered to the applicant or to such other person as appears to the court to be entitled to it;
- (b) if the thing cannot for any reason be so delivered or the thing has in consequence of the seizure depreciated in value, an order directing the Territory to pay to the applicant such amount by way of compensation as the court considers to be just and reasonable.

25 (2) Where the applicant satisfies the court that he or she has sustained financial loss by reason of being deprived of the thing seized, the court may, in making an order under subsection (1), direct the Territory to pay the applicant such amount by way of compensation as the court considers just and reasonable.

30 (3) The award of costs with respect to the hearing of an application lies in the discretion of the court.

Adjournment pending other proceedings

35 46. If, on the hearing of an application made under section 42, it appears to the court that the thing that is the subject of the application is required to be produced in evidence in proceedings in connection with an offence against this Act or the regulations, the court may, on the application of the respondent or on its own motion, adjourn the hearing until the conclusion of those proceedings.

Forfeiture of things seized**47. Where—**

- (a) anything seized under this Part has not been dealt with in accordance with section 41; and
- 5 (b) an application for disallowance of the seizure under section 42—
- (i) has not been made within the relevant period allowed; or
- (ii) has been made within that period, but has been withdrawn or refused;

10 the thing is forfeited to the Territory and may, subject to this Part, be destroyed, sold or otherwise disposed of as the Minister may, generally or in a particular case, direct.

Cost of destruction or disposal of things forfeited**48. (1) Where—**

- 15 (a) a person is convicted of an offence against this Act or the regulations, in respect of anything forfeited to the Territory under this Division; and
- (b) that person was the owner of the thing immediately before it was forfeited;

20 any costs incurred by or on behalf of the Territory in connection with the lawful destruction or disposal of the thing is a debt due to the Territory by that person.

(2) Where a debt under subsection (1) is due by 2 or more persons, the liability of those persons is joint and several.

25 (3) In any proceedings under subsection (1), a certificate signed by the Minister stating that the amount of any costs and the manner in which they were incurred is evidence of the matters stated.

Interference with things detained

30 49. (1) Where ^{an authorised} a health officer has seized a thing under this Part and detained it on premises pursuant to section 39, a person who, without the permission of ^{an authorised} a health officer, removes, breaks, opens or interferes with the thing is guilty of an offence punishable on conviction by a fine not exceeding \$5,000 or imprisonment for 6 months, or both.

(2) Where an offence against subsection (1) has been committed, then whether or not any person has been charged with or convicted of that offence, the occupier of the premises where the offence was committed is guilty of an offence.

5 Penalty: \$5,000 or imprisonment for 6 months, or both.

(3) It is a defence to a prosecution for breach of subsection (2) that the defendant—

- (a) had taken all reasonable steps to prevent the breach of subsection (1); or
- 10 (b) believed on reasonable grounds that another person had taken, or would take, all reasonable steps to prevent that breach.

PART VI—IMPROVEMENT AND PROHIBITION NOTICES

Improvement notices

15 50. (1) Where an authorised officer believes on reasonable grounds that a person who holds a business licence is contravening or likely to contravene—

- (a) a provision of this Act, the regulations, or a code of practice; or
- (b) a condition of the licence;

the authorised officer may give—

- 20 (c) an improvement notice to the person who is, or whom the authorised officer reasonably believes to be, in charge of—
 - (i) the relevant prescribed business; or
 - (ii) the premises where the contravention is believed to be occurring or likely to occur; and
- 25 (d) if that person is not, to the knowledge of the authorised officer, the licensee—a copy of the improvement notice to the licensee;

requiring the licensee to rectify the matters or activities occasioning the contravention, or likely contravention.

30 (2) Where an authorised officer believes on reasonable grounds that a person who holds an operator's licence is contravening or likely to contravene—

- (a) a provision of this Act, the regulations, or a code of practice; or
- (b) a condition of the licence;

the authorised officer may give an improvement notice to the person requiring him or her to rectify the matters or activities occasioning the contravention, or likely contravention.

(3) An improvement notice shall—

- 5 (a) specify the contravention that the authorised officer believes is occurring or is likely to occur and set out the reasons for that belief; and
- 10 (b) specify a period, being a period that is in the authorised officer's opinion reasonable, within which the licensee is to rectify the matters or activities to which the notice relates.

(4) An improvement notice may specify action that the licensee is to take during the period specified in the notice.

- 15 (5) Before the end of the period specified in an improvement notice, an authorised officer may, on his or her own motion or on application by the licensee, by notice in writing given to the licensee, extend the period within which the licensee is to take action in accordance with the notice.

- 5 (6) An authorised officer who refuses an application under subsection ~~(4)~~ shall give written notice of it to the applicant.

- 20 (7) An improvement notice continues in force until revoked in accordance with section 52.

Prohibition notices

51. (1) Where an authorised officer believes on reasonable grounds that—

- 25 (a) the manner in which a prescribed business, or any part of a prescribed business, is being carried on;
- (b) the use being made of premises on which a prescribed business is carried on; or
- (c) the state or condition of premises on which a prescribed business is carried on;

- 30 involves, or may involve, the imminent risk of injury to health, the authorised officer may give—

- (d) a prohibition notice to the person who is, or whom the authorised officer reasonably believes to be, in charge of the relevant prescribed business or premises, as the case requires; and
- 35 (e) if that person is not, to the knowledge of the authorised officer, the licensee—a copy of the prohibition notice to the licensee;

directing, as the case requires, that—

- (f) the prescribed business, or a specified part of that business, be not carried on;
 - (g) the licensee ensure that the prescribed business or a specified part of that business be not carried on except in accordance with directions specified in the notice; or
 - (h) the licensee ensure that the premises—
 - (i) be not used for the business, or for a specified part of that business; or
 - (ii) be not used for the business, or for a specified part of the business, except in accordance with directions specified in the notice.
- (2) Where an authorised officer believes on reasonable grounds that the manner in which a person, being the holder of an operator's licence, performs skin penetration procedures involves, or may involve, the imminent risk of injury to health, the authorised officer may give to that person a prohibition notice directing that person, as the case requires—
- (a) to cease performing skin penetration procedures; or
 - (b) to ensure that he or she does not perform skin penetration procedures except in accordance with directions specified in the notice.
- (3) Without limiting the generality of subsection (1), a prohibition notice may include directions relating to—
- (a) any part of the premises where a specified activity is, or is not, to be carried on;
 - (b) any substance, compound or article that is, or is not, to be used in connection with a specified activity;
 - (c) any practice or procedure that is, or is not, to be followed in connection with a specified activity;
 - (d) the impounding or isolation of any appliance;
 - (e) the destruction or disposal, in a manner specified in the notice, of any appliance; or
 - (f) the specification of a period, being a period that is, in the authorised officer's opinion, reasonable, within which the licensee is to comply with a direction.
- (4) Before the end of any period specified under paragraph (3) (f), an authorised officer may, on his or her own motion or on application by the

licensee, by notice in writing given to the licensee, extend any period within which the licensee is to take action in accordance with the notice.

(5) An authorised officer who refuses an application under subsection (4) shall give written notice of it to the applicant.

5 (6) The licensee of a prescribed business who has been given a prohibition notice shall cause a copy of that notice to be displayed, and to be kept displayed, in a prominent place on the food premises specified in the notice.

10 (7) A licensee who, without reasonable excuse, contravenes subsection (6) is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000.

(8) A prohibition notice continues in force until revoked in accordance with section 52.

Revocation of notices

15 52. (1) An authorised officer shall, on his or her own motion or on application by the licensee, revoke an improvement notice or a prohibition notice, if satisfied after carrying out an inspection in relation to the matters in respect of which the relevant notice was issued—

20 (a) in the case of an improvement notice—that the licensee has complied with the notice; or

(b) in the case of a prohibition notice—that adequate measures have been taken by the licensee to prevent or remove the risk of injury to health that gave rise to the issue of the notice.

25 (2) An application by a licensee for the purposes of subsection (1) shall—

(a) be made in writing;

(b) be addressed to the authorised officer who issued the relevant notice;

30 (c) specify the measures taken by the licensee in compliance with the notice;

(d) nominate a date on or after which an inspection may be made in relation to the matters in respect of which the notice was given; and

(e) be accompanied by the determined fee.

35 (3) As soon as practicable after receipt of an application in accordance with subsection (2), an authorised officer shall, by arrangement with the licensee, carry out an inspection in relation to the matters in respect of which the relevant notice was given and, if satisfied about the matters referred to in

paragraph (1) (a) or (b), as the case requires, by notice in writing given to the relevant licensee—

- (a) revoke the relevant notice; or
- (b) refuse to revoke the relevant notice.

5 Compliance with notices

53. A person to whom—

- (a) an improvement notice; or
- (b) a prohibition notice;

10 has been given shall not, without reasonable excuse, fail to comply with the requirements of the relevant notice.

Penalty: \$10,000.

PART VII—REVIEW OF DECISIONS

Review by Tribunal

15 **54. (1)** An application may be made to the Tribunal for review of a decision of the Minister—

- (a) refusing to grant a business licence under paragraph 17 (1) (b);
- (b) granting a business licence subject to conditions under subsection 17 (2);
- (c) refusing to grant an operator's licence under paragraph 19 (1) (b);
- 20 (d) granting an operator's licence subject to conditions under subsection 19 (3);
- (e) refusing to approve an alteration to premises or an appliance under paragraph 24 (5) (b);
- (f) refusing to vary a licence under subsection 25 (1);
- 25 (g) varying a licence under subsection 25 (4);
- (h) suspending a licence under paragraph 26 (3) (c);
- (i) cancelling a licence under paragraph 26 (3) (d); or
- (j) suspending a licence under subsection 27 (2).

30 **(2)** An application may be made to the Tribunal for review of a decision of an authorised officer—

- (a) to give an improvement notice under paragraph 50 (1) (c);

- (b) to give an improvement notice under subsection 50 (2);
- (c) refusing to extend a period for compliance with an improvement notice under subsection 50 (5);
- (d) to give a prohibition notice under paragraph 51 (1) (d);
- 5 (e) to give a prohibition notice under subsection 51 (2);
- (f) refusing to extend a period for compliance with a prohibition notice under subsection 51 (4); or
- (g) refusing to revoke a notice under paragraph 52 (3) (b).
- (3) A notice that—
- 10 (a) is required or permitted to be given under a provision referred to in subsection (1) or paragraph (2) (a), (b), (d) or (e); or
- (b) is required to be given in relation to a decision referred to in paragraph (2) (c) or (f);
- 15 shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

PART VIII—MISCELLANEOUS

Power of Minister to determine fees

55. The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act and the regulations.

20 Evidentiary value of copies of records

56. Where—

- (a) an authorised officer, in the discharge of his or her functions under this Act or the regulations, makes or causes to be made a copy of a record or part of a record; and
 - 25 (b) certifies that the copy is a true copy of that record or part;
- then, in any proceedings under this Act or the regulations, the copy is admissible in evidence for all purposes for which the record or part could have been so admitted unless the court is satisfied that the certificate of the authorised officer is not accurate.

30 Conduct of directors, servants and agents

57. (1) Where, for the purposes of 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.

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

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

- 20 (a) a natural person is convicted of an offence against this Act or the regulations; 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.

25 (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 shall be read as including a reference to failing or refusing to engage in conduct.

30 **Penalty for companies**

58. Where a company is convicted of an offence against this Act or the regulations, the penalty that a court may impose in respect of the offence is a fine not exceeding 5 times the maximum fine that, but for this section, the court could impose as a penalty for the offence.

35 **Regulations**

59. (1) The Executive may make regulations for the purposes of 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;

- 5 for offences against the regulations, including offences consisting of contraventions of requirements contained in a code of practice.