

2003

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Nurse Practitioners Legislation Amendment Bill 2003

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2003

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FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Nurse Practitioners Legislation Amendment Bill 2003

A Bill for

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Nurse Practitioners Legislation Amendment Act*
4 *2003*.

5 **2 Commencement**

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

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

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

13 *Note 3* If a provision has not commenced within 6 months beginning on the
14 notification day, it automatically commences on the first day after that
15 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).

1 **Part 3** **Legislation Act 2001**

2 **5** **Legislation amended—pt 3**

3 This part amends the *Legislation Act 2001*.

4 **6** **Dictionary, part 1, new definition of *nurse practitioner***

5 *insert*

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

1 **Part 4** **Mental Health (Treatment and**
2 **Care) Act 1994**

3 **7 Legislation amended—pt 4**

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

5 **8 New section 4A**

6 *insert*

7 **4A Offences against Act—application of Criminal Code etc**

8 Other legislation applies in relation to offences against this Act.

9 *Note 1 Criminal Code*

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

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

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

17 *Note 2 Penalty units*

18 The Legislation Act, s 133 deals with the meaning of offence penalties
19 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).

1 **119B Identity cards for mental health officers**

2 (1) The chief executive must give a mental health officer an identity
3 card that states the person is a mental health officer for this Act and
4 shows—

5 (a) the name of the person; and

6 (b) a recent photograph of the person.

7 (2) A person commits an offence if—

8 (a) the person was appointed as a mental health officer; and

9 (b) the person ceases to be a mental health officer; and

10 (c) the person does not return the person's identity card to the
11 chief executive as soon as practicable (but within 7 days) after
12 the day the person ceases to be a mental health officer.

13 Maximum penalty: 1 penalty unit.

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

1 **Part 5** **Pharmacy Act 1931**

2 **10 Legislation amended—pt 5**

3 This part amends the *Pharmacy Act 1931*.

4 **11 New section 4A**

5 *in part 1, insert*

6 **4A Offences against Act—application of Criminal Code etc**

7 Other legislation applies in relation to offences against this Act.

8 *Note 1 Criminal Code*

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

- 11
 - s 51 (Restrictions on supply of certain medicines etc).

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

16 *Note 2 Penalty units*

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

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

- 1 (b) the person intentionally attends on, prescribes for, or supplies a
2 substance or instrument to, someone else—
- 3 (i) for the treatment or cure of a sexual health condition
4 (whether or not the other person has the condition); or
- 5 (ii) for menstrual problems; or
- 6 (iii) to influence the course of a pregnancy.
- 7 Maximum penalty: 50 penalty units, imprisonment for 6 months or
8 both.
- 9 (2) Absolute liability applies to subsection (1) (a) (i).
- 10 (3) Strict liability applies to subsection (1) (a) (ii) and (iii).
- 11 (4) Subsection (1) does not apply to—
- 12 (a) a registered pharmacist who dispenses a substance or
13 instrument to someone else under a prescription given by a
14 doctor or nurse practitioner; or
- 15 (b) a registered pharmacist who, in the ordinary course of the
16 pharmacist's business, sells or supplies a substance or
17 instrument (other than a substance or instrument prescribed
18 under the regulations) for a purpose other than a purpose
19 mentioned in subsection (1) (b).
- 20 (5) In this section:
- 21 *authorised nurse practitioner* means a nurse practitioner who is the
22 occupant of a nurse practitioner position acting within the scope of
23 practice for the position.
- 24 *nurse practitioner position*—see the *Health Act 1993*,
25 section 37B (2).
- 26 *scope of practice*—see the *Health Act 1993*, section 37B (2).

1 ***sexual health condition*** means—

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

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

8 *Note* Under the *Sexually Transmitted Diseases Act 1956*, s 4 a ***sexually***
9 ***transmitted disease*** is chancroid, chlamydial disease, donovanosis,
10 gonorrhoea, HIV/AIDS, lymphogranuloma venereum, syphilis or a
11 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

-
- 1 (b) the other person is not an eligible receiver; and
- 2 (c) the person is reckless about whether the other person is an
- 3 eligible receiver.
- 4 Maximum penalty: 100 penalty units, imprisonment for 1 year or
- 5 both.
- 6 (2) A person commits an offence if—
- 7 (a) the person sells or otherwise supplies a biological preparation
- 8 or restricted substance; and
- 9 (b) the person is not—
- 10 (i) a doctor; or
- 11 (ii) an authorised nurse practitioner; or
- 12 (iii) a dentist; or
- 13 (iv) a pharmacist; or
- 14 (v) a veterinary surgeon; or
- 15 (vi) the holder of a licence to sell or otherwise supply the
- 16 preparation or substance; or
- 17 (vii) a public employee who is authorised in writing by the
- 18 Minister for this section.
- 19 Maximum penalty: 100 penalty units, imprisonment for 1 year or
- 20 both.
- 21 (3) Absolute liability applies to subsection (2) (b) (i) to (v).
- 22 (4) Strict liability applies to subsection (2) (b) (vi) and (vii).
- 23 (5) In this section:
- 24 ***authorised nurse practitioner*** means a nurse practitioner who is the
- 25 occupant of a nurse practitioner position acting within the scope of
- 26 practice for the position, if the scope of practice for the position

Section 16

- 1 includes prescribing stated biological preparations or restricted
2 substances (however described).
- 3 ***eligible receiver***, in relation to a biological preparation or restricted
4 substance, means—
- 5 (a) a doctor; or
6 (b) an authorised nurse practitioner; or
7 (c) a dentist; or
8 (d) a pharmacist; or
9 (e) a veterinary surgeon; or
10 (f) the holder of a licence to sell the preparation or substance; or
11 (g) a public employee who is authorised in writing by the Minister
12 for this section; or
13 (h) a person who presents a prescription authorising the supply of
14 the preparation or substance to the person or someone else for
15 whom the person is acting.
- 16 ***nurse practitioner position***—see the *Health Act 1993*,
17 section 37B (2).
- 18 ***prescription*** means a prescription, given by a doctor, authorised
19 nurse practitioner, dentist or veterinary surgeon, that complies with
20 the regulations.
- 21 ***scope of practice***—see the *Health Act 1993*, section 37B (2).

1 **17 Maximum penalty where offence is due to inadvertence**
2 **Section 18 (b)**

3 *omit*

4 issued by doctors

5 **18 Regulation-making power**
6 **Section 22 (2) (i)**

7 *substitute*

8 (i) the issue of prescriptions;

1 **Part 7** **Poisons Regulations 1933**

2 **19 Legislation amended—pt 7**

3 This part amends the *Poisons Regulations 1933*.

4 **20 Dispensing**
5 **Regulation 5 (2) (k)**

6 *substitute*

7 (k) a prescription for a substance containing a biological
8 preparation or restricted substance must be kept by the
9 pharmacist to whom it is presented, whether or not the
10 prescription has been dispensed, if—

- 11 (i) the pharmacist suspects that the prescription is forged or
12 fraudulently issued; or
- 13 (ii) the prescription does not contain the signature of a person
14 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

- 1 (b) the person fails to take reasonable steps to ensure that 1 or
2 more of the following is not used to induce someone else to
3 believe that the prostitute is not infected with a sexually
4 transmitted disease:
- 5 (i) the fact that a prostitute had a medical test;
- 6 (ii) the fact that a prostitute had a medical examination by a
7 doctor or authorised nurse practitioner;
- 8 (iii) the result of a prostitute's medical test;
- 9 (iv) the result of a prostitute's medical examination by a
10 doctor or authorised nurse practitioner.
- 11 Maximum penalty: 20 penalty units.
- 12 (2) A prostitute commits an offence if—
- 13 (a) the prostitute tells someone else—
- 14 (i) that the prostitute had a medical test; or
- 15 (ii) that the prostitute had a medical examination by a doctor
16 or authorised nurse practitioner; or
- 17 (iii) the result of the prostitute's medical test; or
- 18 (iv) the result of the prostitute's medical examination by a
19 doctor or authorised nurse practitioner; and
- 20 (b) the prostitute—
- 21 (i) intends the person to believe that the prostitute is not
22 infected with a sexually transmitted disease; or
- 23 (ii) is reckless about whether the person believes that the
24 prostitute is not infected with a sexually transmitted
25 disease.
- 26 Maximum penalty: 20 penalty units.
- 27 (3) An offence against subsection (1) is a strict liability offence.

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

8 (5) In this section:

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

11 **24 Disqualifying offences—this Act**
12 **Schedule 2, item 8, column 3**

13 *omit*

14 medical examination

15 *substitute*

16 medical test and medical examination

17 **25 Dictionary, new definition of *authorised nurse***
18 ***practitioner***

19 *insert*

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

23 **26 Dictionary, definition of *medical examination***

24 *omit*

1 **27 Dictionary, new definitions**

2 *insert*

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

5 *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.

- 1 (4) Failure to comply with subsection (1) by a doctor—
- 2 (a) is taken to be unsatisfactory professional conduct for the
- 3 *Medical Practitioners Act 1930*, part 4 (The conduct of
- 4 medical practice); and
- 5 (b) is a ground for the patient to make a complaint to the
- 6 commissioner for health complaints under the *Community and*
- 7 *Health Services Complaints Act 1993*, section 22 (1).
- 8 (5) Failure to comply with subsection (1) by an authorised nurse
- 9 practitioner—
- 10 (a) is taken to be a failure to exercise adequate care in practising
- 11 nursing for the *Nurses Act 1988*, section 61 (1) (Cancellation or
- 12 suspension of registration or enrolment); and
- 13 (b) is a ground for the patient to make a complaint to the
- 14 commissioner for health complaints under the *Community and*
- 15 *Health Services Complaints Act 1993*, section 22 (1).

16 **102A Doctors and authorised nurse practitioners—failure to**

17 **notify**

- 18 (1) A doctor or authorised nurse practitioner commits an offence if—
- 19 (a) the doctor or nurse practitioner has reasonable grounds to
- 20 believe that a patient has, or may have, a notifiable condition;
- 21 and
- 22 (b) the doctor or nurse practitioner fails to notify the chief health
- 23 officer, in accordance with the applicable code of practice,
- 24 about the patient's notifiable condition as soon as practicable.
- 25 Maximum penalty: 5 penalty units.
- 26 (2) A doctor commits an offence if—
- 27 (a) the doctor has reasonable grounds to believe that a dead person
- 28 had, or may have had, a notifiable condition at the time of
- 29 death; and

Section 31

- 1 (b) the person was a patient of the doctor immediately before
2 death, or was examined by the doctor after death; and
- 3 (c) the doctor fails to notify the chief health officer, in accordance
4 with the applicable code of practice, about the person's
5 notifiable condition as soon as practicable.
- 6 Maximum penalty: 5 penalty units.
- 7 (3) An offence against this section is a strict liability offence.
- 8 (4) It is a defence to a prosecution for an offence against subsection (1)
9 or (2) if the doctor or authorised nurse practitioner proves that he or
10 she believed on reasonable grounds that the chief health officer had
11 already been told about the notifiable condition of the patient or
12 dead person.

13 **31 Authorised notification of contacts**
14 **Section 108 (4) (a)**

15 *substitute*

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

17 **32 Section 111**

18 *substitute*

19 **111 Disclosure of information that identifies doctor etc**

- 20 (1) A person commits an offence if the person—
- 21 (a) intentionally discloses information notified under this division;
22 and

- 1 (b) is reckless about whether the person who made the notification,
2 or the pathology laboratory or hospital to which the
3 notification relates, is reasonably able to be identified from the
4 information.
- 5 Maximum penalty: 50 penalty units, imprisonment for 6 months or
6 both.
- 7 (2) Subsection (1) does not apply if—
- 8 (a) the person who made the notification, or the person in charge
9 of the pathology laboratory or hospital, consents in writing to
10 the disclosure; or
- 11 (b) the person has a reasonable excuse for the disclosure.
- 12 (3) In this section:
- 13 *person who made the notification* means the doctor, authorised
14 nurse practitioner, pathologist or responsible person who made the
15 notification.
- 16 *responsible person* means a counsellor mentioned in section 105 (1)
17 (Notification by responsible people) or person mentioned in
18 section 105 (2) who is responsible for the care, support or education
19 of someone else.

20 **33 Section 114**

21 *substitute*

22 **114 Public health directions—notice to doctor or authorised** 23 **nurse practitioner**

- 24 (1) This section applies if the chief health officer gives a public health
25 direction about a person for reasons including the chief health
26 officer's belief that the person has a disease or notifiable condition.

Section 34

- 1 (2) The chief health officer must give written notice of the direction to
2 any doctor or authorised nurse practitioner professionally attending
3 the person at the time of the direction.

4 **34 Dictionary, new definitions**

5 *insert*

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

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

11 **35 Dictionary, definition of *responsible person***

12 *substitute*

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

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

21 **36 Dictionary, new definition of *scope of practice***

22 *insert*

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

1 **Part 10** **Public Health Regulations**
2 **2000**

3 **37 Legislation amended—pt 10**

4 This part amends the *Public Health Regulations 2000*.

5 **38 Sale of injurious drugs, articles and apparatus**
6 **Regulation 51 (7) (c) and (d)**

7 *substitute*

8 (c) the supply of drugs by prescription or order, signed by a doctor
9 or authorised nurse practitioner; or

10 (d) the supply of drugs by a doctor or authorised nurse practitioner
11 to a patient or person acting on behalf of a patient.

1 **Part 11** **Road Transport (Alcohol and**
2 **Drugs) Act 1977**

3 **39 Legislation amended—pt 11**

4 This part amends the *Road Transport (Alcohol and Drugs) Act*
5 1977.

6 **40 Restrictions on screening tests and breath analyses**
7 **Section 14 (3) (b)**

8 *substitute*

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

13 **41 New section 14 (4)**

14 *insert*

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

19 **42 Medical examinations**
20 **Section 16 (4) and (5)**

21 *omit*

22 doctor

23 *substitute*

24 doctor or authorised nurse practitioner

1 **43 Section 16 (6)**

2 *omit*

3 doctor or a police officer

4 *substitute*

5 doctor, authorised nurse practitioner or police officer

6 **44 Refusing blood test etc**
7 **Section 23 (2) (b)**

8 *omit*

9 doctor

10 *substitute*

11 doctor or authorised nurse practitioner

12 **45 Section 23**

13 *renumber subsections when Act next republished under Legislation*
14 *Act*

15 **46 Driver etc intoxicated**
16 **Section 24A (2)**

17 *substitute*

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

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

3 *substitute*

4 (e) a certificate purporting to be signed by a doctor or authorised
5 nurse practitioner stating all of the following is evidence of the
6 matters stated in the certificate:

7 (i) that he or she is a doctor or authorised nurse practitioner;

8 (ii) that at a stated hospital, on a stated date and at a stated
9 time, he or she was attending the person named in the
10 certificate;

11 (iii) that he or she was told by a police officer of the officer's
12 intention to require a person to undergo a screening test
13 under section 8 (Power to require screening test if vehicle
14 not involved in accident), section 9 (Power to require
15 screening test if motor vehicle involved in accident) or
16 section 10 (Power to require screening test for culpable
17 driving) or to provide a sample of the person's breath for
18 breath analysis under section 12 (Breath analysis);

19 (iv) that he or she was of the opinion at the time he or she was
20 told that—

21 (A) complying with the requirement would be
22 detrimental to the person's medical condition; or

23 (B) complying with the requirement would not be
24 detrimental to the person's medical condition; and

25 **48 Section 41 (1)**

26 *renumber subparagraphs when Act next republished under*
27 *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.

1 **5A Notification about case of sexually transmitted disease**

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

8 Maximum penalty: 5 penalty units.

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

12 Maximum penalty: 5 penalty units.

- 13 (3) Subsection (2) does not apply if another Territory law requires or
- 14 permits the details to be given.

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

16 **6 Notification about person contravening s 5 (2)**

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

22 Maximum penalty: 5 penalty units.

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

24 **6A Notification by pathologist etc**

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

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

13 Maximum penalty: 5 penalty units.

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

17 Maximum penalty: 5 penalty units.

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

22 *pathologist* includes a laboratory assistant or technical officer

23 employed in a laboratory.

24 **7 Notice requiring medical examination**

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

Section 55

- 1 (a) receives a notification under section 6 (Notification about
2 person contravening s 5 (2)) about the person; or
3 (b) has another reason for believing that the person has, or may
4 have, a sexually transmitted disease.
5 (2) The person must have the medical examination.
6 (3) In this section:
7 *medical examination* means an examination by a doctor or
8 authorised nurse practitioner.

7A Notice requiring medical examination of young person

- 10 (1) If a notice under section 7 (Notice requiring medical examination) is
11 given to a person under 16 years old (the *young person*), the chief
12 health officer may give a copy of the notice to a parent or other
13 person who has parental responsibility for the young person.
14 (2) A person commits an offence if—
15 (a) the person is given a copy of a notice under subsection (1); and
16 (b) the person fails to take all reasonable steps to ensure that the
17 young person complies with the notice.
18 Maximum penalty: 50 penalty units.
19 (3) An offence against subsection (2) is a strict liability offence.
20 (4) In this section:
21 *parental responsibility*—see the *Children and Young People*
22 *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.

1

59 Section 8

2

renumber subsections when Act next republished under Legislation

3

Act

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

Section 62

1 (b) the doctor or nurse practitioner fails to notify the chief health
2 officer about the patient's condition as soon as possible,
3 including—

4 (i) whether the tuberculosis is or was in an active form or is
5 suspected of being or having been in that form; and

6 (ii) whether the patient is or was in an infectious condition or
7 is suspected of being or having been in that condition.

8 Maximum penalty: 5 penalty units.

9 (2) A doctor commits an offence if—

10 (a) the doctor has reasonable grounds to believe that a dead person
11 had, or may have had, tuberculosis at the time of death; and

12 (b) the person was a patient of the doctor immediately before
13 death, or was examined by the doctor after death; and

14 (c) the doctor fails to notify the chief health officer about the
15 person's condition as soon as possible, including—

16 (i) whether the tuberculosis is or was in an active form or is
17 suspected of being or having been in that form; and

18 (ii) whether the person is or was in an infectious condition or
19 is suspected of being or having been in that condition.

20 Maximum penalty: 5 penalty units.

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

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

26 (5) In this section:

1 Presentation speech

2 Notification

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.