

# NORTHERN TERRITORY OF AUSTRALIA

## PUBLIC AND ENVIRONMENTAL HEALTH ACT 2011

As in force at 2 July 2011

### Table of provisions

<b>Part 1</b>	<b>Preliminary matters</b>	
1	Short title .....	1
2	Commencement .....	1
3	Objects of Act .....	1
4	Definitions .....	2
5	Precautionary principle .....	5
6	Act binds Crown .....	5
7	Application of Criminal Code .....	5
<b>Part 2</b>	<b>Public health risk activities</b>	
<b>Division 1</b>	<b>General matters</b>	
8	Application of Part .....	6
9	Declaration of public health risk activities .....	6
<b>Division 2</b>	<b>Registration of businesses carrying out declared activities</b>	
10	Business required to be registered .....	7
11	Application for registration .....	7
12	Grant or refusal of registration .....	8
13	Conditions of registration .....	8
14	Compliance with conditions by proprietor .....	8
15	Compliance with conditions by mobile operator .....	9
16	Term of registration .....	10
17	Renewal of registration .....	10
18	Display of registration notice .....	11
19	Registration non-transferable .....	11
20	Variation of conditions of registration .....	11
21	Cancellation of registration .....	12
22	Applying for registration after cancellation .....	13
23	Changes relating to registered business to be notified .....	13
24	CHO to be notified of sale or disposal of business .....	14
<b>Part 3</b>	<b>Public health nuisances</b>	
25	Public health nuisance and its source .....	14
26	Causing or permitting public health nuisance .....	15
27	Complaint about public health nuisance .....	16

---

28	Investigation of complaint .....	16
----	----------------------------------	----

## **Part 4 Public health notices and orders**

### **Division 1 Public health notices**

29	Issue of public health notice .....	16
30	Compliance with public health notice.....	17
31	Duration of public health notice .....	18

### **Division 2 Public health orders**

32	Issue of public health order.....	18
33	Duration of public health order.....	19
34	Compliance with public health order.....	19
35	Display of public health order .....	19
36	Enforcement of public health order.....	19

### **Division 3 Extension and cancellation**

37	Extension of period for compliance with public health notice or order .....	20
38	Cancellation of public health notice or order.....	21

## **Part 5 Special powers**

### **Division 1 Conduct of inquiries**

39	Establishment of inquiry .....	22
40	Procedure of inquiry .....	22
41	Powers of inquirer.....	22
42	Report of inquiry .....	23
43	Directions by inquirer.....	23
44	Misleading information and documents .....	24
45	Contempt of inquiry .....	25
46	Protection and immunity from liability .....	25

### **Division 2 Emergency powers**

47	Application of Division .....	26
48	Declaration of public health emergency.....	26
49	Content of declaration .....	26
50	Duration of declaration .....	27
51	Notification or extension of declaration.....	27
52	CHO's emergency powers.....	27
53	Appointment and powers of authorised officer during public health emergency .....	28
54	Record of action taken during public health emergency .....	29
55	Report on public health emergency .....	29

56	Contravention of emergency declaration or direction .....	30
57	Limitation on stay of operation of emergency powers.....	30
<b>Division 3 Powers relating to things that threaten public health</b>		
58	Dealings with certain things .....	31
59	Removal and destruction of things .....	31
<b>Division 4 Power to take action</b>		
60	Action taken if direction, public health notice or order contravened.....	32
61	Action if public health nuisance exists .....	33
62	CHO may authorise entry and work.....	33
<b>Division 5 Health information</b>		
63	CHO may obtain health information.....	33
64	Use of health information.....	34
65	Register of health information.....	34
<b>Part 6 Administration</b>		
<b>Division 1 Chief Health Officer</b>		
66	Establishment of office .....	34
67	Appointment of CHO .....	34
68	Powers and functions .....	35
69	Delegation .....	35
<b>Division 2 Enforcement agencies</b>		
70	Appointment of enforcement agency .....	35
71	Delegation to agency .....	36
72	Powers and functions .....	36
73	Fees and charges.....	36
74	Appointment of authorised officers .....	36
75	Failure by enforcement agency to act.....	37
<b>Division 3 Authorised officers</b>		
76	Who is authorised officer .....	37
77	Qualifications for appointment .....	37
78	Identity card .....	38
79	Functions and powers .....	39
<b>Division 4 Powers of entry, inspection, seizure</b>		
80	Entry, inspection and seizure.....	39

81	Warrants .....	41
82	Obtaining warrant by telephone or other electronic method .....	42
83	Entering Aboriginal land .....	42
84	Requirement to provide information.....	43
85	Requirement to produce documents or things .....	43
86	Failing to comply with requirement of authorised officer .....	43
87	Obstructing and threatening authorised officer .....	44
88	False representation.....	45

## **Division 5      Seizure and forfeiture of things**

### **Subdivision 1      Seizure**

89	Detention of thing seized .....	45
90	Notification of seizure of thing.....	45
91	Return of thing seized.....	46

### **Subdivision 2      Order disallowing seizure**

92	Application for order disallowing seizure .....	46
93	CHO entitled to answer application .....	46
94	Order disallowing seizure of seized thing .....	47
95	Ancillary orders.....	47
96	Adjournment pending hearing of other proceedings .....	47

### **Subdivision 3      Forfeiture**

97	Forfeiture of seized thing .....	48
98	Destruction or disposal of forfeited thing .....	48
99	Return of forfeited thing .....	48
100	Compensation to be paid in certain circumstances .....	49

## **Part 7              Guidelines and standards**

101	Guidelines.....	50
102	Standards .....	50
103	Inspection and purchase of copies of guidelines, standards and related documents .....	51

## **Part 8              Reviews and appeals**

104	Reviewable decisions and affected persons.....	51
105	Review by CHO .....	52
106	Appeal against decision on review .....	53
107	Appeal against decision relating to emergency declaration.....	53
108	Conduct of appeal .....	54
109	Operation and implementation of decision pending review or appeal.....	54

---

<b>Part 9</b>	<b>General offences and procedural matters</b>	
<b>Division 1</b>	<b>General offences</b>	
110	Contravention of exemption.....	55
111	Bribery .....	56
112	Confidentiality of information .....	56
113	Misleading information and documents .....	57
<b>Division 2</b>	<b>Criminal liability for offences</b>	
114	Definitions.....	58
115	Liability of representative .....	59
116	Conduct of representative.....	59
117	Criminal liability of partner in partnership.....	60
118	Criminal liability of manager of unincorporated association.....	61
119	Criminal liability of executive officer of body corporate .....	62
<b>Division 3</b>	<b>Legal proceedings</b>	
120	Who may start proceedings under Act.....	63
121	When proceedings under Act started .....	63
122	Offender liable for certain costs.....	63
123	Publication of names of offenders and other information.....	63
<b>Part 10</b>	<b>Miscellaneous matters</b>	
124	Approved forms .....	64
125	Administering Agency registers .....	64
126	Information in Administering Agency registers.....	65
127	Inspection of Administering Agency registers .....	66
128	Enforcement agency registers .....	66
129	Exemption from application of Act .....	67
130	Powers of police officers.....	67
131	Protection from liability .....	67
132	Acquisition on just terms.....	68
133	Regulations.....	68
<b>Part 11</b>	<b>Repeals and transitional matters</b>	
<b>Division 1</b>	<b>Repeal of Acts</b>	
134	Acts repealed.....	69
<b>Division 2</b>	<b>Transitional matters for Public and Environmental Health Act 2011</b>	
135	Definitions.....	70
136	Registration of business carrying out declared activity .....	70

---

137	Appointments.....	70
138	Notices under section 7C.....	70
139	Regulations and other instruments .....	71

**Schedule 1    Reviewable decisions and affected persons**

**Schedule 2    Repealed Acts**

**ENDNOTES**

# NORTHERN TERRITORY OF AUSTRALIA

---

This reprint shows the Act as in force at 2 July 2011. Any amendments that commence after that date are not included.

---

## PUBLIC AND ENVIRONMENTAL HEALTH ACT 2011

### An Act about public and environmental health

#### Part 1 Preliminary matters

##### 1 Short title

This Act may be cited as the *Public and Environmental Health Act 2011*.

##### 2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

##### 3 Objects of Act

(1) This Act has the following objects:

- (a) to protect and promote the health of individuals and communities in the Territory;
- (b) to provide a flexible capacity to protect the health of particular individuals and communities in the Territory from emerging environmental conditions, or public and environmental health issues, that may impact on their health and wellbeing;
- (c) to enable special action to be taken to protect the health of particular individuals and communities in the Territory who are at public health risk or facing particular health problems;
- (d) to improve the public and environmental health outcomes of all Territorians in partnership with individuals and the community;
- (e) to monitor, assess and control environmental conditions, factors and agents, facilities and equipment and activities, services and products that impact on or may impact on public and environmental health.

- (2) In carrying out the objects of this Act, regard should be had to the precautionary principle.

#### 4 Definitions

In this Act:

**acting in an official capacity**, in relation to an authorised officer, means the officer is exercising powers or performing functions under this Act or exercising powers or performing functions otherwise related to the administration of this Act.

**Administering Agency register**, see section 125(1).

**affected person**, see section 104(2).

**approved form** means a form approved under section 124.

**authorised officer**, see section 76(1).

**business** includes:

- (a) the provision of services on a commercial or non-commercial basis; and
- (b) a profession, trade or occupation.

**Chief Health Officer** means the person holding or occupying the office of Chief Health Officer established by section 66.

**CHO** is an acronym for Chief Health Officer.

**declared activity** means an activity declared under section 9(1) to be a public health risk activity.

**emergency declaration** means a declaration of a public health emergency made under section 48.

**enforcement agency** means an enforcement agency appointed under section 70.

**environmental health** means the aspects of human health determined by the physical, chemical, biological and social factors in the environment.

**forfeited thing**, see section 98(1).

**guideline** means a guideline in force under section 101.

**health information**, see section 4 of the *Information Act*.



**health information register**, see section 65(1).

**inquirer**, see section 39(1).

**misleading information** means information that is misleading in a material particular or because of the omission of a material particular.

**mobile operator**, for a registered business, means an individual (whether the proprietor of the business or the agent or employee of the proprietor) who conducts operations of the business that involve carrying out a declared activity away from the place registered as the place on which the declared activity is carried out.

**occupier**, of a place, includes the following:

- (a) a person who is in charge of or manages a business conducted at the place, whether or not the person is the proprietor of the business;
- (b) a person who occupies or controls the place, whether or not the person owns the place;
- (c) if different parts of the place are occupied by different persons – a person who occupies or controls a part of the place, whether or not the person owns the place or part of the place.

**owner**, of a place, includes the following:

- (a) a person who is the proprietor of a business conducted at the place;
- (b) a person who manages the place as the agent of the owner;
- (c) a mortgagee in possession of the place who has assumed active management of some or all of the activities carried out at the place.

**place** includes the following:

- (a) vacant land;
- (b) premises;
- (c) a vehicle;
- (d) a body of water;
- (e) a part of a place.

**precautionary principle** means the principle stated in section 5.

**premises** includes:

- (a) a building or structure; and
- (b) a part of a building or structure; and
- (c) land on which a building or structure is situated.

**proprietor**, of a business, means:

- (a) the owner of the business; or
- (b) a person conducting business for the owner of the business;  
or
- (c) if a person mentioned in paragraph (a) or (b) cannot be identified – the person who appears to be in charge of the business.

**public health** means the physical, mental and social wellbeing of the community.

**public health notice**, see section 29(1).

**public health nuisance**, see section 25(1) and (2).

**public health order**, see section 32(1).

**public health risk** means a risk of harm to public health.

**reasonably believes** means believes on reasonable grounds.

**registered business** means a business for which registration has been granted under section 12 or renewed under section 17.

**registration** means registration of a business granted under section 12 or renewed under section 17.

**registration notice**, for the registration of a business, means a notice stating the date, terms and conditions of the registration.

**residential premises** means premises used exclusively or primarily as a residence, and includes:

- (a) a caravan or mobile home; and
- (b) a houseboat or other vessel.

**reviewable decision**, see section 104(1).

**seized thing**, see section 89(1).

**serious public health risk** means a public health risk involving significant potential harm to public health that:

- (a) is of a high impact; or
- (b) is on a wide scale; or
- (c) is or may be irreversible.

**source**, of a public health nuisance, see section 25(3).

**standard** means a standard applying in the Territory, or a stated part of the Territory, under section 102.

**vehicle** means anything used for carrying anything or any person by land, water or air.

## **5 Precautionary principle**

- (1) If there is a serious public health risk, lack of full scientific certainty should not be used as a reason for postponing measures to prevent, control or abate the risk.
- (2) In the application of subsection (1), decision making should be guided by:
  - (a) a careful evaluation to avoid, where practicable, serious harm to public health; and
  - (b) an assessment of the consequences of the options available with regard to the risk of each consequence occurring.

## **6 Act binds Crown**

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

## **7 Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 7*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with the burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

## **Part 2            Public health risk activities**

### **Division 1        General matters**

#### **8                  Application of Part**

- (1) This Part does not apply to a person who is authorised by another Act to carry out a declared activity.
- (2) Without limiting subsection (1), a person is authorised by another Act if:
  - (a) the person is a health practitioner who carries out the activity in the course of practising the health practitioner's profession; or
  - (b) the person is licensed or otherwise authorised under the *Radiation Protection Act* to carry out the activity.
- (3) In this section:

***health practitioner*** means:

- (a) a medical practitioner; or
- (b) a person registered under the Health Practitioner Regulation National Law:
  - (i) to practise in the dental profession as a dentist (other than as a student); and
  - (ii) in the dentists division of that profession; or
- (c) a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a student); or
- (d) a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession (other than as a student).

#### **9                  Declaration of public health risk activities**

- (1) The Minister may, by *Gazette* notice, declare an activity to be a public health risk activity.
- (2) Without limiting subsection (1), the declared activity may be an activity that might:
  - (a) result in the transmission of disease; or

- (b) otherwise be a public health risk.

## **Division 2            Registration of businesses carrying out declared activities**

### **10            Business required to be registered**

A person commits an offence if:

- (a) the person is the proprietor of a business; and
- (b) the person, or an employee or agent of the person, carries out a declared activity in the conduct of the business; and
- (c) the business is not registered for the activity.

Fault elements:

The person:

- (a) intentionally carries out the activity in the conduct of the business; or
- (b) is reckless as to whether the person's employee or agent carries out the activity in the conduct of the business.

Maximum penalty:        200 penalty units.

### **11            Application for registration**

- (1) An application for the registration of a business involving the carrying out of a declared activity must:
- (a) be made in the approved form to the CHO by the proprietor of the business; and
  - (b) include the following particulars:
    - (i) the name and address of the proprietor;
    - (ii) the name under which the business operates and the address of each place where the business is conducted;
    - (iii) the nature and location of the declared activity;
    - (iv) the nature of the business;
    - (v) if the declared activity is being, or is proposed to be, carried out by a mobile operator – the name and address of the mobile operator; and

- (c) include a set of scaled drawings, plans or specifications of the business; and
  - (d) be accompanied by the fee prescribed by regulation.
- (2) The CHO may request the proprietor to provide any additional information the CHO requires to consider the application.

## **12            Grant or refusal of registration**

- (1) The CHO must consider the application and decide whether to register the business.
- (2) The CHO must register the business if satisfied the proprietor will:
- (a) carry out the declared activity in a proper way; and
  - (b) conduct the business in accordance with its registration and this Act.
- (3) The CHO must give the proprietor the following:
- (a) written notice of the CHO's decision;
  - (b) if the CHO registers the business – a registration notice for the business;
  - (c) if the CHO refuses to register the business – written notice of:
    - (i) the reasons for the refusal; and
    - (ii) the procedures for review and appeal under Part 8.

## **13            Conditions of registration**

- (1) It is a condition of the registration of the business that the proprietor and any mobile operators for the business comply with this Act.
- (2) The CHO may impose any other conditions of registration relating to the carrying out of the declared activity the CHO considers appropriate.

## **14            Compliance with conditions by proprietor**

A person commits an offence if:

- (a) the person is the proprietor of a registered business; and
- (b) the registration of the business is subject to a condition; and

- (c) the proprietor engages in conduct that results in a contravention of the condition.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of the condition.

Maximum penalty: 200 penalty units.

## **15 Compliance with conditions by mobile operator**

- (1) A person commits an offence if:

- (a) the person is a mobile operator for a registered business; and
- (b) the registration of the business is subject to a condition; and
- (c) the person engages in conduct that results in a contravention of the condition.

Fault elements:

The person:

- (a) knows the registration is subject to a condition; and
- (b) intentionally engages in the conduct; and
- (c) is reckless as to whether the conduct would result in a contravention of the condition.

Maximum penalty: 100 penalty units.

- (2) A person commits an offence if:

- (a) the person is the proprietor of a registered business; and
- (b) the registration of the business is subject to a condition; and
- (c) a mobile operator for the business engages in conduct that results in a contravention of the condition.

Maximum penalty: 100 penalty units.

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

- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves the defendant used all due diligence to ensure the mobile operator complied with the condition.
- (5) The proprietor of a business may be prosecuted for and found guilty of an offence against subsection (2) even if the mobile operator has not been prosecuted for an offence against subsection (1).

## **16            Term of registration**

The registration of a business remains in force for the period stated in the registration notice, unless it is cancelled under section 21.

## **17            Renewal of registration**

- (1) An application for the renewal of the registration of a business must:
  - (a) be made in the approved form to the CHO by the proprietor of the business; and
  - (b) be made before the end of the term of the registration; and
  - (c) be accompanied by the fee prescribed by regulation.
- (2) The CHO may require an inspection by an authorised officer of the business and the way the declared activity is conducted before deciding the application.
- (3) The CHO must consider the application and decide whether to renew the registration.
- (4) The CHO may impose different conditions on a renewed registration than those imposed immediately before the renewal.
- (5) The CHO must give the proprietor the following:
  - (a) written notice of the CHO's decision;
  - (b) if the CHO renews the registration – a registration notice for the business;
  - (c) if the CHO refuses to renew the registration – written notice of:
    - (i) the reasons for the refusal; and
    - (ii) the procedures for review and appeal under Part 8.



## **18            Display of registration notice**

- (1) The proprietor of a registered business must display a copy of the registration notice for the business in a conspicuous place at each place where the business is conducted.

Maximum penalty:        20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) A mobile operator for the business must carry a copy of the registration notice at all times the operator is carrying out a declared activity away from the place registered as the place on which the declared activity is carried out.

Maximum penalty:        20 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

## **19            Registration non-transferable**

The registration of a business is not transferable.

## **20            Variation of conditions of registration**

- (1) The CHO may vary the conditions of the registration of a registered business:

- (a) on application of the proprietor to the CHO; or
- (b) on the CHO's initiative.

- (2) An application for variation must be:

- (a) in the approved form; and
- (b) accompanied by the fee prescribed by regulation.

- (3) The CHO must consider the application and decide whether to vary the conditions of the registration in accordance with the application.

- (4) Following an application for variation, the CHO must give written notice to the proprietor of:

- (a) the CHO's decision; and
- (b) if the CHO refuses the application:
  - (i) the reasons for the refusal; and
  - (ii) the procedures for review and appeal under Part 8.

- (5) Before varying the registration on the CHO's initiative, the CHO must give the proprietor written notice:
  - (a) stating the proposed variation; and
  - (b) stating the reasons for the variation; and
  - (c) inviting the proprietor to submit, within the period of not less than 7 days stated in the notice, reasons why the variation should not be made.
- (6) The CHO may, having considered any submissions of the proprietor, vary the conditions of the registration as proposed in the notice or in another way the CHO considers appropriate.
- (7) The CHO must, if the CHO varies the conditions under subsection (6), give written notice to the proprietor of the variation.
- (8) A variation of conditions of registration takes effect on the later of the following:
  - (a) the date on which the proprietor receives notice of the variation;
  - (b) the date stated in the notice.
- (9) Subsections (2) to (8) do not apply if the variation is for a formal or clerical reason that does not alter the effect of the registration.

## **21            Cancellation of registration**

- (1) The CHO may cancel the registration of a business:
  - (a) if the proprietor or a mobile operator for the business contravenes a condition of the registration; or
  - (b) if the proprietor or a mobile operator for the business is found guilty of an offence against this Act or another law of the Territory relating to the declared activity that is the subject of the registration; or
  - (c) for another reason the CHO considers appropriate.
- (2) Before cancelling the registration, the CHO must give written notice to the proprietor:
  - (a) stating the CHO proposes to cancel the registration; and
  - (b) stating the reasons for cancellation; and

- (c) inviting the proprietor to submit, within the period of not less than 7 days stated in the notice, reasons why the variation should not be made.
- (3) If, having considered any submissions of the proprietor, the CHO continues to consider the registration should be cancelled, the CHO may cancel the registration by written notice to the proprietor.
- (4) The notice must state:
  - (a) the reasons for the cancellation; and
  - (b) the procedures for review and appeal under Part 8.
- (5) The cancellation takes effect on the later of the following:
  - (a) the date on which the proprietor receives the notice;
  - (b) the date stated in the notice.

## **22 Applying for registration after cancellation**

- (1) The cancellation of the registration of a business does not prevent the proprietor from applying to re-register the same business or register another business.
- (2) However, the proprietor is not entitled to re-register the same business or register another business within 12 months after the date the registration was cancelled.

## **23 Changes relating to registered business to be notified**

- (1) The proprietor of a registered business must give the CHO written notice of a change in any of the following within 14 days after the change occurs:
  - (a) the proprietor's name or address;
  - (b) the name of the business;
  - (c) the address of the place where the business is conducted;
  - (d) the name or address of a mobile operator for the business.

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

**24 CHO to be notified of sale or disposal of business**

- (1) A person commits an offence if:
- (a) the person is the proprietor of a registered business; and
  - (b) the person:
    - (i) sells or otherwise disposes of the business or other property used for carrying out declared activities by the business; or
    - (ii) ceases to operate the business; and
  - (c) does not give the CHO written notice in accordance with subsection (4).

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.
- (4) The notice must:
- (a) include details of the business or property sold or disposed of or of the cessation; and
  - (b) if the proprietor sells the business or other property – include the name and address of the purchaser of the business or property; and
  - (c) be given to the CHO within 7 days after the sale, disposal or cessation.

**Part 3 Public health nuisances****25 Public health nuisance and its source**

- (1) A **public health nuisance** is anything that:
- (a) puts at risk or damages public health; or
  - (b) has put at risk or damaged public health; or
  - (c) is likely to put at risk or damage public health.

(2) Without limiting subsection (1), a public health nuisance may relate to any of the following:

- (a) place;
- (b) water or land covered by water;
- (c) an animal, whether dead or alive;
- (d) refuse;
- (e) dust, fumes, vapour or any other emission.

*Examples of animals for subsection (2)(c)*

1 A bird.

2 A reptile.

3 An insect.

(3) The **source** of a public health nuisance is the condition, state or conduct that is, or results in, the public health nuisance.

## 26 Causing or permitting public health nuisance

(1) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct results in a public health nuisance.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct will result in a public health nuisance.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) A person commits an offence if:

- (a) the person is an occupier of a place; and
- (b) the source of a public health nuisance exists at, or emanates from, the place; and

- (c) the occupier fails to prevent or remove the source.

Fault elements:

The person:

- (a) knows the source of the nuisance exists at, or emanates from, the place; and
- (b) intentionally fails to prevent or remove the source.

Maximum penalty:     400 penalty units or imprisonment for  
   2 years.

## **27            Complaint about public health nuisance**

- (1) A person who is affected by what the person believes is a public health nuisance may complain to an authorised officer about the nuisance.
- (2) The complaint:
- (a) may be made orally or in writing; and
- (b) must state what the person believes is the source of the public health nuisance.

## **28            Investigation of complaint**

- (1) As soon as possible after a complaint is made, an authorised officer must investigate the complaint to decide whether or not a public health nuisance exists.
- (2) The authorised officer who investigates the complaint need not be the authorised officer who received the complaint.

# **Part 4            Public health notices and orders**

## **Division 1        Public health notices**

### **29            Issue of public health notice**

- (1) The CHO may issue a notice (a ***public health notice***) to a person if the CHO reasonably believes:
- (a) the person is the occupier of a place where:
- (i) an activity is being carried on that contravenes, or is likely to contravene, this Act; or

- (ii) an activity has been carried on that contravened this Act; and it is likely the contravention will be repeated; or
  - (iii) the source of a public health nuisance exists, or emanates from; or
- (b) the person:
  - (i) is carrying on an activity that contravenes, or is likely to contravene, this Act; or
  - (ii) has carried on an activity that contravened this Act and it is likely the person will repeat the contravention; or
  - (iii) is engaging in conduct that is the source of a public health nuisance.
- (2) The notice must state the following:
  - (a) the reasons the CHO has issued the notice;
  - (b) the person must rectify the circumstances that gave rise to the notice;
  - (c) the period within which the person must comply with the notice;
  - (d) if the CHO considers it appropriate – the action recommended (but not required) to be taken;
  - (e) the procedures for review and appeal under Part 8.
- (3) An activity may contravene or be likely to contravene this Act because of the way the activity is being carried out.

### **30 Compliance with public health notice**

- (1) A person commits an offence if:
  - (a) a public health notice is issued to the person; and
  - (b) the person engages in conduct that results in a contravention of the notice.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and

- (b) is reckless as to whether the conduct would result in a contravention of the notice.

Maximum penalty:        400 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.
- (3) To avoid doubt, a person does not commit an offence against subsection (1) merely because the person does not take the action recommended by the CHO.

### **31            Duration of public health notice**

A public health notice has effect until it is cancelled under section 38.

## **Division 2            Public health orders**

### **32            Issue of public health order**

- (1) The CHO may issue an order (a **public health order**) to a person:
  - (a) issued with a public health notice who has failed to comply with the notice (whether or not the period for compliance with the notice, or any extension of the period, has expired); or
  - (b) who is conducting a business (which need not be a registered business) or carrying out any activity (which need not be a declared activity) in circumstances or in a way that gives rise to an immediate serious public health risk.
- (2) The order must state the following:
  - (a) the reasons for issuing the order;
  - (b) the place or activity to which the order applies;
  - (c) the action the person must take to rectify the circumstances that gave rise to the order;
  - (d) if appropriate – the period within which the order must be complied with;
  - (e) the procedures for review and appeal under Part 8.
- (3) The order may include any of the following directions:
  - (a) a thing must or must not to be used in connection with a business or activity;



- (b) a thing must be isolated, destroyed or disposed of in a stated way;
- (c) a business or activity must be conducted or carried out in a stated way;
- (d) the whole or a part of a place where a business or activity is conducted or carried out must be closed or sealed off.

**33            Duration of public health order**

A public health order remains in force until it is cancelled under section 38.

**34            Compliance with public health order**

A person commits an offence if:

- (a) a public health order is issued to the person; and
- (b) the person engages in conduct that results in a contravention of the order.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of the order.

Maximum penalty:     500 penalty units.

**35            Display of public health order**

- (1) A person issued with a public health order must display a copy of the order in a conspicuous place at each place to which the order relates.

Maximum penalty:     20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

**36            Enforcement of public health order**

- (1) The CHO may apply to the Local Court for an order under subsection (2) if a person issued with a public health order fails to comply with the order within:

- (a) the period for compliance with the order; or

- (b) if the period for compliance is extended under section 37 – the extended period for compliance.
- (2) If the Court is satisfied the person has failed to comply with the public health order, the Court may order the person to remedy the failure by:
  - (a) taking particular action; or
  - (b) stopping engaging in particular conduct; or
  - (c) doing anything else the Court considers necessary.
- (3) In considering the application, the Court may call for and consider any relevant report on the matter.
- (4) In addition to making an order under subsection (2), the Court may:
  - (a) order the person to pay to the Territory a civil penalty of up to 500 penalty units; and
  - (b) make other orders (including as to costs) the Court considers just.
- (5) The Court may make an order under subsection (4)(a) whether or not the person has been prosecuted for or found guilty of an offence against section 34.

### **Division 3            Extension and cancellation**

#### **37            Extension of period for compliance with public health notice or order**

- (1) Before the period for compliance with a public health notice or public health order expires, the CHO may extend the period:
  - (a) on application of the person issued with the notice or order; or
  - (b) on the CHO's initiative.
- (2) If a person applies for an extension of the period for compliance, the CHO must consider the application and decide whether to extend the period.
- (3) The CHO must give written notice to the applicant of:
  - (a) the CHO's decision; and

- (b) if the CHO refuses the application:
  - (i) the reasons for the refusal; and
  - (ii) the procedures for review and appeal under Part 8.
- (4) The CHO must not extend the period for compliance unless satisfied the applicant will not be able to comply with the notice or order within the period.

### **38            Cancellation of public health notice or order**

- (1) The CHO may cancel a public health notice or public health order:
  - (a) on application of the person issued with the notice or order; or
  - (b) on the CHO's initiative.
- (2) An application for cancellation must:
  - (a) be in the approved form; and
  - (b) be accompanied by the fee prescribed by regulation; and
  - (c) state the action taken to comply with the notice or order; and
  - (d) state a date on which, or a period within which, an appropriate inspection may be made to decide whether the notice or order has been complied with.
- (3) If a person applies for cancellation of a notice or order, the CHO must consider the application and decide whether to cancel the notice or order.
- (4) The CHO must give written notice to the applicant of:
  - (a) the CHO's decision; and
  - (b) if the CHO refuses the application:
    - (i) the reasons for the refusal; and
    - (ii) the procedures for review and appeal under Part 8.
- (5) The CHO must not cancel a notice or order unless the CHO is satisfied:
  - (a) an authorised officer has carried out an appropriate inspection; and
  - (b) the notice or order has been complied with.

## **Part 5            Special powers**

### **Division 1        Conduct of inquiries**

#### **39            Establishment of inquiry**

- (1) If the Minister considers there is a matter concerning public health or the administration of this Act that is of a serious nature, the Minister may appoint a person (an ***inquirer***) to conduct an inquiry and report on the matter.
- (2) The inquirer must have suitable expertise and experience to conduct the inquiry.

#### **40            Procedure of inquiry**

- (1) An inquiry must be conducted:
  - (a) subject to and in accordance with any directions of the Minister; and
  - (b) with as little formality and technicality as a proper consideration of the issues allows; and
  - (c) in accordance with any procedures decided by the inquirer.
- (2) The inquirer:
  - (a) is not bound by the rules of evidence; and
  - (b) is not required to conduct the inquiry as a hearing; and
  - (c) must observe the rules of natural justice; and
  - (d) must keep a record of the proceedings for the inquiry.

#### **41            Powers of inquirer**

The inquirer may do any of the following for the inquiry:

- (a) by notice signed by the inquirer – direct a person to attend before the inquirer to give evidence or produce a relevant document or thing;
- (b) by notice signed by the inquirer – direct a person to produce a relevant document or thing;
- (c) direct a person to take an oath or affirmation to answer truthfully questions relevant to the inquiry;

- (d) direct a person to answer a relevant question;
- (e) take statements and receive affidavits;
- (f) inspect a document or thing produced before the inquirer;
- (g) make copies of, photograph or take extracts from a document or thing produced before the inquirer;
- (h) arrange for the testing or examination of a document or thing produced before the inquirer;
- (i) possess and retain a document or thing produced before the inquirer for the period the inquirer considers necessary for the inquiry.

#### **42 Report of inquiry**

- (1) On completing the inquiry, the inquirer must make a report to the Minister detailing:
  - (a) the way in which the inquiry was conducted; and
  - (b) the findings of the inquiry.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.

#### **43 Directions by inquirer**

- (1) A person must comply with a direction by the inquirer to do any of the following:
  - (a) attend at the inquiry;
  - (b) give oral or written evidence;
  - (c) produce a document or thing;
  - (d) take an oath or make an affirmation;
  - (e) answer a relevant question.

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

- (2) An offence against subsection (1) is an offence of strict liability.

- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

#### **44 Misleading information and documents**

- (1) A person must not give misleading information to the inquirer.

Fault elements:

The person:

- (a) intentionally gives the information to the inquirer; and
- (b) knows the information is misleading; and
- (c) knows the inquirer is conducting an inquiry under this Division.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (2) A person must not give the inquirer a document containing misleading information.

Fault elements:

The person:

- (a) intentionally gives the document to the inquirer; and
- (b) knows the document contains misleading information; and
- (c) knows the inquirer is conducting an inquiry under this Division.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (3) Subsection (2) does not apply if the person, when giving the document:

- (a) draws the misleading aspect of the document to the inquirer's attention; and
- (b) to the extent to which the person can reasonably do so – gives the inquirer the information necessary to remedy the misleading aspect of the document.

## 45 Contempt of inquiry

- (1) A person must not interrupt or obstruct the conduct of the inquiry.

Fault elements:

The person:

- (a) intentionally engages in conduct; and
- (b) is reckless as to whether the conduct would result in the interruption or obstruction.

Maximum penalty: 200 penalty units or imprisonment for 1 year.

- (2) A person must not threaten or insult the inquirer in the conduct of the inquiry.

Maximum penalty: 50 penalty units.

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

- (4) In this section:

**interrupt** includes create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the inquiry is conducted.

**obstruct** includes hinder and resist.

## 46 Protection and immunity from liability

- (1) An inquirer has the same protection and immunity as a Judge of the Supreme Court.

- (2) A person who gives evidence or produces a document or thing for an inquiry has the same obligations and protection as a witness in a proceeding in the Supreme Court.

- (3) In any proceeding in a court or before a person or tribunal exercising or performing its powers or functions in a judicial manner, other than proceedings in a court for the prosecution of an offence against section 44(1) or (2), the following is not admissible:

- (a) any evidence given for an inquiry;
- (b) any record of the proceedings of an inquiry.

## **Division 2            Emergency powers**

### **47            Application of Division**

- (1) In the event of an inconsistency between a provision of or under this Division and a provision of or under the *Disasters Act* or *Notifiable Diseases Act*, the provision of or under the *Disasters Act* or *Notifiable Diseases Act* prevails to the extent of the inconsistency.
- (2) In the event of an inconsistency between a provision of or under this Division and a provision of or under another Division of this Part or another Part of this Act, the provision of this Division prevails to the extent of the inconsistency.

### **48            Declaration of public health emergency**

The Minister may, in writing, declare a public health emergency if the Minister is satisfied:

- (a) circumstances of such seriousness and urgency exist that are, or threaten to cause, an immediate serious public health risk; and
- (b) after consulting the Chairman of the Northern Territory Counter Disaster Council:
  - (i) a state of disaster or state of emergency has not been declared under the *Disasters Act* because of the circumstances; and
  - (ii) it is not appropriate to declare a state of disaster or state of emergency under that Act.

### **49            Content of declaration**

An emergency declaration must:

- (a) state the nature of the public health emergency; and
- (b) state the declaration has effect in the whole of the Territory or a stated part of the Territory; and
- (c) subject to section 50, state the period during which the declaration must be in force.



**50            Duration of declaration**

- (1) An emergency declaration comes into operation on the date on which it is made and continues in force for:
  - (a) the period, not exceeding 5 days, stated in the declaration; or
  - (b) the period during which the Minister extends or further extends the operation of the declaration under subsection (2).
- (2) While an emergency declaration is in force, the Minister may, in writing, extend the period the emergency declaration is in force by one or more further periods, each not exceeding 5 days.

**51            Notification or extension of declaration**

The Minister must, as soon as practicable after making an emergency declaration or extending the period during which an emergency declaration has effect, publish the declaration or extension in:

- (a) the *Gazette*; and
- (b) a daily newspaper circulating throughout the Territory; and
- (c) if the Minister is satisfied the notices published under paragraphs (a) and (b) would not be sufficient notice of the declaration or extension in a particular area of the Territory – another publication circulating in the area the Minister considers would give sufficient notice in the area.

**52            CHO's emergency powers**

- (1) If an emergency declaration is in force, the CHO may take the actions (including giving oral or written directions) the CHO considers necessary, appropriate or desirable to alleviate the public health emergency stated in the declaration.
- (2) The actions the CHO may take include any of the following:
  - (a) reducing, removing or destroying the public health risk causing or threatening to cause the emergency;
  - (b) issuing warnings in relation to the emergency;
  - (c) segregating or isolating persons in an area or at a particular place;
  - (d) evacuating persons from an area or a particular place;

- (e) preventing persons accessing or entering into an area or a particular place;
  - (f) controlling the movement of vehicles within an area.
- (3) The directions the CHO may give include directions requiring any of the following:
- (a) a person to undergo a medical examination of a general nature, or of a stated kind, immediately or within the period stated;
  - (b) a stated person to remain in, or move to or from, a stated area or place immediately or within a stated period;
  - (c) a stated thing to be seized or destroyed;
  - (d) a stated person to provide oral or written information relating to the emergency.

**53            Appointment and powers of authorised officer during public health emergency**

- (1) While an emergency declaration is in force, the CHO may:
- (a) appoint authorised officers for the sole purpose of assisting the CHO in exercising the CHO's powers under this Division; and
  - (b) direct an authorised officer mentioned in paragraph (a) or another authorised officer to assist the CHO in exercising the CHO's powers under this Division.
- (2) An authorised officer assisting the CHO may use the force that is necessary and reasonable to do any of the following:
- (a) enter a place to:
    - (i) save human life; or
    - (ii) prevent injury to a person; or
    - (iii) rescue an injured or endangered person;
  - (b) prevent entry into or close off an area or place;
  - (c) remove a person from an area or place;
  - (d) search for and seize a thing;

- (e) search for, examine, copy, remove, and retain documents relating to the public health emergency for so long as is reasonably necessary to take notes or extracts from, or take photographs or make copies of, the documents.
- (3) An authorised officer taking action to assist the CHO:
- (a) may take the action at any time of the day; and
  - (b) is not required to give notice to any person of the officer's intention to take the action; and
  - (c) is not required to obtain consent to take the action from any person concerned or the owner or occupier of any area or place concerned; and
  - (d) is not required to hold a warrant or another form of authorisation required under a law in force in the Territory to:
    - (i) enter and remain at any place (including Aboriginal land) concerned; or
    - (ii) search any person or place concerned.

#### **54            Record of action taken during public health emergency**

- (1) The CHO must keep and maintain a signed written record of all the action the CHO takes, including the directions the CHO gives, under sections 52 and 53 in dealing with a public health emergency.
- (2) In any proceeding in a court or before a person or tribunal exercising or performing powers or functions in a judicial manner, a record made under subsection (1) is evidence of the matters mentioned in the record and of the facts on which those matters are based.

#### **55            Report on public health emergency**

- (1) After an emergency declaration ceases to have effect, the CHO must make a report to the Minister detailing the following:
  - (a) the events giving rise to the public health emergency the subject of the declaration;
  - (b) the action taken under this Division to deal with the emergency;
  - (c) the directions given by the CHO under this Division in the course of the emergency;

- (d) the outcomes of the action taken in dealing with the emergency.
- (2) The CHO must give the report to the Minister within 3 months after the date the declaration ceases to be in force.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.

## **56            Contravention of emergency declaration or direction**

- (1) A person commits an offence if:
  - (a) the CHO:
    - (i) makes an emergency declaration; or
    - (ii) gives a direction under section 52(3); and
  - (b) the person engages in conduct that results in a contravention of the declaration or direction.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of the declaration or direction.

Maximum penalty:     400 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

## **57            Limitation on stay of operation of emergency powers**

In any proceedings for judicial review or in any other proceedings, a court, person or tribunal exercising or performing powers or functions in a judicial manner is not authorised to make an interlocutory order that has the effect of staying the operation of an emergency declaration or an action taken by the CHO under this Division.

### **Division 3 Powers relating to things that threaten public health**

#### **58 Dealings with certain things**

- (1) The CHO may, by written notice to a person, give any of the following directions about a thing that is or is likely to be a public health risk:
  - (a) direct the person not to manufacture, sell, use or transport the thing;
  - (b) direct the person to deal with the thing in accordance with a guideline, standard or another stated document.
- (2) A person commits an offence if the person:
  - (a) is given a direction under subsection (1); and
  - (b) engages in conduct that results in a contravention of the direction.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of the direction

Maximum penalty: 400 penalty units.

#### **59 Removal and destruction of things**

- (1) The CHO may, by written notice, direct a person to remove or destroy a thing if the CHO is satisfied the thing may cause a threat to the health of an individual or community.
- (2) The direction is subject to the conditions the CHO considers appropriate, including conditions requiring compliance with stated guidelines, standards or other written material.
- (3) A person commits an offence if the person:
  - (a) is given a direction under subsection (1); and

- (b) engages in conduct that results in a contravention of the direction.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of the direction.

Maximum penalty:     400 penalty units.

- (4) If the person does not comply with the direction:
  - (a) the CHO may remove or destroy the thing in accordance with the direction; and
  - (b) the costs incurred by the CHO in doing so are recoverable as a debt due to the Territory by the person.

#### **Division 4            Power to take action**

##### **60            Action taken if direction, public health notice or order contravened**

- (1) The CHO may take the action stated in subsection (2) the CHO considers necessary and appropriate, or direct another authorised officer to take the action, if:
  - (a) a person given a direction by the CHO under Division 2 or 3 contravenes the direction; or
  - (b) a person issued with a public health notice contravenes the notice; or
  - (c) a person issued with a public health order contravenes the order.
- (2) The CHO may take any of the following actions:
  - (a) execute the direction given to the person mentioned in subsection (1)(a);
  - (b) rectify the contravention mentioned in subsection (1)(b) or (c).
- (3) The cost incurred by the CHO or another authorised officer in taking action under subsection (2) is a debt due to the Territory by the person who failed to take the action.

**61            Action if public health nuisance exists**

If an authorised officer who decides a public health nuisance exists is not, after making reasonable inquiry, able to locate an appropriate person to issue a public health notice for the nuisance, the CHO must:

- (a) take the action the CHO considers necessary to abate the public health nuisance or implement adequate measures to prevent or remove the source of the nuisance; or
- (b) direct another authorised officer to take the action.

**62            CHO may authorise entry and work**

For taking action under this Division, the CHO may authorise a person to:

- (a) enter a place (with or without employees, vehicles, plant, equipment or materials):
  - (i) that is the subject of the direction, order or notice; or
  - (iii) to which the nuisance relates; and
- (b) carry out the necessary work.

**Division 5            Health information**

**63            CHO may obtain health information**

- (1) The CHO may, by written notice, direct a person to give the health information prescribed by regulation to the CHO or another authorised officer.
- (2) Without limiting subsection (1), the CHO may direct a health practitioner or other health services provider to give information.
- (3) A person commits an offence if the person:
  - (a) is given a direction under subsection (1); and
  - (b) engages in conduct that results in a contravention of the direction.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and

- (b) is reckless as to whether the conduct would result in a contravention of the direction.

Maximum penalty: 100 penalty units.

#### **64 Use of health information**

The CHO may use the health information obtained for monitoring, protecting, maintaining or promoting public health.

*Note for section 64*

*Section 112 deals with the disclosure to other persons of information obtained in the course of administering this Act.*

*Examples for section 64*

- 1 *Population health monitoring.*
- 2 *Analysis and reporting of factors impacting on public health, including:*
  - (a) *lifestyle; and*
  - (b) *chronic, acute or emerging health conditions.*

#### **65 Register of health information**

- (1) The CHO must keep a register of the health information (the **health information register**) obtained.

*Note for subsection (1)*

*The health information register is not available for inspection by the public under section 127 because it is not an Administering Agency register.*

- (2) The register may be in any form, including electronic form.

## **Part 6 Administration**

### **Division 1 Chief Health Officer**

#### **66 Establishment of office**

There is to be a Chief Health Officer.

*Note for section 66*

*Generally in this Act, the acronym CHO is used to refer to the Chief Health Officer.*

#### **67 Appointment of CHO**

- (1) The Minister must, by *Gazette* notice, appoint a person to be the CHO.



- (2) The Minister must not appoint a person to be the CHO unless the person is:
- (a) a Chief Executive Officer, or employee, as defined in the *Public Sector Employment and Management Act*, and
  - (b) registered, or entitled to be registered, as a medical practitioner.

## **68 Powers and functions**

- (1) The CHO has the following functions:
- (a) to ensure this Act is complied with;
  - (b) to develop and implement strategies to promote and protect public health;
  - (c) to advise the Minister on any changes that may be necessary or appropriate to this Act;
  - (d) the functions decided in writing by the Minister for this Act;
  - (e) any other functions imposed on the CHO under this or another Act.
- (2) The CHO has:
- (a) the powers and functions conferred on the CHO under this or another Act; and
  - (b) the power to do all things necessary or convenient to be done for, or incidental to, the exercise of the CHO's powers and the performance of the CHO's functions.
- (3) In exercising powers and performing functions under this Act, the CHO is subject to the directions of the Minister.

## **69 Delegation**

The CHO may, in writing, delegate to a person any of the CHO's powers or functions under this or another Act.

## **Division 2 Enforcement agencies**

### **70 Appointment of enforcement agency**

- (1) The CHO may, by *Gazette* notice, appoint a person to be an enforcement agency for this Act.

- (2) The appointment of the agency is subject to the conditions the CHO considers appropriate and states in the notice.
- (3) The notice must describe the role the agency is expected to have in administering this Act.

#### **71 Delegation to agency**

- (1) The CHO may delegate to the enforcement agency the powers and functions the CHO considers appropriate for the agency to perform its role in administering this Act.
- (2) The CHO must not delegate a power or function to the agency unless the agency agrees to the delegation.

#### **72 Powers and functions**

- (1) An enforcement agency has the powers and functions delegated to the agency by the CHO.
- (2) If the agency is a body corporate, the agency may exercise its powers and perform its functions by:
  - (a) authorised officers appointed by it under section 74; or
  - (b) other persons employed or engaged by it.
- (3) The agency must not delegate any of its powers or functions.

#### **73 Fees and charges**

- (1) An enforcement agency may demand and recover a fee or charge for any service, product, commodity or item or class of services, products, commodities or items the agency performs or supplies in exercising a power or performing a function delegated to the agency by the CHO.
- (2) A regulation may prescribe:
  - (a) the amount of the fee or charge; or
  - (b) the method to calculate the amount of the fee or charge.

#### **74 Appointment of authorised officers**

- (1) An enforcement agency that is a body corporate must appoint the number of authorised officers it considers necessary for the proper exercise of its powers and performance of its functions.
- (2) The agency must keep a list of authorised officers it appoints.

- (3) Immediately after appointing an authorised officer, the agency must give written notice of the appointment to the CHO.

#### **75 Failure by enforcement agency to act**

- (1) This section applies if:
- (a) an enforcement agency fails to exercise a power or perform a function delegated to the agency; and
  - (b) the CHO is satisfied the failure is likely to be a public health risk.
- (2) The CHO may exercise the power or perform the function.
- (3) The cost incurred by the CHO in exercising the power or performing the function is a debt due to the Territory by the agency.

### **Division 3 Authorised officers**

#### **76 Who is authorised officer**

- (1) Each of the following persons is an **authorised officer**:
- (a) the CHO;
  - (b) a person appointed under subsection (2);
  - (c) if an enforcement agency is an individual – the agency;
  - (d) if an enforcement agency is a body corporate – the chief executive officer of the agency;
  - (e) a person appointed under section 74;
  - (f) a police officer exercising or purporting to exercise the powers, or performing or purporting to perform the functions, of an authorised officer under this Act.
- (2) The CHO may appoint a person to be an authorised officer.

#### **77 Qualifications for appointment**

The CHO or an enforcement agency must not appoint a person to be an authorised officer unless the person holds the qualifications, knowledge, skills or experience approved by the CHO.

## **78 Identity card**

- (1) In exercising a power or performing a function under this Act, an authorised officer (other than a police officer who is in uniform) must carry an identity card that:
  - (a) states:
    - (i) the officer's name and that the person is an authorised officer; and
    - (ii) the card's date of expiry; and
  - (b) shows a recent photograph of the officer.
- (2) The CHO is responsible for:
  - (a) ensuring the CHO has an identity card; and
  - (b) issuing an identity card to each authorised officer appointed by the CHO.
- (3) An enforcement agency is responsible for:
  - (a) if the agency is an individual – ensuring the individual has an identity card; and
  - (b) if the agency is a body corporate – issuing an identity card to each authorised officer appointed by it.
- (4) A person who ceases to be an authorised officer must return the identity card to the issuing authority within 2 weeks after the cessation.

Maximum penalty: 20 penalty units.
- (5) An offence against subsection (4) is an offence of strict liability.
- (6) It is a defence to a prosecution for an offence against subsection (4) if the defendant establishes a reasonable excuse.
- (7) If an authorised officer (other than a police officer who is in uniform) purports to exercise a power under this Act without producing the officer's identity card when requested to do so, until the card is produced:
  - (a) the officer is not authorised to exercise the power; and
  - (b) a person is not required to comply with a requirement made by the officer.

(8) In this section:

**issuing authority**, for an identity card, means the person who issued the card.

## **79 Functions and powers**

(1) An authorised officer has the following functions:

- (a) to ensure this Act is being complied with;
- (b) the other functions imposed on the officer by this or another Act.

(2) An authorised officer appointed under section 74 may only exercise a power or perform a function if it is necessary for the proper exercise of a power, or proper performance of a function, delegated to the enforcement agency who appointed the officer.

(3) The CHO may impose conditions and limitations on the exercise of powers, or the performance of functions, by an authorised officer or a class of authorised officers.

(4) When exercising a power or performing a function, an authorised officer is:

- (a) if appointed under section 76(2) – subject to the CHO's directions; or
- (b) if appointed under section 74 – subject to the directions of the enforcement agency; or
- (c) if a police officer – subject to the directions of the Commissioner of Police.

(5) However, if an emergency declaration is in force, authorised officers mentioned in subsection (4)(b) are subject to the CHO's directions.

## **Division 4 Powers of entry, inspection, seizure**

### **80 Entry, inspection and seizure**

(1) This section applies subject to sections 78(7) and 81(7).

(2) For the performance of an authorised officer's functions under this Act, an authorised officer may enter a place:

- (a) other than residential premises at any reasonable time; or

- (b) with the consent of the owner or occupier; or
  - (c) under the authority of a warrant.
- (3) An authorised officer who enters a place under subsection (2) may do any of the following:
- (a) inspect the place or anything found at the place;
  - (b) open any container, receptacle or package found at the place;
  - (c) require a person who is at the place to state the person's name and address;
  - (d) examine, mark, fasten, secure or take and remove samples of anything found at the place;
  - (e) weigh, count, measure or gauge anything found at the place;
  - (f) require production of any registration or exemption that relates to the owner or occupier of the place;
  - (g) require a person at the place to answer questions, produce a document or thing kept there under the person's control or give any other assistance the officer requires to carry out the inspection;
  - (h) examine, copy or take extracts from a document produced or require a person to provide a copy of the document;
  - (i) take photographs, films or audio, video or other recordings;
  - (j) make any sketches or drawings or any other recording in another way;
  - (k) seize and remove anything found at the place;
  - (l) seal or close off the place;
  - (m) exercise another power prescribed by regulation.
- (4) The officer may not do anything authorised by this section unless the officer reasonably believes doing so may disclose evidence of, or otherwise relates to, an offence against this Act or is otherwise necessary for this Act.
- (5) The officer may exercise powers under subsection (2) or (3):
- (a) with the force that is necessary and reasonable; and

- (b) either alone or with the number of persons to assist the officer that is necessary and reasonable.
- (6) To enter a vehicle under subsection (2), the officer may require a person:
  - (a) to stop, move or not move the vehicle; or
  - (b) to bring the vehicle to a stated place and remain in control of the vehicle until the officer permits the person to leave.

## **81 Warrants**

- (1) An authorised officer may apply to a Justice for a warrant to enter a place if:
  - (a) entry under section 80(2)(a) would cause an unreasonable delay; and
  - (b) consent under section 80(2)(b) has been refused or cannot be obtained within a reasonable time.
- (2) The application may be made:
  - (a) in person; or
  - (b) if that is not practical – by telephone, fax or other electronic method.
- (3) The Justice may issue a warrant to the officer if satisfied by evidence on oath there are reasonable grounds for entering the place.
- (4) The warrant authorises the officer:
  - (a) to enter and remain at the place; and
  - (b) to exercise the powers stated in section 80 for the purpose stated in the warrant.
- (5) The warrant may be executed by the authorised officer to whom it is issued or another authorised officer.
- (6) The authorised officer executing a warrant must, when asked by a person at the place, display the warrant to the person.
- (7) If the officer does not display the warrant when asked, the officer is not authorised to remain at the place.

## **82 Obtaining warrant by telephone or other electronic method**

- (1) This section applies if a Justice issues a warrant on an application under section 81(2)(b).
- (2) The Justice must:
  - (a) complete and sign the warrant; and
  - (b) inform the authorised officer of its terms; and
  - (c) record on the warrant the reasons for issuing it.
- (3) The authorised officer must:
  - (a) complete in duplicate a form of warrant in the terms given under subsection (2)(b); and
  - (b) write on both copies the name of the Justice and the date and time the warrant was issued; and
  - (c) send one of the copies to the Justice.
- (4) On receiving the copy, the Justice must:
  - (a) compare it with the warrant the Justice signed; and
  - (b) if satisfied they are in substance identical, note this fact on the warrant and send the warrant and copy to the CHO.
- (5) If the form of the warrant prepared under subsection (3)(a) is in substance identical to the warrant signed by the Justice under subsection (2)(a), it has the same authority as a warrant issued under section 81(3).

## **83 Entering Aboriginal land**

- (1) An authorised officer may enter Aboriginal land within the meaning of the *Aboriginal Land Act* if it is necessary or convenient for exercising powers under section 80 of this Act.
- (2) The officer may stay on the land for as long as reasonably necessary for exercising the powers.
- (3) The officer may do so even though the officer does not hold a permit under that Act to do so.



**84 Requirement to provide information**

For performing an authorised officer's functions under this Act, the officer may stop a person and require the person to do any of the following:

- (a) give the person's full name and residential or business address;
- (b) give details of any authorisation to do an activity or exemption under this Act;
- (c) provide information about the person's or another person's activities in relation to any matter under this Act;
- (d) provide any other information relating to public health reasonably required for this Act.

**85 Requirement to produce documents or things**

- (1) An authorised officer may require a person to produce:
  - (a) an authority to do an activity the person holds or ought to hold; or
  - (b) a record or other document required to be kept under this Act; or
  - (c) a thing in the person's possession.
- (2) The officer may:
  - (a) examine the authority, record, other document or thing; or
  - (b) take extracts or notes from or take photographs or make copies of the authority, record, document or thing; or
  - (c) seize and remove the record, document or thing.
- (3) The officer may not do an act authorised by this section unless the officer reasonably believes doing so may disclose evidence of or otherwise relates to an offence against this Act or is otherwise necessary for this Act.

**86 Failing to comply with requirement of authorised officer**

- (1) A person commits an offence if:
  - (a) an authorised officer while acting in an official capacity requires the person to do something; and

- (b) the person engages in conduct that results in a contravention of the requirement.

Fault elements:

The person:

- (a) knows the requirement is made by the authorised officer acting in an official capacity; and
- (b) intentionally engages in conduct that results in a contravention of the requirement; and
- (c) is reckless as to whether the conduct would result in a contravention of the requirement.

Maximum penalty: 100 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

## **87 Obstructing and threatening authorised officer**

- (1) A person must not obstruct or threaten an authorised officer acting in an official capacity.

Fault elements:

The person:

- (a) knows the authorised officer is acting in an official capacity; and
- (b) intentionally obstructs or threatens the authorised officer.

Maximum penalty: 100 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

- (3) In this section:

**obstruct** includes hinder and resist.

## 88 False representation

A person must not falsely represent, by words or conduct, that the person, or another person, is an authorised officer.

Fault element: The person intentionally represents the person or other person is an authorised officer with an intention to deceive.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

## Division 5 Seizure and forfeiture of things

### Subdivision 1 Seizure

## 89 Detention of thing seized

- (1) This section applies if, under section 80 or 85, an authorised officer seizes an authority, record, document or thing (the **seized thing**).
- (2) The authorised officer or another authorised officer may, until the start of proceedings for an offence against this Act in relation to the seized thing and (if necessary) during the proceedings:
  - (a) keep the thing at the place where it was found; or
  - (b) remove the thing to another place and keep it there in the officer's possession or under the officer's control.
- (3) If the thing is kept under subsection (2)(a), the officer:
  - (a) must ensure the thing is identified in a way that indicates it has been seized under this Act; and
  - (b) may physically segregate the thing.

*Examples for subsection (3)*

1 The seized thing could be placed in an appropriately labelled container.

2 A barrier with appropriate signs could be placed around the seized thing.

## 90 Notification of seizure of thing

- (1) The authorised officer who seizes the seized thing must, as soon as practicable after seizing it, give the person from whom it is seized written notice of the seizure.

- (2) The notification must include the following details:
- (a) a description of the thing;
  - (b) the reason for seizing the thing;
  - (c) details of the right to apply to the Local Court for the return of the thing under section 92;
  - (d) if the thing has been removed from the place where it was seized – the address of the place where the thing is held;
  - (e) if applicable – the name of the enforcement agency under whose authority the authorised officer is acting.

### **91 Return of thing seized**

If, before the seized thing is forfeited to the Territory under section 97, the CHO becomes satisfied no offence relating to the thing has been committed against this Act, the CHO must, as soon as practicable, deliver the thing to the person who appears to the CHO to be entitled to it.

## **Subdivision 2 Order disallowing seizure**

### **92 Application for order disallowing seizure**

A person may apply to the Local Court for an order disallowing the seizure of a seized thing within 72 hours after the thing is seized.

### **93 CHO entitled to answer application**

The CHO:

- (a) is a party to the application; and
- (b) must be served with a copy of the application in accordance with the *Local Court Rules*; and
- (c) is entitled to appear as respondent at the hearing of the application.

**94 Order disallowing seizure of seized thing**

- (1) On hearing the application, the Local Court must make an order disallowing the seizure of the seized thing if it is satisfied:
  - (a) it is:
    - (i) proved the applicant would be entitled to the thing if it had not been seized; and
    - (ii) not proved an offence relating to the thing has been committed against this Act; or
  - (b) there are exceptional circumstances justifying the making of the order.
- (2) Otherwise, the Court must dismiss the application.

**95 Ancillary orders**

- (1) If the Local Court makes an order disallowing the seizure of the seized thing, the Court must also make one or both of the following orders:
  - (a) an order directing the respondent to deliver the thing concerned to the applicant;
  - (b) if the thing cannot for any reason be delivered or has, as a consequence of being seized, depreciated in value – an order directing the respondent to pay to the applicant the amount of compensation the Court considers just and reasonable.
- (2) The Court may make the orders as to costs as it considers just.

**96 Adjournment pending hearing of other proceedings**

- (1) The Local Court may adjourn the hearing of the application if, during the hearing of the application, it appears to the Court the seized thing is required to be produced in evidence in proceedings (which may be pending proceedings) in connection with an offence against this Act or another law of the Territory.
- (2) The adjournment may be:
  - (a) made on the application of the respondent or on the Court's initiative; and
  - (b) until the conclusion of the proceedings in connection with the offence.

### **Subdivision 3 Forfeiture**

#### **97 Forfeiture of seized thing**

A seized thing is forfeited to the Territory:

- (a) if it is not returned under section 91 and no application for an order disallowing its seizure is made under section 92 – on the expiry of the period within which an application may be made under section 92; or
- (b) if an application for an order disallowing its seizure under section 92 is withdrawn or dismissed – on the date of the withdrawal or dismissal.

#### **98 Destruction or disposal of forfeited thing**

- (1) An authorised officer may, with the written CHO's approval, destroy, sell or otherwise dispose of a thing forfeited to the Territory under section 97 (the ***forfeited thing***).
- (2) A person who was, immediately before the thing was forfeited to the Territory, the owner of the thing is liable for the costs incurred for its destruction or disposal (including any storage costs).
- (3) The costs are recoverable as a debt due to the Territory by the owner.
- (4) In proceedings for the recovery of the debt, a certificate signed by the CHO stating the amount of the costs and the way in which they were incurred is evidence of the matters certified.

#### **99 Return of forfeited thing**

- (1) This section applies if:
  - (a) the CHO becomes satisfied no offence relating to the forfeited thing has been committed against this Act; and
  - (b) the thing has not been destroyed or disposed of in a way that would prevent its return.
- (2) The CHO must, as soon as practicable, deliver the thing to:
  - (a) the person from whom it was seized; or
  - (b) if the CHO is satisfied another person is entitled to it – the other person.

- (3) On the delivery of the thing to the person, any proprietary and other interests in the thing that existed immediately before its forfeiture are restored.

**100 Compensation to be paid in certain circumstances**

- (1) A person may apply to the CHO for compensation for the forfeited thing.
- (2) The Territory is liable to pay just compensation to the applicant in relation to the thing if:
- (a) no offence relating to the thing has been committed against this Act; and
  - (b) the thing:
    - (i) cannot be returned; or
    - (ii) has, as a consequence of being seized, depreciated in value; and
  - (c) the CHO is satisfied the applicant would be entitled to the thing if it had not been forfeited.
- (3) The CHO must:
- (a) decide the amount of compensation to be paid; and
  - (b) give written notice to the applicant of:
    - (i) the decision; and
    - (ii) the applicant's right to apply to the Local Court for review under subsection (4).
- (4) The applicant may, if dissatisfied with the CHO's decision, apply to the Local Court to review the merits of the decision.
- (5) The application for review must be made within 72 hours after notice of the CHO's decision was received by the applicant.
- (6) In determining the review, the Court must, by written notice to the applicant:
- (a) confirm the decision reviewed; or
  - (b) vary the decision reviewed; or
  - (c) revoke the decision reviewed; or

- (d) substitute a decision for that decision.
- (7) The Court must state the reasons for its determination in the notice.

## **Part 7 Guidelines and standards**

### **101 Guidelines**

- (1) The CHO may make guidelines relating to any matter under this Act except declared activities.
- (2) The CHO must consult with the Minister in the preparation of the guidelines.
- (3) The guidelines may apply, adopt or incorporate (with or without changes) a matter contained in another document or instrument as in force or existing at a particular time or from time to time.
- (4) The CHO must, by *Gazette* notice, give notice of making the guidelines.
- (5) The notice must:
  - (a) describe the subject matter of the guidelines; and
  - (b) state the date on which the guidelines take effect (which may not be earlier than the date of the notice); and
  - (c) state the place where and the times when a person may inspect or purchase a copy of the guidelines.

### **102 Standards**

- (1) The Minister may, by *Gazette* notice, declare a document applies, whether as in force or existing at a particular time or from time to time, as a standard in the Territory or a stated part of the Territory relating to a declared activity or another matter under this Act.
- (2) However, the Minister may only make the declaration after the Minister has consulted with and considered the recommendations, and reasons for the recommendations, of the CHO as to whether the document should apply in the Territory as a standard.
- (3) The standard may apply, adopt or incorporate (with or without changes) a matter contained in another document or instrument as in force or existing at a particular time or from time to time.
- (4) The declaration of the standard must:
  - (a) describe the subject matter of the standard; and



- (b) state the date (not earlier than the date of the notice) on which the standard applies in the Territory or a part of the Territory; and
  - (c) state the place where, and the times when, a person may inspect or purchase a copy of the standard.
- (5) A person commits an offence if the person engages in conduct that results in a contravention of a standard.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of the standard.

Maximum penalty: 400 penalty units.

### **103 Inspection and purchase of copies of guidelines, standards and related documents**

The CHO:

- (a) must make available copies of guidelines for inspection or purchase by members of the public at the place stated for the purpose under section 101(5)(c); and
- (b) must make available copies of standards for inspection or purchase by members of the public at the place stated for the purpose under section 102(4)(c); and
- (c) must make available for inspection by members of the public at the same place copies of all documents applied, adopted or incorporated in the guidelines and standards; and
- (d) may charge and receive from a person a reasonable fee for the purchase of a copy of a guideline or standard.

## **Part 8 Reviews and appeals**

### **104 Reviewable decisions and affected persons**

- (1) A **reviewable decision** is a decision stated in Schedule 1.
- (2) An **affected person**, for a reviewable decision, is a person stated in Schedule 1 opposite the decision.

**105 Review by CHO**

- (1) An affected person for a reviewable decision may request the CHO to review the merits of the decision.
- (2) The person must request the review:
  - (a) if the decision concerns a matter under Part 2 or 3 – within 72 hours after:
    - (i) the person receives notice of the decision; or
    - (ii) if subparagraph (i) does not apply – the person becomes aware of the decision; or
  - (b) for another decision – within 7 days after:
    - (i) the person receives notice of the decision; or
    - (ii) if subparagraph (i) does not apply – the person becomes aware of the decision.
- (3) The request must:
  - (a) be in the approved form; and
  - (b) be accompanied by the fee prescribed by regulation; and
  - (c) state the grounds on which it is made and the facts relied on to establish the grounds.
- (4) The CHO must:
  - (a) conduct the review in a way that is fair and expeditious; and
  - (b) give proper consideration to the issues.
- (5) After reviewing the merits of the decision, the CHO must:
  - (a) confirm the decision; or
  - (b) vary the decision; or
  - (c) revoke the decision; or
  - (d) substitute another decision for the decision.
- (6) The CHO must, as soon as practicable after making a decision on the review, give the affected person written notice of the decision.

- (7) The notice must include:
  - (a) the reasons for the decision; and
  - (b) the procedures for appeal under this Part.
- (8) The validity of a decision under this section is not affected by a contravention of subsection (6) or (7).
- (9) A decision under subsection (5)(b) or (d) is for this Act (other than this Part) taken to be the decision of the person who made the reviewable decision.

#### **106 Appeal against decision on review**

- (1) The affected person for a decision reviewed under section 105 may appeal to the Local Court against the CHO's decision on the review.
- (2) The appeal must be lodged:
  - (a) if the decision concerns a matter under Part 2 or 3 – within 72 hours after:
    - (i) the person receives notice of the decision under section 105(6); or
    - (ii) if subparagraph (i) does not apply – the person becomes aware of the decision; or
  - (b) for another decision – within 7 days after:
    - (i) the person receives notice of the decision under section 105(6); or
    - (ii) if subparagraph (i) does not apply – the person becomes aware of the decision.

#### **107 Appeal against decision relating to emergency declaration**

- (1) A person whose interests are affected by any of the following decisions may appeal to the Local Court against the decision:
  - (a) a decision of the Minister under section 48 to declare a public health emergency;
  - (b) a decision of the Minister under section 50(2) to extend the period an emergency declaration is in force;
  - (c) a decision of the CHO under section 52(1) to take stated action to alleviate a public health emergency, including a decision to give a direction.

- (2) The appeal must be lodged within 24 hours after the decision is made.

### **108 Conduct of appeal**

- (1) At the hearing of an appeal under section 106 or 107, fresh evidence or evidence in addition to or in substitution for the evidence before the CHO may be given on the appeal.
- (2) In deciding the appeal, the Local Court may:
  - (a) confirm the decision; or
  - (b) vary the decision; or
  - (c) set aside the decision; or
  - (d) substitute its own decision for the decision; or
  - (e) refer the matter to which the appeal relates to the Minister or CHO for reconsideration, either generally or in relation to stated matters, and for substitution of another decision.
- (3) In referring the matter to the Minister or CHO, the Court must:
  - (a) advise the Minister or CHO of its reasons for doing so; and
  - (b) give to the Minister or CHO the directions it considers appropriate for the reconsideration of the whole or any part of the matter being remitted.
- (4) The Court may make the orders it considers appropriate to give effect to its decision and the orders as to costs it considers just.
- (5) A decision under subsection (2)(b) or (d) is taken for this Act (other than this Part) to be the decision of the person who made the decision appealed against.

### **109 Operation and implementation of decision pending review or appeal**

- (1) A request under section 105 for a review of a reviewable decision does not affect the operation or implementation of the decision.
- (2) However, the CHO may, by written notice to the affected person for the decision:
  - (a) suspend the operation or implementation of so much of the decision as the CHO considers appropriate to effectively review the decision; or

- (b) impose conditions on the operation or implementation of the decision until determination of the review.
- (3) An appeal under section 106 or 107 against a decision does not affect the operation or implementation of the decision.
- (4) However, the Local Court may make an order staying or otherwise affecting the operation or implementation of so much of the decision as the Court considers appropriate to effectively hear and decide the appeal.
- (5) The order:
  - (a) is subject to the conditions stated in the order; and
  - (b) has effect:
    - (i) for the period stated in the order; or
    - (ii) if no period is stated – until the Court has decided the appeal.

## **Part 9            General offences and procedural matters**

### **Division 1        General offences**

#### **110            Contravention of exemption**

A person commits an offence if:

- (a) the person, or the person's business, activity or property, is exempt from the application of this Act or a stated provision of this Act; and
- (b) the exemption is subject to a condition; and
- (c) the person engages in conduct that results in a contravention of the condition.

Fault elements:

The person:

- (a) knows about the circumstances of the exemption mentioned in paragraphs (a) and (b); and
- (b) intentionally engages in the conduct; and

- (c) is reckless as to whether the conduct would result in a contravention of a condition of the exemption.

Maximum penalty:        200 penalty units.

### **111        Bribery**

A person commits an offence if the person gives, procures, offers or promises a bribe, recompense or reward to influence another person (the **official**) in the exercise of the official's powers or performance of the official's functions under this Act.

Fault elements:

The person:

- (a) knows the official is acting in the exercise of the official's powers or performance of the official's functions under this Act; and
- (b) intentionally gives, procures, offers or promises the bribe, recompense or reward; and
- (c) intends to influence the official in the exercise of the official's powers or performance of the official's functions.

Maximum penalty:        400 penalty units or imprisonment for  
2 years.

### **112        Confidentiality of information**

- (1) A person commits an offence if:
  - (a) the person obtains information in the course of carrying out functions connected with the administration of this Act; and
  - (b) engages in conduct that results in the disclosure of the information to someone else.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in the disclosure of the information.

Maximum penalty:        200 penalty units.

- (2) Subsection (1) does not apply to a person disclosing information:
- (a) for the administration of this Act; or
  - (b) with the consent of the person to whom the information relates, or, if the person is less than 18 years of age or otherwise lacks legal capacity, the parent, guardian or legal representative of the person; or
  - (c) for legal proceedings arising out of the operation of this Act; or
  - (d) for public health information:
    - (i) in a statistical form that does not identify the person who is the subject of the information; or
    - (ii) in accordance with the CHO's authorisation under subsection (3).
- (3) The CHO may, in writing, authorise the disclosure of health information to a stated person for a stated purpose if, before disclosing the information, the CHO takes reasonable steps to protect the privacy of persons to whom the information relates.

*Examples of stated purposes for subsection (3)*

1 *Scientific study or research.*

2 *Ensuring the accuracy of the health information register.*

- (4) For subsection (3), a stated person may be:
- (a) a named person; or
  - (b) a person holding or occupying a stated office, position or designation; or
  - (c) a person from time to time holding or occupying a stated office, position or designation.

### **113        Misleading information and documents**

- (1) A person must not give misleading information to an authorised officer acting in an official capacity.

Fault elements:

The person:

- (a) intentionally gives the information to the officer; and
- (b) knows the information is misleading; and

(c) knows the officer is acting in an official capacity.

Maximum penalty:     400 penalty units or imprisonment for  
2 years.

(2) A person must not give a document containing misleading information to an authorised officer acting in an official capacity.

Fault elements:

The person:

- (a) intentionally gives the document to the officer; and
- (b) knows the document contains misleading information; and
- (c) knows the officer is acting in an official capacity.

Maximum penalty:     400 penalty units or imprisonment for  
2 years.

(3) Subsection (2) does not apply if the person, when giving the document:

- (a) draws the misleading aspect of the document to the authorised officer's attention; and
- (b) to the extent to which the person can reasonably do so – gives the authorised officer the information necessary to remedy the misleading aspect of the document.

## **Division 2            Criminal liability for offences**

### **114            Definitions**

In this Division:

***declared provision*** means any of the following provisions:

- (a) section 10, 14, 15(2), 26(1) or (2), 30(1), 34, 43(1), 44(1) or (2), 45(1), 56(1), 58(2), 59(3), 63(3), 86(1), 87(1), 88, 102(5), 110, 111, 112(1) or 113(1) or (2);
- (b) a provision of the Regulations prescribed by regulation.

***representative***, of a person, means an employee or agent of the person.



### **115        Liability of representative**

- (1) It is not a defence to a prosecution for an offence against a provision of this Act that the defendant was, at the time of the commission of the offence, another person's representative.
- (2) However, it is a defence if the defendant proves the defendant was, at the time of the commission of the offence:
  - (a) another person's representative; and
  - (b) acting as the other person's representative under the direct or indirect supervision of the other person.

### **116        Conduct of representative**

- (1) This section applies to a prosecution for an offence against a provision of this Act.

*Note for subsection (1)*

*This section deals with prosecutions of individuals. Part IIAA, Division 5, of the Criminal Code contains provisions about corporate criminal responsibility.*

- (2) Conduct engaged in by a representative of a person within the scope of the representative's actual or apparent authority is taken to have been also engaged in by the person.
- (3) However, subsection (2) does not apply if the person proves the person took reasonable steps to prevent the conduct.
- (4) In deciding whether the person took reasonable steps to prevent the conduct, a court must consider:
  - (a) any action the person took to ensure the representative had a reasonable knowledge and understanding of the requirement to comply with the contravened provision; and
  - (b) the level of management, control or supervision that was appropriate for the person to exercise over the representative.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) If it is relevant to prove a person had a fault element in relation to a physical element of an offence, it is enough to show:
  - (a) the conduct relevant to the physical element was engaged in by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the fault element in relation to the physical element.

- (7) A person may rely on section 43AX of the Criminal Code in relation to conduct by a representative that would be an offence by the person only if:
- (a) the representative was under a mistaken but reasonable belief about the facts that, had they existed, would have meant that the conduct would not have constituted an offence; and
  - (b) the person proves the person exercised due diligence to prevent the conduct.

*Note for subsection (7)*

*Section 43AX of the Criminal Code provides a person is not criminally responsible if the person engaged in conduct under a mistake of fact in relation to an offence of strict liability.*

- (8) A person (the **defendant**) may not rely on section 43BA of the Criminal Code in relation to a physical element of an offence brought about by another person if the other person is a representative of the defendant.

*Note for subsection (8)*

*Section 43BA of the Criminal Code provides a person is not criminally responsible in circumstances of an intervening conduct or event.*

- (9) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (2) or (6).
- (10) In this section:

**fault element** includes intention, knowledge, recklessness, opinion, belief and purpose, but does not include negligence.

**person** means an individual.

## **117        Criminal liability of partner in partnership**

- (1) A partner in a partnership commits an offence if:
- (a) another partner in the partnership (the **offender**) commits an offence in the course of the activities of the partnership by contravening a declared provision (a **relevant offence**); and
  - (b) the partner was in a position to influence the conduct of the offender in relation to the contravention; and

- (c) the partner failed to take reasonable steps to prevent the contravention.

Fault element:            The partner was reckless about whether the contravention would happen.

Maximum penalty:        The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) This section does not affect the liability of the offender.
- (3) This section applies whether or not the offender is prosecuted for, or convicted of, the relevant offence, but does not apply if the offender would have a defence to a prosecution for the relevant offence.
- (4) In this section:

**partner**, of a partnership, includes a person who is concerned with, or takes part in, the management of the partnership.

**partnership** does not include an incorporated limited partnership formed under the *Partnership Act*.

## 118        **Criminal liability of manager of unincorporated association**

- (1) A manager of an unincorporated association commits an offence if:
- (a) another manager of the association (the **offender**) commits an offence in the course of the activities of the association by contravening a declared provision (a **relevant offence**); and
- (b) the manager was in a position to influence the conduct of the offender in relation to the contravention; and
- (c) the manager failed to take reasonable steps to prevent the contravention.

Fault element:            The manager was reckless about whether the contravention would happen.

Maximum penalty:        The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) This section does not affect the liability of the offender.
- (3) This section applies whether or not the offender is prosecuted for, or convicted of, the relevant offence, but does not apply if the offender would have a defence to a prosecution for the relevant offence.

(4) In this section:

**manager**, of an unincorporated association, means a person who is concerned with, or takes part in, the management of the association.

### **119        Criminal liability of executive officer of body corporate**

(1) An executive officer of a body corporate commits an offence if:

- (a) the body corporate commits an offence (a **relevant offence**) by contravening a declared provision; and
- (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
- (c) the officer failed to take reasonable steps to prevent the contravention; and
- (d) the officer was reckless about whether the contravention would happen.

Maximum penalty:        The maximum penalty that may be imposed on an individual for the relevant offence.

(2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:

- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
  - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
  - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
  - (iii) the body corporate's representatives and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
- (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.

(3) Subsection (2) does not limit the matters the court may consider.

- (4) This section does not affect the liability of the body corporate.
- (5) This section applies whether or not the body corporate is prosecuted for, or convicted of, the relevant offence.
- (6) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (7) In this section:

**executive officer**, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

### **Division 3            Legal proceedings**

#### **120            Who may start proceedings under Act**

Proceedings for an offence against this Act may only be started by:

- (a) an authorised officer; or
- (b) a person authorised by the Minister.

#### **121            When proceedings under Act started**

Proceedings for an offence against this Act may only be started within 2 years after the date on which the offence is alleged to have been committed.

#### **122            Offender liable for certain costs**

- (1) A person who is found guilty of an offence against this Act is liable to pay:
  - (a) to the Territory – the costs incurred by the Territory relating to seizing, transporting, storing, examining, analysing or disposing of anything that relates to the commission of the offence; and
  - (b) to an enforcement agency – any costs incurred by the agency in relation to the commission of the offence.
- (2) An amount payable under subsection (1) is a debt due to the Territory or enforcement agency.

#### **123            Publication of names of offenders and other information**

- (1) The CHO may publish in the *Gazette*, or in a newspaper or other publication circulating in the Territory or part of the Territory, a

notice about a person who is found guilty, or whose employee or agent is found guilty, of an offence against this Act relating to a public health risk or public health nuisance.

- (2) The notice may contain the following information:
  - (a) the location of the state, condition or activity constituting the public health risk or public health nuisance;
  - (b) the name of the person and, if the state, condition or activity occurred during or as a result of the operations of a business by the person, the name of the business;
  - (c) a description of the nature of the offence, the decision of the court, the penalty imposed or any forfeiture incurred;
  - (d) any other information relating to the risk to public health or public health nuisance the CHO considers appropriate.
- (3) The CHO may only publish the notice:
  - (a) if no appeal is lodged within the appeal period – within 21 days after the appeal period expires; or
  - (b) if an appeal is lodged within the appeal period and the finding of guilt is affirmed on appeal – within 21 days after the final order on appeal is made.
- (4) A person who in good faith publishes the edition of the newspaper or other publication in which the notice is published incurs no liability for doing so.

## **Part 10                    Miscellaneous matters**

### **124            Approved forms**

The CHO may approve forms for this Act.

### **125            Administering Agency registers**

- (1) The CHO must keep a register (an ***Administering Agency register***) of each of the following:
  - (a) declared activities;
  - (b) registered businesses;
  - (c) directions given under section 58(1);
  - (d) enforcement agencies;

- (e) authorised officers;
  - (f) exemptions given under section 129.
- (2) The register may be in any form, including an electronic form.
  - (3) The CHO may, for the purpose of correcting an error, alter an entry in the register in the way the CHO considers appropriate.

## **126 Information in Administering Agency registers**

- (1) The register of declared activities must state the type of each declared activity.
- (2) The register of registered businesses must state the following information for each registered business:
  - (a) the name and principal business address of the proprietor of the business;
  - (b) the address of each place where declared activities are carried out by the business;
  - (c) the date of the registration of the business and any renewals of the registration;
  - (d) any conditions of the registration of the business;
  - (e) any change of ownership of property used in relation to the carrying out of declared activities by the business;
  - (f) any cancellation of the registration of the business, any conditions of the cancellation and the reasons for the cancellation;
  - (g) if an exemption is made for the business under section 129 – details of the exemption;
  - (h) any other information the CHO considers appropriate.
- (3) The register of directions given under section 58(1) must state the following information for each direction:
  - (a) the name of the person given the direction;
  - (b) the details of the direction.
- (4) The register of enforcement agencies must state the following information for each agency appointed:
  - (a) the name and business address of the agency;

- (b) the conditions of the appointment;
  - (c) the role of the agency.
- (5) The register of authorised officers must state the name of each officer appointed by the CHO and an enforcement agency.
- (6) The register of exemptions given under section 129 must state the details of the exemption stated in the notice given under the section.
- (7) An Administering Agency register may also contain the other information the CHO considers appropriate.

### **127 Inspection of Administering Agency registers**

A person may, on payment of the fee prescribed by regulation:

- (a) search an Administering Agency register; or
- (b) take an extract of an entry in an Administering Agency register.

### **128 Enforcement agency registers**

- (1) The CHO may direct an enforcement agency to establish and maintain a register concerning a public health matter.
- (2) The agency must establish and maintain the register in accordance with the direction.
- (3) Also, a regulation may provide for any of the following:
- (a) the establishment and maintenance of a register;
  - (b) the collection and collation of information to be recorded in a register;
  - (c) the recording of information in a register and the correction or removal of any information recorded in the register;
  - (d) the maintenance of confidentiality in relation to information provided for recording in a register and information recorded in the register;
  - (e) the release of information recorded in a register.
- (4) A regulation may limit the liability of a person who carries out duties in relation to establishing and maintaining a register for any direct and indirect loss or injury suffered because of the way in which the person carried out or failed to carry out the duties.



**129 Exemption from application of Act**

- (1) The CHO may exempt any of the following from the application of this Act or a stated provision of this Act:
  - (a) by written notice given to a person – the person, the business the person is conducting or activity the person is carrying out;
  - (b) by written notice given to the owner of personal property or the owner or occupier of real property – the personal property or real property;
  - (c) by *Gazette* notice:
    - (i) a class of persons, businesses or activities; or
    - (ii) a class of personal property or real property.
- (2) An exemption may be made:
  - (a) on the written application of a person who is, or whose business or property is, the subject of the exemption sought; or
  - (b) on the CHO's initiative.
- (3) An exemption may be subject to the conditions (including the payment of a fee) the CHO considers appropriate and states in the notice.

**130 Powers of police officers**

The powers conferred by this Act on a police officer, including the Commissioner of Police, are in addition to and do not limit any other power the police officer may have under another law in force in the Territory.

**131 Protection from liability**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:
  - (a) the CHO;
  - (b) an enforcement agency;
  - (c) an authorised officer, including an authorised officer appointed under section 53(1)(a);

- (d) a person assisting an authorised officer under section 80(5)(b).
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) This section has effect subject to Part VIIA of the *Police Administration Act* to the extent it applies to the civil liability of an authorised officer who is a police officer.
- (4) In this section:
  - exercise**, of a power, includes the purported exercise of the power.
  - performance**, of a function, includes the purported performance of the function.

### **132 Acquisition on just terms**

If the operation of this Act would, apart from this section, result in an acquisition of property from a person otherwise than on just terms:

- (a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

### **133 Regulations**

- (1) The Administrator may make regulations under this Act.
- (2) A regulation may provide for the following:
  - (a) the making and implementing of measures and plans to prevent, monitor or control public health risks;
  - (b) the prevention or abatement of public health nuisances;
  - (c) hygiene and sanitation, including the inspection and control of sanitation;
  - (d) the supply and quality of drinking water;
  - (e) the control of animals;
  - (f) the eradication or control of pests, insects and vermin;

- (g) the management and treatment of waste and wastewater;
  - (h) the storage, or preparation for burial, cremation or other disposal, of bodies of deceased persons;
  - (i) medical and dental inspection of school children;
  - (j) implementing measures to treat and prevent:
    - (i) diseases; and
    - (ii) dental and eye defects;
  - (k) the inspection and control of places and declared activities;
  - (l) obtaining, using or disclosing health information.
- (3) A regulation may also do any of the following:
- (a) prescribe fees payable under this Act;
  - (b) apply, adopt or incorporate (with or without changes) the whole or part of a document as in force or existing at a particular time or from time to time;
  - (c) provide for the enforcement of a standard, including by providing that a contravention of the standard is an offence against a regulation;
  - (d) provide for an offence against a regulation to be an offence of strict or absolute liability but not with a penalty exceeding 100 penalty units.

## **Part 11            Repeals and transitional matters**

### **Division 1        Repeal of Acts**

#### **134            Acts repealed**

The Acts mentioned in Schedule 2 are repealed.

## **Division 2            Transitional matters for Public and Environmental Health Act 2011**

### **135            Definitions**

In this Division:

**commencement day** means the day on which section 134 commences.

**former CHO** means the Chief Health Officer as defined in the repealed Act.

**former health officer** means a Health Officer, Health Surveyor or Medical Officer of Health as defined in the repealed Act.

**repealed Act** means the *Public Health Act* as in force immediately before the commencement day.

### **136            Registration of business carrying out declared activity**

A business that immediately before the commencement day was carrying out a declared activity is taken to be registered for the declared activity for 3 months from the commencement day.

### **137            Appointments**

- (1) The person who immediately before the commencement day was appointed as the former CHO is taken to be the CHO appointed under section 67(1).
- (2) A person who immediately before the commencement day was appointed as a former health officer is taken to be an authorised officer appointed under section 76(2).
- (3) Subject to this Act, any act, matter or thing done or omitted to be done before the commencement day by or in relation to the former CHO or a former health officer is, to the extent it would, apart from section 134, have had effect on or after that day, taken to have been done or omitted to be done by or in relation to the CHO or an authorised officer.
- (4) A reference in an Act or other document to a former health officer is taken to be a reference to an authorised officer.

### **138            Notices under section 7C**

A notice in force under section 7C of the repealed Act immediately before the commencement day is taken to be a public health notice.

**139 Regulations and other instruments**

- (1) Regulations, and statutory instruments, in force under the repealed Act immediately before the commencement day are taken to be regulations and statutory instruments under this Act.
- (2) A regulation or statutory instrument continued in force under subsection (1) ends on the earlier of the following:
  - (a) when it would have ended had this Act not been enacted;
  - (b) 2 years after the commencement day.
- (3) Despite section 7, Part IIAA of the Criminal Code does not apply to an offence against a regulation continued in force under subsection (1).

## **Schedule 1 Reviewable decisions and affected persons**

section 104

<b>Reviewable decision</b>	<b>Affected person</b>
Refusal to register business (section 12)	Applicant
Refusal to renew registration of business (section 17)	Proprietor of business
Refusal to vary conditions of registration of business (section 20)	Proprietor of business
Cancellation of registration of business (section 21)	Proprietor of business
Issue of public health notice (section 29)	Person issued with notice
Issue a public health order (section 32)	Person issued with order
Refusal to extend period for compliance with public health notice or public health order (section 37)	Person issued with notice or order
Refusal to cancel public health notice or public health order (section 38)	Person issued with notice or order

## **Schedule 2 Repealed Acts**

section 134

<i>Public Health Ordinance 1952</i>	Ordinance No. 27 of 1952
<i>Public Health Ordinance 1957</i>	Ordinance No. 8 of 1957
<i>Public Health Ordinance 1958</i>	Ordinance No. 17 of 1958
<i>Public Health Ordinance 1961</i>	Ordinance No. 32 of 1961
<i>Public Health Ordinance 1962</i>	Ordinance No. 14 of 1962
<i>Public Health Amendment Act 1981</i>	Act No. 103 of 1981
<i>Public Health Amendment Act 1985</i>	Act No. 6 of 1985

## ENDNOTES

### 1

### KEY

Key to abbreviations

amd = amended  
app = appendix  
bl = by-law  
ch = Chapter  
cl = clause  
div = Division  
exp = expires/expired  
f = forms  
Gaz = Gazette  
hdg = heading  
ins = inserted  
lt = long title  
nc = not commenced

od = order  
om = omitted  
pt = Part  
r = regulation/rule  
rem = remainder  
renum = renumbered  
rep = repealed  
s = section  
sch = Schedule  
sdiv = Subdivision  
SL = Subordinate Legislation  
sub = substituted

### 2

### LIST OF LEGISLATION

#### *Public and Environmental Health Act 2011 (Act No. 7, 2011)*

Assent date	16 March 2011
Commenced	1 July 2011 ( <i>Gaz</i> S28, 3 June 2011)

### 3

### LIST OF AMENDMENTS

pt 12 hdg	exp No. 7, 2011, s 148
ss 140 – 148	exp No. 7, 2011, s 148
sch 3 – 4	exp No. 7, 2011, s 148