

NORTHERN TERRITORY OF AUSTRALIA

POLICE ADMINISTRATION AMENDMENT ACT 2016

Act No. 30 of 2016

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 30 of 2016

An Act to amend the *Police Administration Act*

[Assented to 13 July 2016]
[Second reading 25 May 2016]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Police Administration Amendment Act 2016*.

2 Commencement

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

3 Act amended

This Act amends the *Police Administration Act*.

4 Section 4 amended

Section 4(1)

insert (in alphabetical order)

affected member, for Part VII, Division 7AA, see section 147FA(1).

child, for Part VII, Division 7AA, see section 147FA(1).

court, for Part VII, Division 7AA, see section 147FA(1).

disease test approval, for Part VII, Division 7AA, see section 147FA(1).

disease test authorisation, for Part VII, Division 7AA, see section 147FA(1).

disease test order, for Part VII, Division 7AA, see section 147FA(1).

grounds for disease testing, for Part VII, Division 7AA, see section 147FB(5).

incapable person, for Part VII, Division 7AA, see section 147FA(1).

infectious disease, for Part VII, Division 7AA, see section 147FA(1).

nurse, for Part VII, Division 7AA, see section 147FA(1).

protected person, for Part VII, Division 7AA, see section 147FA(1).

qualified person, for Part VII, Division 7AA, see section 147FA(1).

responsible person, for Part VII, Division 7AA, see section 147FA(2).

senior member, for Part VII, Division 7AA, see section 147FA(1).

substance, for Part VII, Division 7AA, see section 147FA(1).

third party, for a transferor, means:

- (a) a responsible person for the transferor on whom an application for a disease test order is served under section 147FI; or
- (b) another responsible person for the transferor appointed third party under section 147FJ(1)(d).

transfer of a substance, for Part VII, Division 7AA, see section 147FA(1).

transferor, for Part VII, Division 7AA, see section 147FA(1).

5 Section 4A inserted

After section 4, in Part I

insert

4A Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against section 147FG, 147FO, 147FV or 155.

Note for section 4A

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

6 Part VII, Division 7AA inserted

After section 147F

insert

Division 7AA Blood testing for infectious diseases

Subdivision 1 Preliminary Matters

147FA Interpretation

(1) In this Division:

affected member means a member in relation to whom there are grounds for disease testing.

child means a person who is under the age of 18 years.

court means the Local Court.

disease test approval means an approval under Subdivision 2 for the taking and testing of a blood sample from a transferor.

disease test authorisation means a disease test approval or a disease test order.

disease test order means an order of the court under Subdivision 3 authorising the taking and testing of a blood sample from a transferor, and includes a variation of the order under section 147FK(3).

grounds for disease testing, see section 147FB(5).

incapable person means a person who is not a child and who:

- (a) for any reason is unable to give consent to being tested for an infectious disease; or
- (b) is deceased, unconscious, or otherwise unable:
 - (i) to understand a request to give consent to being tested for an infectious disease; or
 - (ii) to communicate whether or not the person consents to being tested for an infectious disease.

infectious disease means any of the following:

- (a) Human Immunodeficiency Virus (HIV) infection;
- (b) Hepatitis B;
- (c) Hepatitis C;
- (d) another disease prescribed by regulation capable of being transmitted by the transfer of a substance.

nurse means 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).

protected person means:

- (a) a child; or
- (b) an incapable person.

qualified person means a person who has been trained to take samples of blood from persons by a registered training organisation within the meaning of the Australian Quality Training Framework as approved from time to time under the *Skilling Australia's Workforce Act 2005* (Cth).

senior member means a member of or above the rank of superintendent.

substance means blood, saliva or faeces.

transfer of a substance means the transfer of a substance from a person into broken skin, or a mucous membrane, of a member.

transferor, where there are grounds for disease testing, means the person from whom it is suspected the substance was transferred.

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- (2) In this Division, a person is a **responsible person** for a transferor in the following circumstances:
- (a) if the transferor is a child – the person is any of the following:
 - (i) a parent of the child;
 - (ii) a guardian of the child;
 - (iii) another adult person who has responsibility for the day-to-day care of the child;
 - (iv) if no person mentioned in subparagraph (i) to (iii) is available – a person, or a person in a class of persons, prescribed by regulation;
 - (b) if the transferor is an incapable person other than a deceased person – the person is any of the following:
 - (i) an adult relative of the incapable person;
 - (ii) a person who is a guardian of the incapable person under the *Adult Guardianship Act*;
 - (iii) a person who is a donee of an enduring power of attorney created by instrument under the *Powers of Attorney Act* and is authorised to perform functions in relation to the incapable person in the circumstances in which this Act applies;
 - (iv) a person who is a decision maker for the incapable person under the *Advance Personal Planning Act* and is authorised to perform functions in relation to the incapable person in the circumstances in which this Act applies;
 - (v) a person who is a carer (as defined in section 4 of the *Carers Recognition Act*) in relation to the incapable person;
 - (vi) if no person mentioned in subparagraph (i) to (v) is available – a person, or a person in a class of persons, prescribed by regulation;
 - (c) if the transferor is a deceased person – the person has lawful custody of the transferor's body.

Subdivision 2 Disease test approvals

147FB Application for disease test approval

- (1) An affected member may apply to a senior member for a disease test approval in relation to a transferor if:
 - (a) there are grounds for disease testing; and
 - (b) the transferor is not a protected person; and
 - (c) the senior member is not involved in the investigation of any suspected offence to which the proposed disease test approval relates.
- (2) The application must:
 - (a) if practicable be in writing; and
 - (b) state the full name of, and other relevant details in relation to, the applicant; and
 - (c) state the full name and address of the transferor, if known; and
 - (d) state the grounds for suspecting that there has been a transfer of a substance from the transferor to the affected member; and
 - (e) include any other information that is prescribed by regulation for this subsection.
- (3) If it is not practicable to make the application in writing, the applicant must, as soon as practicable after the application is made, make a written record of it, including all the information required under subsection (2).
- (4) If the transferor is being detained under section 147FC, the application must be made:
 - (a) as soon as practicable after the transferor's apprehension; and
 - (b) in a manner that ensures the determination of the application as soon as practicable after that apprehension.

(5) In this section:

grounds for disease testing, in relation to a transferor, means grounds for suspecting that there has been a transfer of a substance from the transferor to a member as a result of:

- (a) an assault by the transferor against the member; or
- (b) the lawful apprehension or detention of the transferor by the member; or
- (c) another circumstance prescribed by regulation and involving the transferor and the member.

147FC Detention of transferor

A member may apprehend and detain the transferor for as long as is reasonably necessary to enable the determination of the application.

147FD Disease test approval

- (1) A senior member may grant a disease test approval:
 - (a) after having considered an application made under section 147FB, if satisfied that:
 - (i) there are grounds for disease testing; and
 - (ii) the transferor is not a protected person; or
 - (b) even if the affected member has not made an application under section 147FB if, in addition to being satisfied of the matters mentioned in paragraph (a)(i) and (ii), the senior member:
 - (i) has knowledge of the circumstances that gave rise to the grounds for disease testing; and
 - (ii) is satisfied that it was not feasible for the affected member to apply for the approval within a reasonable time after those grounds arose.
- (2) The disease test approval may be granted subject to any conditions that the senior member considers appropriate and specifies in the approval.
- (3) A disease test approval may be:
 - (a) granted orally, whether in person or by radio, telephone or any other available means of communication; or

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- (b) granted in writing, containing the particulars in the form approved by the Commissioner, which must include a statement of the effect of the approval.
 - (4) The senior member must, as soon as practicable after granting an approval orally, make a record in writing of the particulars mentioned in subsection (3)(b) relating to the approval.

147FE Service of copy of disease test approval

- (1) A copy of the disease test approval must be served personally on the transferor.
- (2) The copy of the disease test approval must contain an explanation, in a form approved by the Commissioner:
 - (a) of the purpose and effect of the approval; and
 - (b) that force may be used to enforce the approval; and
 - (c) that failure to comply with a requirement mentioned in section 147FF(e) is an offence.
- (3) A disease test approval does not take effect until a copy of it is served in accordance with this section.

147FF Effect of disease test approval

A disease test approval relating to a transferor:

- (a) authorises a blood sample to be taken from the transferor in accordance with the approval; and
- (b) authorises a member to apprehend the transferor and detain the transferor for as long as is reasonably necessary to enable the taking of a sample of the transferor's blood; and
- (c) authorises, for paragraph (b), a member to enter any place where the member suspects on reasonable grounds that the transferor might be located; and
- (d) authorises a member to take the transferor to a place that the member considers has appropriate facilities for taking the blood sample; and
- (e) authorises a member to require the transferor to submit to the taking of the blood sample in accordance with the approval; and

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- (f) authorises a medical practitioner, nurse or qualified person to take a blood sample from the transferor; and
 - (g) authorises the blood sample to be tested for an infectious disease.

147FG Failure to comply with requirement under disease test approval

- (1) A transferor commits an offence if the transferor:
 - (a) is required by a member, as mentioned in section 147FF(e), to submit to the taking of a blood sample in accordance with a disease test approval; and
 - (b) fails to comply with the requirement.

Maximum penalty: 100 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 has a reasonable excuse.

Subdivision 3 Disease test orders

147FH Application for disease test order

The following persons may apply to the court for a disease test order in relation to a transferor:

- (a) an affected member, if:
 - (i) there are grounds for disease testing; and
 - (ii) the transferor is a protected person;
- (b) a senior member if, in addition to being satisfied of the matters mentioned in paragraph (a)(i) and (ii), the senior member:
 - (i) has knowledge of the circumstances that gave rise to the grounds for disease testing; and
 - (ii) is satisfied that it was not feasible for the affected member to apply for the order within a reasonable time after those grounds arose.

147FI Service of copy of application

The applicant must serve a copy of the application personally on a third party for the transferor.

147FJ Hearing of application

- (1) The court:
 - (a) must hear and decide the application with as little delay as possible and in the absence of the public; and
 - (b) may, in extraordinary circumstances, adjourn the application (but for no more than 24 hours) to allow further evidence to be put before the court; and
 - (c) must ensure that the transferor and the third party are given the opportunity to be represented by a lawyer at the hearing; and
 - (d) may appoint another responsible person to be the third party for the transferor if satisfied that the third party on whom the application was served is not available to attend the hearing or otherwise act as third party under this Division.
- (2) An affected member cannot be compelled to give evidence at the hearing.

147FK Disease test order

- (1) The court may make a disease test order in relation to the transferor if the court is satisfied that:
 - (a) there are grounds for disease testing; and
 - (b) in the circumstances, a blood sample should be taken from the transferor.
- (2) The disease test order may be made subject to any conditions that the court considers appropriate and specifies in the order.
- (3) The court may, by further order, vary or revoke a disease test order.

147FL Explanation of disease test order

- (1) A court making a disease test order must ensure that the transferor and the third party are informed of the following:
 - (a) the transferor's right under section 147FP to appeal to the Supreme Court against the disease test order;

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- (b) that the transferor has a right to obtain legal advice and to communicate with a lawyer;
 - (c) about the purpose and effect of the order;
 - (d) that force may be used to enforce the order;
 - (e) that failure to comply with the order is an offence.
- (2) The court must take all reasonable steps to ensure that the explanation provided to the transferor is expressed in a language and manner that the transferor is likely to understand.
- (3) A failure by the court to comply with this section does not invalidate the disease test order.

147FM Service of copy of disease test order

- (1) A copy of a disease test order must be served personally on the third party for the transferor.
- (2) A disease test order does not take effect until a copy of it is served in accordance with this section.

147FN Effect of disease test order

A disease test order relating to a transferor:

- (a) authorises a blood sample to be taken from the transferor in accordance with the order; and
- (b) requires the third party for the transferor to take all reasonable steps to enable the taking of the blood sample in accordance with the order; and
- (c) authorises a member to apprehend the transferor and detain the transferor for as long as is reasonably necessary to enable the taking of a sample of the transferor's blood; and
- (d) authorises, for paragraph (c), a member to enter any place where the member suspects on reasonable grounds that the transferor might be located; and
- (e) authorises a member to take the transferor to a place that the member considers has appropriate facilities for taking the blood sample; and
- (f) authorises a member to require the transferor to submit to the taking of the blood sample in accordance with the order; and

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- (g) authorises a medical practitioner, nurse or qualified person to take a blood sample from the transferor; and
 - (h) authorises the blood sample to be tested for an infectious disease.

147FO Failure to comply with disease test order

- (1) A person commits an offence if:
 - (a) the person is the third party for a transferor; and
 - (b) a disease test order is made for the transferor; and
 - (c) the person fails to take all reasonable steps to enable the taking of the blood sample in accordance with the order.

Maximum penalty: 100 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 has a reasonable excuse.

147FP Appeal against disease test order on behalf of transferor

- (1) The third party for a transferor in relation to whom a disease test order has been made may, on behalf of the transferor, appeal to the Supreme Court against the order.
- (2) Unless the Supreme Court otherwise orders, the appeal:
 - (a) must be filed without delay; and
 - (b) does not stay the operation of the disease test order.
- (3) The Supreme Court cannot order a stay of a disease test order of more than 48 hours from the time the disease test order is made.
- (4) The Supreme Court must hear and decide the appeal:
 - (a) (unless it is impossible to do so) within 48 hours after the disease test order is made; and
 - (b) in the absence of the public; and
 - (c) (unless it is impossible to do so) without adjourning the appeal.
- (5) The Supreme Court may allow or dismiss the appeal.

147FQ Appeal against disease test order by affected member

- (1) If a court decides not to make a disease test order under section 147FK, the following persons may appeal to the Supreme Court against the decision:
 - (a) an affected member named in the application for the order;
 - (b) a senior member if the senior member is satisfied that it is not feasible for the affected member to file the appeal without delay.
- (2) Unless the Supreme Court otherwise orders, the appeal must be filed without delay.
- (3) The Supreme Court must hear and decide the appeal:
 - (a) (unless it is impossible to do so) within 48 hours after the decision not to make a disease test order; and
 - (b) in the absence of the public; and
 - (c) (unless it is impossible to do so) without adjourning the appeal.
- (4) The Supreme Court may allow or dismiss the appeal.

Subdivision 4 General**147FR Taking blood sample under disease test authorisation**

- (1) A member executing a disease test authorisation in relation to a transferor may ask a medical practitioner, nurse or qualified person to take a blood sample from the transferor.
- (2) When asking the medical practitioner, nurse or qualified person to take the blood sample, the member must produce a copy of the disease test authorisation for inspection by the medical practitioner, nurse or qualified person.
- (3) Subject to subsection (4), the medical practitioner, nurse or qualified person must take a blood sample from the transferor in accordance with the disease test authorisation.

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- (4) A medical practitioner, nurse or qualified person is not required to take a blood sample as authorised in the disease test authorisation, until the practitioner, nurse or qualified person is satisfied that:
 - (a) there is no serious risk that serious harm would be caused to the transferor, or another person, by the taking of the sample; and
 - (b) the health of the transferor would not be adversely affected by the taking of the sample.
 - (5) If assistance is needed for taking a blood sample, the medical practitioner, nurse or qualified person may ask another person to give assistance that is necessary and reasonable.
 - (6) The medical practitioner, nurse or qualified person, and a person assisting the medical practitioner, nurse or qualified person, may use the force that is reasonably necessary for taking the blood sample.
 - (7) The medical practitioner, nurse or qualified person must, as soon as practicable after taking the sample, send the sample to a pathology laboratory with appropriate facilities for testing the sample for infectious diseases.

147FS Analysis of blood sample

- (1) A person who works in the pathology laboratory and who receives a blood sample sent under section 147FR(7) must conduct an analysis of the sample, or arrange for another person to conduct an analysis, without delay after receiving the sample.
- (2) The person who conducts the analysis may destroy the sample, or part of the sample:
 - (a) before it has been used for the analysis or a further analysis, if it is not required for any analysis or further analysis; or
 - (b) after it has been used for the analysis or a further analysis, if it is not required for any further analysis.

147FT No payment for taking or testing blood

A person who takes a blood sample under a disease test authorisation cannot require any of the following persons to make any payment (whether in money or money's worth) for, or in relation to, the taking or testing of a blood sample under a disease test authorisation:

- (a) the transferor;

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- (b) if the transferor is a protected person – a responsible person, whether or not the responsible person was a third party to the application for the authorisation;
 - (c) if the transferor is a deceased person – the person who has lawful possession of the transferor's estate.

147FU Restriction on disclosure of results of analysis

- (1) Section 155(1) does not apply to a disclosure of the results of an analysis of a blood sample under this Subdivision by a person who conducted the analysis, if the disclosure is to one or more of the following:
 - (a) an affected member in relation to the analysis;
 - (b) the transferor;
 - (c) if the transferor is a protected person – a responsible person for the protected person;
 - (d) if the transferor is a deceased person – the senior next of kin of the transferor;
 - (e) a medical practitioner, nurse or other health professional involved in treating, or providing care for, an affected member or the transferor;
 - (f) a psychiatrist, psychologist or social worker providing counselling for an affected member or the transferor;
 - (g) a person, or a person in a class of persons, prescribed by regulation for this section.
- (2) Section 155(1) does not apply to a person mentioned in subsection (1) who discloses information (the **secondary disclosure**) disclosed to the person under this section:
 - (a) if the secondary disclosure is to another person mentioned in subsection (1); or
 - (b) if the person is an affected member – if the secondary disclosure is not a public disclosure to the media made in a way that would reveal the identity of the transferor; or
 - (c) if the person is a transferor – if the secondary disclosure is not a public disclosure to the media made in a way that would reveal the identity of an affected member.

(3) In this section:

senior next of kin, see section 3 of the *Coroners Act*.

147FV Prohibition on use of blood sample for other purpose

A person commits an offence if:

- (a) the person intentionally uses a blood sample for a purpose; and
- (b) the blood sample was taken under this Part and the person is reckless in relation to that circumstance; and
- (c) the purpose is other than analysis under this Part and the person is reckless in relation to that circumstance.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

7 Part VIIA, Division 2 replaced

Part VIIA, Division 2

repeal, insert

Division 2 Protection from liability and vicarious liability of the Territory

148B 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 under this Act.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) 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.

8 Section 155 replaced

Section 155

repeal, insert

155 Unauthorised disclosure of confidential information

- (1) A person commits an offence if:
- (a) the person obtains information in the course of performing functions connected with the administration of this Act; and
 - (b) the person intentionally engages in conduct; and
 - (c) the conduct results in the disclosure of the information and the person is reckless in relation to that result.

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

- (2) Strict liability applies to subsection (1)(a).
- (3) Subsection (1) does not apply if:
- (a) the person discloses the information:
 - (i) for the administration of this Act; or
 - (ii) with the consent of the person to whom the information relates; or
 - (iii) for legal proceedings arising out of the operation of this Act; or
 - (b) the information is otherwise available to the public.

Note for subsection (3)

In addition to the circumstances mentioned in subsection (3), a person who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

9 Expiry of Act

This Act expires on the day after it commences.