

NORTHERN TERRITORY OF AUSTRALIA

PUBLIC AND ENVIRONMENTAL HEALTH LEGISLATION AMENDMENT
ACT 2022

Act No. 10 of 2022

Table of provisions

Part 1	Preliminary matters	
1	Short title	1
2	Commencement	1
Part 2	Amendment of Public and Environmental Health Act 2011	
3	Act amended	1
4	Section 4 amended (Definitions).....	2
5	Section 52A amended (CHO's power to charge fees during emergencies).....	2
6	Section 52B inserted	2
	52B Determination regarding emergency fee money	
7	Section 55 amended (Report on public health emergency).....	2
8	Division 2A inserted in Part 5.....	3
	Division 2A Post-emergency powers: COVID-19 pandemic	
	57A Application of Division	
	57B CHO's powers	
	57C Conditions and consultation requirements for exercise of powers under section 57B	
	57D Publication requirements	
	57E CHO's power to charge fees	
	57F Determination regarding fee money	
	57G Appointment and powers of authorised officers under this Division	
	57H Record of action taken under this Division	
	57J Report	
	57K Contravention of direction	
	57L Limitation on stay of operation of powers	
9	Section 113A amended (Coughing or spitting on certain workers).....	8
10	Section 114 amended (Definitions for Part 9, Division 2)	8
11	Part 10A inserted.....	8
	Part 10A Validation of Chief Health Officer Directions	
	133A Definitions	
	133B Purpose and effect of Part	

	133C	Validated directions	
	133D	Consequential effects of validation	
	133E	Effect on contraventions of validated directions	
	133F	Amendment and revocation	
12		Part 11, Division 5 inserted.....	12
	Division 5	Transitional matters for Public and Environmental Health Legislation Amendment Act 2022	
	142	Definition	
	143	Written directions of CHO	
	144	Appointment of and direction to authorised officers	
Part 3		Amendment of Public and Environmental Health Regulations 2014	
13		Regulations amended.....	13
14		Regulation 4B inserted	13
	4B	Prescribed maximum fee – CHO's post-emergency powers: COVID-19	
15		Schedule 5 amended (Infringement notices and prescribed amounts).....	13
Part 4		Repeal	
16		Repeal of Act.....	13



NORTHERN TERRITORY OF AUSTRALIA

Act No. 10 of 2022

An Act to amend the *Public and Environmental Health Act 2011* and the
Public and Environmental Health Regulations 2014

[Assented to 26 May 2022]
[Introduced 23 March 2022]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Public and Environmental Health Legislation Amendment Act 2022*.

2 Commencement

This Act commences on the day after the day on which the Administrator's assent to this Act is declared.

Part 2 Amendment of Public and Environmental Health Act 2011

3 Act amended

This Part amends the *Public and Environmental Health Act 2011*.

4 Section 4 amended (Definitions)

Section 4

insert

COVID-19 means the Coronavirus disease named "COVID-19" by the World Health Organization.

5 Section 52A amended (CHO's power to charge fees during emergencies)

Section 52A(1)

omit

and remain quarantined at a place after entering the Territory from a place outside the Territory

insert

quarantine and remain quarantined at a place

6 Section 52B inserted

After section 52A

insert

52B Determination regarding emergency fee money

- (1) The Minister may, in writing, determine that a fee or class of fees charged by the CHO under section 52A is Commonwealth money.
- (2) Despite section 52A(3), a fee determined to be Commonwealth money under subsection (1) is a debt due to the Commonwealth.
- (3) A determination under subsection (1) may have effect on and from 23 October 2020 or any later date.

7 Section 55 amended (Report on public health emergency)

After section 55(1)

insert

- (1A) After an emergency declaration that is extended by the Minister under section 50(2) ceases to be in force, the CHO may, instead of the report mentioned in subsection (1), make a report to the Minister summarising the matters set out in that subsection.

8 Division 2A inserted in Part 5

After section 57

insert

Division 2A Post-emergency powers: COVID-19 pandemic**57A Application of Division**

- (1) Subject to subsection (2), this Division has effect for 2 years immediately following the declaration of the public health emergency in relation to the COVID-19 pandemic made under section 48 on 18 March 2020 and published in *Gazette* No. S10 of 18 March 2020, as extended from time to time, being revoked or ceasing to have effect.
- (2) This Division ceases to have effect if the Minister makes a further declaration under section 48 in relation to the COVID-19 pandemic.
- (3) Nothing in this Division affects anything in, or anything done under, Division 2.
- (4) In the event of an inconsistency between a provision of or under this Division and another provision this Act (other than Division 2), the provision of or under this Division prevails to the extent of the inconsistency.
- (5) In the event of an inconsistency between a provision of or under this Division and the *Notifiable Diseases Act 1981*, the provision of or under that Act prevails to the extent of the inconsistency.

57B CHO's powers

- (1) While this Division is in effect, the CHO may take the same actions (including giving oral or written directions) that may be taken under section 52 as if the declaration mentioned in section 57A(1) was still in force.
- (2) Without limiting subsection (1) or section 52, directions the CHO may give include directions:
 - (a) requiring a person be tested for COVID-19; or
 - (b) requiring a person who tests positive or who declines to be tested to isolate for a specified period as directed; or
 - (c) requiring a person who is at risk of COVID-19 infection to quarantine at a suitable location or in a suitable facility; or

- (d) regulating the conduct of a person:
 - (i) while required to isolate or quarantine; or
 - (ii) after the person leaves isolation or quarantine; or
 - (e) in relation to a particular event or premises, if there is reason to believe there is a risk of transmission of COVID-19 at that event or on those premises; or
 - (f) requiring a person to register their presence at a place or premises, including by use of technology; or
 - (g) imposing restrictions or conditions on activities of a person based on:
 - (i) whether the person is vaccinated against COVID-19; or
 - (ii) how many COVID-19 vaccine doses the person has received; or
 - (h) as to physical health measures, including the following:
 - (i) requirements to wear masks;
 - (ii) physical distancing in public from persons unknown or who are not a member of a person's household;
 - (iii) placing limitations on movements or activities of people, including any of the following:
 - (A) requiring a person to remain at their residential premises;
 - (B) restricting the number of visitors a person may host at a place or premises;
 - (C) restricting the number of persons who may attend an event;
 - (D) restricting the movement of people within a community or between communities, including prohibiting people from entering or leaving an area or community; or
 - (i) of any other kind that in the opinion of the CHO is necessary, appropriate or desirable to reduce harm from COVID-19.
- (3) A direction under this section must not prevent:
- (a) a resident of the Territory from entering the Territory; or

(b) a person from leaving the Territory.

57C Conditions and consultation requirements for exercise of powers under section 57B

- (1) The CHO must not give a direction of a type mentioned in section 57B(2)(f) to (i) unless the CHO, before giving the direction:
- (a) takes into account social considerations and economic considerations, in addition to public health considerations; and
 - (b) consults with the following:
 - (i) the Chief Minister;
 - (ii) the Minister;
 - (iii) the Treasurer;
 - (iv) the Minister administering the *Police Administration Act 1978*;
 - (v) any other Minister nominated by the Chief Minister in relation to the proposed direction.
- (2) Consultation under subsection (1)(b) is not required to be in writing.
- (3) A written direction to which a consultation requirement under subsection (1) applies must state the ministers who were consulted.

57D Publication requirements

- (1) The CHO must publish any written direction given under section 57B(2)(b), (c) or (f) to (i).
- (2) Subsection (1) does not apply to a direction given directly to, or which names, a person or vessel.

57E CHO's power to charge fees

- (1) The CHO may charge a fee, of an amount decided by the CHO but no greater than the amount prescribed by regulation, to a person or class of persons for any action taken under section 57B(1) that requires the person or class to enter quarantine and remain quarantined at a place.
- (2) A person or class of persons must pay any fee determined under subsection (1) that is charged to the person or class.
- (3) The fee is recoverable as a debt due to the Territory from the person or class of persons so charged.

57F Determination regarding fee money

- (1) The Minister may, in writing, determine that a fee or class of fees charged by the CHO under section 57E is Commonwealth money.
- (2) Despite section 57E(3), a fee determined to be Commonwealth money under subsection (1) is a debt due to the Commonwealth.

57G Appointment and powers of authorised officers under this Division

- (1) The CHO may:
 - (a) appoint authorised officers for the 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 this Division 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.

57H Record of action taken under this Division

- (1) The CHO must keep and maintain a signed written record of all the action the CHO takes under this Division, including the directions given, under section 57B.
- (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.

57J Report

- (1) After this Division ceases to have effect, the CHO must make a report to the Minister summarising the following:
 - (a) the action the CHO has taken under this Division, including any the directions given by the CHO;
 - (b) the outcomes of the action taken under this Division.
- (2) The CHO must give the report to the Minister within 3 months after the date this Division ceases to have effect.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.

57K Contravention of direction

- (1) A person commits an offence if:
 - (a) the CHO takes an action under section 57B that involves giving a direction, whether oral or written and whether specified in section 57B(2) or otherwise; and
 - (b) the person intentionally engages in conduct; and

- (c) the conduct results in a contravention of the direction and the person is reckless in relation to that result.

Maximum penalty: 400 penalty units.

- (2) Strict liability applies to subsection (1)(a).
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

57L Limitation on stay of operation of powers

In any proceedings, including judicial review, 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 action taken by the CHO under this Division.

9 Section 113A amended (Coughing or spitting on certain workers)

Section 113A(4)

omit

10 Section 114 amended (Definitions for Part 9, Division 2)

Section 114, definition ***declared provision***, after "56(1),"

insert

57K(1),

11 Part 10A inserted

After section 133

insert

Part 10A Validation of Chief Health Officer Directions

133A Definitions

In this Part:

commencement means the commencement of section 11 of the *Public and Environmental Health Legislation Amendment Act 2022*.

validated direction means any provision of the directions specified in section 133C.

133B Purpose and effect of Part

- (1) The purpose of this Part is to confirm the validity of the provisions of the directions specified in section 133C and ensure their effectiveness.
- (2) This Part has effect despite any other law of the Territory to the contrary.
- (3) To avoid doubt, if a validated direction is inconsistent with a law of the Commonwealth:
 - (a) the law of the Commonwealth prevails to the extent of the inconsistency; and
 - (b) the validated direction is severable from the directions specified in section 133C; and
 - (c) the validated direction is to be construed as valid and effective to the extent to which it is not inconsistent with the law of the Commonwealth.

Note for subsection (3)

See section 59 of the Interpretation Act 1978.

133C Validated directions

- (1) The directions (and their provisions) given or purported to have been given under section 52 by the Chief Health Officer on 13 October 2021 entitled *COVID-19 Directions (No. 55) 2021: Directions for mandatory vaccination of workers to attend the workplace*:
 - (a) were, and are taken to always have been, valid under this Act; and
 - (b) had, and are taken to always have had, full force and effect on and from when they were given by the Chief Health Officer until 22 April 2022.
- (2) The directions (and their provisions) given or purported to have been given under section 52 by the Chief Health Officer on 10 November 2021 entitled *COVID-19 Directions (No. 81) 2021: Amendments to COVID-19 Directions (No. 55) 2021*:
 - (a) were, and are taken to always have been, valid under this Act; and

- (b) had, and are taken to always have had, full force and effect on and from when they were given by the Chief Health Officer until 22 April 2022.
- (3) The directions (and their provisions) given or purported to have been given under section 52 by the Chief Health Officer on 15 February 2022 entitled *COVID-19 Directions (No. 41) 2022: Directions for high risk places*:
 - (a) are, and are taken to always have been, valid under this Act; and
 - (b) have, and are taken to always have had, full force and effect on and from when they were given by the Chief Health Officer.
- (4) The directions (and their provisions) given or purported to have been given under section 52 by the Chief Health Officer on 13 March 2022 entitled *COVID-19 Directions (No. 52) 2022: Directions for additional vaccination requirements for certain workers to attend the workplace*:
 - (a) are, and are taken to always have been, valid under this Act; and
 - (b) have, and are taken to always have had, full force and effect on and from when they were given by the Chief Health Officer.
- (5) The directions (and their provisions) given or purported to have been given under section 52 by the Chief Health Officer on 21 April 2022 entitled *COVID-19 Directions (No. 60) 2022: Amendment of COVID-19 Directions (No. 52) 2022*:
 - (a) are, and are taken to always have been, valid under this Act; and
 - (b) have, and are taken to always have had, full force and effect on and from when they were given by the Chief Health Officer.

133D Consequential effects of validation

Without limiting the effect of section 133C, the following are not invalid or unlawful on the ground that a validated direction was not valid or did not have full force and effect:

- (a) any right, privilege, power, duty or function given or imposed or purportedly given or imposed under the validated direction;
- (b) any exercise of, performance of or action taken under a right, privilege, power, duty or function given or imposed or purportedly given or imposed under the validated direction;

- (c) the making or purported making of any decision under the validated direction;
- (d) the granting or purported granting or issuing or purported issuing of any order or any other document under the validated direction;
- (e) any action taken to enforce the validated direction;
- (f) any infringement notice issued for an alleged contravention of the validated direction committed after the commencement;
- (g) any amount paid in response to an infringement notice issued for an alleged contravention of the validated direction committed after the commencement;
- (h) any prosecution, conviction or sentence for an alleged contravention of the validated direction committed after the commencement;
- (i) any dismissal of a person from employment, or other action taken against a person, by an employer of the person for non-compliance with the validated direction;
- (j) any refusal of entry to premises or removal from premises of a person, or other action taken against a person, by an owner or occupier of the premises for non-compliance with the validated direction.

133E Effect on contraventions of validated directions

This Part has no effect on the following:

- (a) any offence against section 56(1) for an alleged contravention of a validated direction committed before the commencement;
- (b) any infringement notice issued for an alleged contravention of the validated direction committed before the commencement;
- (c) any amount paid in response to an infringement notice issued for an alleged contravention of the validated direction committed before the commencement;
- (d) any prosecution, conviction or sentence for an alleged contravention of the validated direction committed before the commencement.

133F Amendment and revocation

A validated direction is, and is taken to always have been, capable of being amended and revoked by a direction given under section 52.

12 Part 11, Division 5 inserted

After section 141

insert

Division 5 Transitional matters for Public and Environmental Health Legislation Amendment Act 2022**142 Definition**

In this Division:

commencement means the commencement of section 8 of the *Public and Environmental Health Legislation Amendment Act 2022*.

143 Written directions of CHO

- (1) A written direction given by the CHO under section 52 in force immediately before the commencement is taken to be a direction under section 57B.
- (2) The CHO must publish the title of any direction mentioned in subsection (1) in the *Gazette*.
- (3) A direction mentioned in subsection (1) is revoked 100 days after the commencement (if not earlier revoked).

144 Appointment of and direction to authorised officers

In relation to the declaration of the public health emergency mentioned in section 57A(1):

- (a) the appointment of an authorised officer under section 53(1)(a) in force immediately before the commencement is taken to be an appointment under section 57G(1)(a); and
- (b) a direction to an authorised officer under section 53(1)(b) that is in effect immediately before the commencement is taken to be a direction under section 57G(1)(b).

Part 3 Amendment of Public and Environmental Health Regulations 2014

13 Regulations amended

This Part amends the *Public and Environmental Health Regulations 2014*.

14 Regulation 4B inserted

After regulation 4A

insert

4B Prescribed maximum fee – CHO's post-emergency powers: COVID-19

For section 57E(1) of the Act, the prescribed maximum fee is \$10 000.

15 Schedule 5 amended (Infringement notices and prescribed amounts)

Schedule 5, after entry for section 56(1) of the Act

insert

section 57K(1)

32

160

Part 4 Repeal

16 Repeal of Act

This Act is repealed on the day after it commences.