

PUBLIC AND ENVIRONMENTAL HEALTH BILL 2010
SERIAL NO. 135

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

MINISTER FOR HEALTH

EXPLANATORY STATEMENT

GENERAL OUTLINE

This Bill will replace and repeal the current Northern Territory *Public Health Act*.

The main purpose of this Bill is to provide a flexible framework for monitoring and regulating public health and environmental health in the Northern Territory.

The Bill provides a proactive approach to current and emerging public health challenges in the Northern Territory.

NOTES ON CLAUSES

Part 1 Preliminary matters

Clause 1 Short title

This clause provides for citation of the Bill. The Bill when passed will be cited as the *Public and Environmental Health Act 2010*.

Clause 2 Commencement

This clause states that the Bill will commence on the date fixed by the Administrator by notice in the Gazette.

Clause 3 Objects of Act

This clause sets out the objects of the Bill. The objects of the Bill are:

- (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 well-being;
- (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.

Clause 4 Definitions

This clause defines key terms used in the Bill. For example: “authorised officer”, “Chief Health Officer”, “declared activity”, “enforcement agency”, “environmental health”, “public health”, “public health nuisance”, “public health risk” and “serious public health risk”.

Clause 5 Precautionary principle

Sub-clause (1) states that measures to prevent, control or abate a serious public health risk should not be postponed due to lack of full scientific certainty.

Sub-clause (2) describes how the decision making should be guided.

Clause 6 Act binds Crown

This clause states that this Bill shall apply to all the Government bodies including, as far as the legislative power of the Legislative Assembly permits, the Commonwealth and its bodies when carrying out functions in the Territory.

Clause 7 Application of Criminal Code

This clause provides that Part IIAA of the Criminal Code applies to offences against this Bill.

Part 2 Public health risk activities

Division 1 General matters

Clause 8 Application of Part

Sub-clause (1) states that this Part does not apply to a person who is authorised by another Act to carry out a declared activity.

Sub-clause (2) clarifies when a person is authorised by another Act.

Sub-clause (3) defines *health practitioner*.

Clause 9 Declaration of public health risk activities

Sub-clause (1) allows the Minister to declare an activity to be a public health risk activity by

notice in the *Gazette*.

Sub-clause (2) defines *declared activity*.

Division 2 Registration of businesses carrying out declared activities

Clause 10 Business required to be registered

Sub clause (1) makes it an offence for a person to carry out a declared activity in the conduct of business if the business is not registered for the activity. The maximum penalty is 200 penalty units.

Clause 11 Application for registration

Sub-clause (1) sets out the application requirements for registration of a business that involves the carrying out of a declared activity.

Sub-clause (2) provides that the CHO has the power to request the proprietor to provide any additional information when considering the application.

Clause 12 Grant or refusal of registration

Sub-clause (1) provides that the CHO must consider the application and decide whether to register the business.

Sub-clause (2) provides the rationale with which the CHO must be satisfied in order to register the business.

Sub-clause (3) requires the CHO to give the proprietor notice of the CHO's decision.

Clause 13 Conditions of registration

Sub-clause (1) provides that it is a condition of registration that the proprietor and any mobile operators must comply with this Bill.

Sub-clause (2) allows the CHO to impose any conditions on a registration.

Clause 14 Compliance with conditions by proprietor

Sub-clause (1) makes it an offence if the proprietor of a registered business contravenes a condition of registration. The maximum penalty is 200 penalty units.

Clause 15 Compliance with conditions by mobile operator

Sub-clause (1) makes it an offence if a mobile operator for a registered business contravenes a condition of registration. The maximum penalty is 100 penalty units.

Sub-clause (2) makes it an offence for the proprietor of a registered business if a mobile operator for the business contravenes a condition of registration. The maximum penalty is 100 penalty units.

Sub-clause (3) specifies that an offence against sub-clause (2) is an offence of strict liability.

Sub-clause (4) states that a defence to a prosecution for an offence against sub-clause (2) is if the defendant has taken all reasonable steps to ensure the mobile operator complied with the condition of registration.

Sub-clause (5) states that the proprietor of a business may be prosecuted for and found guilty of an offence against sub-clause (2) whether or not the mobile operator has been prosecuted for an offence against sub-clause (1).

Clause 16 Term of registration

Sub-clause (1) specifies that the term of registration of a business is for the period stated in the registration notice, unless it is cancelled under clause 21.

Clause 17 Renewal of registration

Sub-clause (1) outlines how an application for business registration renewal must be made.

Sub-clause (2) allows the CHO to require an inspection by an authorised officer before deciding the application.

Sub-clause (3) requires the CHO to consider the application and decide whether to renew the registration.

Sub-clause (4) allows the CHO to impose different conditions on a renewed registration, which need not be the same conditions as the conditions of registration immediately before the renewal.

Sub-clause (5) requires the CHO to give the proprietor notice of the CHO's decision.

Clause 18 Display of registration notice

Sub-clause (1) makes it an offence if the proprietor of the business does not display a copy of the registration notice in a conspicuous place. The maximum penalty is 20 penalty units.

Sub-clause (2) states that an offence against sub-clause (1) is an offence of strict liability.

Sub-clause (3) makes it an offence if a mobile operator for the business does not carry a copy of the registration notice at all times when carrying out a declared activity away from the registered place. The maximum penalty is 20 penalty units.

Sub-clause (4) states that an offence against sub-clause (3) is an offence of strict liability.

Clause 19 Registration non-transferable

This clause states that the registration of a business is not transferable.

Clause 20 Variation of conditions of registration

Sub-clause (1) gives the CHO power to vary the conditions of registration.

Sub-clause (2) outlines how an application for variation must be made.

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

Sub clause (4) requires the CHO to give the proprietor notice of the CHO's decision.

Sub clause (5) requires the CHO to give the proprietor notice before varying the registration on the CHO's initiative.

Sub-clause (6) allows the CHO to vary the conditions of the registration as proposed in the notice or in another way the CHO considers appropriate after having considered any submissions of the proprietor.

Sub-clause (7) requires that, if the CHO varies the conditions under sub-clause (6), the CHO must give notice to the proprietor of the variation.

Sub-clause (8) specifies that a variation of conditions of registration takes effect on the date on which the proprietor receives the notice or the date stated in the notice, whichever is later.

Sub-clause (9) clarifies that sub-clauses (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.

Clause 21 Cancellation of registration

Sub-clause (1) allows the CHO to cancel the registration of a business in certain circumstances or for another reason that the CHO considers appropriate.

Sub-clause (2) requires the CHO to give notice to the proprietor before cancelling the registration.

Sub-clause (3) allows the CHO to cancel the registration by notice if, having considered any submissions of the proprietor, the CHO continues to consider that the registration should be cancelled.

Sub-clause (4) details the information that must be contained in the notice.

Sub clause (5) specifies that the cancellation takes effect on the date on which the proprietor receives the notice or the date stated in the notice, whichever is later.

Clause 22 Applying for registration after cancellation

Sub-clause (1) states that the cancellation of the registration does not prevent the proprietor from applying to re-register the same business or register another business.

Sub-clause (2) specifies that 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.

Clause 23 Changes relating to registered business to be notified

Sub-clause (1) makes it an offence for the proprietor of a business not to give the CHO notice of a relevant change relating to that business. The maximum penalty is 20 penalty units.

Sub-clause (2) states that an offence against sub-clause (1) is an offence of strict liability.

Sub-clause (3) states that a defence to a prosecution for an offence against sub-clause (1) is if the defendant has a reasonable excuse.

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

Sub-clause (1) makes it an offence for a person not to give the CHO notice as to the sale or disposal of business, or cessation of business. The maximum penalty is 20 penalty units.

Sub-clause (2) states that an offence against sub-clause (1) is an offence of strict liability.

Sub-clause (3) provides that a defence to a prosecution for an offence against sub-clause (1) is if the defendant has a reasonable excuse.

Sub-clause (4) details the information that must be included in the notice, and be given to the CHO within 7 days.

Part 3 Public health nuisances

Clause 25 Public health nuisance and its source

Sub-clause (1) defines *public health nuisance*.

Sub-clause (2) states what a public health nuisance may relate to.

Sub-clause (3) defines the *source* of a public health nuisance.

Clause 26 Causing or permitting public health nuisance

Sub-clause (1) makes it an offence if a person engages in conduct that results in a public health nuisance. The maximum penalty is 400 penalty units or imprisonment for 2 years.

Sub-clause (2) makes it an offence for a person who is the occupier of a place and fails to prevent or remove the source of the public health nuisance. The maximum penalty is 400 penalty units or imprisonment for 2 years.

Clause 27 Complaint about public health nuisance

Sub-clause (1) specifies that a person may complain to an authorised officer about a public health nuisance.

Sub-clause (2) states that the complaint can be made orally or in writing.

Clause 28 Investigation of complaint

Sub-clause (1) sets out the procedure for investigating complaints.

Sub-clause (2) specifies who may investigate the complaint.

Part 4 Public health notices and orders

Division 1 Public health notices

Clause 29 Issue of public health notice

Sub-clause (1) specifies the circumstances in which the CHO may issue a public health notice to a person.

Sub-clause (2) details the information that must be contained in the notice.

Sub-clause (3) specifies that an activity may contravene or be likely to contravene this Bill because of the way the activity is being carried out.

Clause 30 Compliance with public health notice

Sub-clause (1) makes it an offence if a person that has been issued with a public health notice contravenes that notice. The maximum penalty is 400 penalty units.

Sub-clause (2) specifies that a defence to a prosecution for an offence against sub-clause (1) is if the defendant has a reasonable excuse.

Sub-clause (3) clarifies that a person is not committing an offence against sub-clause (1) simply because the person did not take the action recommended by the CHO.

Clause 31 Duration of public health notice

This clause specifies that a public health notice remains in place until it is cancelled.

Division 2 Public health orders

Clause 32 Issue of public health order

Sub-clause (1) specifies the circumstances in which the CHO may issue a public health order to a person.

Sub-clause (2) details the information that must be contained in a public health order.

Sub-clause (3) outlines other directions which may be specified.

Clause 33 Duration of public health order

This clause states that a public health order remains in place until it is cancelled.

Clause 34 Compliance with public health order

This clause makes it an offence if a person that has been issued with a public health order contravenes that order. The maximum penalty is 500 penalty units.

Clause 35 Display of public health order

Sub-clause (1) makes it an offence if a person who has been issued with a public health order does not display a copy of the order in a conspicuous place. The maximum penalty is 20 penalty units.

Sub-clause (2) specifies that an offence against sub-clause (1) is an offence of strict liability.

Clause 36 Enforcement of public health order

Sub-clause (1) allows the CHO to apply to the Local Court for an order under sub-clause (2) if a person issued with a public health order fails to comply with the order.

Sub-clause (2) provides that if the Court is satisfied the person has failed to comply with the public health order, the Court can order the person to remedy the failure.

Sub-clause (3) allows the Court to call for and consider any relevant report on a matter, in considering the application.

Sub-clause (4) allows the Court to order the person to pay to the Territory a civil penalty of up to 500 penalty units and make other orders the Court considers just, in addition to making an order under sub-clause (2).

Sub-clause (5) allows the Court to make an order under sub-clause (4)(a) whether or not a person has been prosecuted for or found guilty of an offence against clause 34.

Division 3 Extension and cancellation

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

Sub-clause (1) provides for the CHO to extend the period of compliance before the current public health notice or public health order expires.

Sub-clause (2) requires the CHO to consider the application and decide whether to extend the period, if a person applies for an extension of the compliance period.

Sub-clause (3) requires the CHO to give the applicant notice of the CHO's decision.

Sub-clause (4) states that the CHO must not extend the period for compliance unless satisfied that the applicant will not be able to comply with the notice or order within the period.

Clause 38 Cancellation of public health notice or order

Sub-clause (1) allows the CHO to cancel a public health notice or public health order.

Sub-clause (2) outlines how an application for cancellation must be made.

Sub-clause (3) requires the CHO to consider the application for cancellation of a notice or order.

Sub-clause (4) requires the CHO to give the applicant notice of the CHO's decision.

Sub-clause (5) specifies that the CHO must not cancel a notice or order unless the CHO is satisfied that an authorised officer has carried out an appropriate inspection and the notice or order has been complied with.

Part 5 Special powers

Division 1 Conduct of inquiries

Clause 39 Establishment of inquiry

Sub-clause (1) provides for the appointment of an inquirer by the Minister.

Sub-clause (2) specifies that the inquirer must have suitable expertise and experience to conduct the inquiry.

Clause 40 Procedure inquiry

Sub-clause (1) sets out the procedures of an inquiry.

Sub-clause (2) outlines the framework in which the inquirer must work within.

Clause 41 Powers of inquirer

This clause specifies the powers of the inquirer.

Clause 42 Report of inquiry

Sub-clause (1) specifies how the inquirer, on completing the inquiry, must report back to the Minister.

Sub-clause (2) requires the Minister to table a report in the Legislation Assembly.

Clause 43 Directions by inquirer

Sub-clause (1) makes it an offence if a person does not comply with a direction of an inquirer. The maximum penalty is 50 penalty units or imprisonment for 6 months.

Sub-clause (2) specifies that an offence against sub-clause (1) is an offence of strict liability.

Sub-clause (3) provides that a defence to a prosecution for an offence against sub-clause (1) is if the defendant has a reasonable excuse.

Clause 44 Misleading information and documents

Sub-clause (1) makes it an offence if a person provides misleading information to the inquirer. The maximum penalty is 400 penalty units or imprisonment for 2 years.

Sub-clause (2) makes it an offence if a person provides a document containing misleading information to the inquirer. The maximum penalty is 400 penalty units or imprisonment for 2

years.

Sub-clause (3) clarifies the circumstances in which sub-clause (2) does not apply to the person.

Clause 45 Contempt of inquiry

Sub-clause (1) makes it an offence for a person to interrupt, obstruct or hinder the conduct of the inquiry. The maximum penalty is 200 penalty units or imprisonment for 1 year.

Sub-clause (2) states that a person must not threaten or insult the inquirer in the conduct of the inquiry.

Sub-clause (3) states that an offence against sub-clause (2) is an offence of strict liability. The maximum penalty is 50 penalty units.

Sub-clause (4) defines *interrupt* and *obstruct*.

Clause 46 Protection and immunity from liability

Sub-clause (1) clarifies that an inquirer has the same protection and immunity as a Judge of the Supreme Court.

Sub-clause (2) provides that a person involved in the inquiry has the same obligations and protection as a witness in a proceeding in the Supreme Court.

Sub-clause (3) outlines when evidence or records of an inquiry are not admissible in a court.

Division 2 Emergency powers

Clause 47 Application of Division

Sub-clause (1) clarifies that the *Disaster Act* or *Notifiable Diseases Act* prevails over this Bill if an inconsistency arises.

Sub-clause (2) clarifies that the provision of this Division of this Bill prevails over another Division of this Part or another Part of this Bill.

Clause 48 Declaration of public health emergency

This clause allows the Minister to declare a public health emergency.

Clause 49 Content of declaration

This clause details the information that must be contained in an emergency declaration.

Clause 50 Duration of declaration

Sub-clause (1) specifies that an emergency declaration can be for a period of no more than 5 days, and may be extended.

Sub-clause (2) allows the Minister to extend an emergency declaration for one or more occasions, each not exceeding 5 days.

Clause 51 Notification or extension of declaration

This clause clarifies how the Minister, as soon as practicable, must advise the public of an emergency declaration or extension of an emergency declaration.

Clause 52 CHO's emergency powers

Sub-clause (1) states that the CHO may take the actions considered necessary when an emergency declaration is in force.

Sub-clause (2) specifies some actions the CHO may take.

Sub-clause (3) specifies some directions the CHO may give.

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

Sub-clause (1) allows the CHO to appoint authorised officers and direct authorised officers to assist exercising the CHO's powers under this Division, while an emergency declaration is in force.

Sub-clause (2) allows an authorised officer assisting the CHO to use reasonable and necessary force to carry out a range of activities.

Sub-clause (3) specifies some of the actions an authorised officer may undertake to assist the CHO.

Clause 54 Record of action taken during public health emergency

Sub-clause (1) requires the CHO to maintain a record when dealing with the public health emergency.

Sub-clause (2) states that a record made under sub-clause (1) is evidence of the matters mentioned in the record and of the facts on which those matters are based.

Clause 55 Report on public health emergency

Sub-clause (1) specifies how the CHO, after an emergency declaration ceases, must report back to the Minister.

Sub-clause (2) requires the CHO report back within 3 months.

Sub-clause (3) requires the Minister to table a report in the Legislation Assembly.

Clause 56 Contravention of emergency declaration or direction

Sub-clause (1) makes it an offence for a person to contravene an emergency declaration or fail to comply with a direction of the CHO given under sub-clause 52(3). The maximum penalty is 400 penalty units.

Sub-clause (2) specifies that a defence to a prosecution for an offence against sub-clause (1) is if the defendant establishes a reasonable excuse.

Clause 57 Limitation on stay of operation of emergency powers

This clause provides that in any proceedings for judicial review or in any other proceedings, a court or person or tribunal exercising or performing powers or functions in a judicial manner cannot overturn an emergency declaration or an action taken by the CHO under this Division.

Division 3 Powers relating to things that threaten public health

Clause 58 Dealings with certain things

Sub-clause (1) allows the CHO to give a person specified directions about a thing that is or is likely to be a public health risk.

Sub-clause (2) makes it an offence if a person contravenes a direction given by the CHO under sub-clause (1). The maximum penalty is 400 penalty units.

Clause 59 Removal and destruction of things

Sub-clause (1) allows the CHO to 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.

Sub-clause (2) specifies that the direction is subject to the conditions the CHO considers appropriate.

Sub-clause (3) makes it an offence if a person does not comply with a direction issued by the CHO. The maximum penalty is 400 penalty units.

Sub-clause (4) specifies that if a person does not comply with the direction, the CHO may remove or destroy the thing in accordance with the direction and the costs incurred by the CHO in doing so can be recovered as a debt due to the Territory by the person.

Division 4 Power to take action

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

Sub-clause (1) allows the CHO to take the action stated in sub-clause (2) if a person has failed to comply with a direction given by the CHO under Division 2 or 3 or has failed to comply with a public health notice or order.

Sub-clause (2) allows the CHO to take actions to execute the direction given to the person mentioned in sub-clause 1(a) or rectify the contravention mentioned in sub-clause (1)(b) or (c).

Sub-clause (3) specifies that the cost incurred by the CHO or another authorised officer in taking action under sub-clause (2) is a debt due to the Territory by the person who failed to

take the action.

Clause 61 Action if public health nuisance exists

Sub-clause (1) allows the CHO to take the action the CHO considered necessary to abate the public health nuisance or implement adequate measures to prevent or remove the source of the nuisance, if a person cannot be located to issue a public health notice to.

Clause 62 CHO may authorise entry and work

This clause provides that for taking action under this Division, the CHO can authorise a person to enter a place and carry out the necessary work.

Division 5 Health information

Clause 63 CHO may require health information

Sub-clause (1) allows the CHO to direct a person to give health information to the CHO or another authorised officer.

Sub-clause (2) clarifies that the CHO may direct a health practitioner or other health services provider to give information.

Sub-clause (3) makes it an offence if a person given a direction contravenes the direction. The maximum penalty is 100 penalty units.

Clause 64 Use of health information

Sub-clause (1) allows the CHO to use health information obtained for monitoring, protecting, maintaining or promoting public health.

Clause 65 Register of health information

Sub-clause (1) states that the CHO must keep a register of the health information obtained. This register is not available for inspection by the public.

Sub-clause (2) allows the register to be in any form, including electronic form.

Part 6 Administration

Division 1 Chief Health Officer

Clause 66 Establishment of office

This clause establishes the office of the Chief Health Officer. The acronym CHO is used to refer to the Chief Health Officer in this Bill.

Clause 67 Appointment of CHO

Sub-clause (1) requires the Minister to appoint by *Gazette* notice, a person to the position of CHO.

Sub-clause (2) outlines the requirements for a person to be appointed as the CHO by the Minister.

Clause 68 Powers and functions

Sub-clause (1) sets out the functions of the CHO.

Sub-clause (2) specifies the powers and functions conferred on the CHO.

Sub-clause (3) states that in exercising the powers and functions, the CHO is subject to the directions of the Minister.

Clause 69 Delegation

This clause provides a power of delegation for the CHO.

Division 2 Enforcement agencies

Clause 70 Appointment of enforcement agency

Sub-clause (1) allows the CHO to appoint a person to be an enforcement agency for this Bill by notice in the *Gazette*.

Sub-clause (2) states that the appointment of an enforcement agency is subject to the conditions the CHO considers appropriate.

Sub-clause (3) states that the notice must describe the role of the enforcement agency in administering this Bill.

Clause 71 Delegation to agency

Sub-clause (1) allows the CHO to delegate to the enforcement agency the powers and functions the CHO considers appropriate for the agency to perform its role.

Sub-clause (2) specifies that the CHO must not delegate a power or function to the agency unless the agency agrees to the delegation.

Clause 72 Powers and functions

Clause (1) states that the enforcement agency has the powers and functions delegated to it by the CHO.

Clause (2) states that if the agency is a body corporate, the agency may exercise its powers and perform its functions by appointing authorised officers or through other persons employed by it.

Clause (3) clarifies that the agency must not delegate any of its powers or functions.

Clause 73 Fees and charges

Sub-clause (1) allows the enforcement agency to demand and recover a fee or charge for any 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.

Sub-clause (2) provides that a regulation may prescribe the fee or charge or method to calculate the fee or charge.

Clause 74 Appointment of authorised officers

Sub-clause (1) requires an enforcement agency that is a body corporate to appoint the appropriate number of authorised officers to carry out the necessary powers and functions delegated by the CHO.

Sub-clause (2) requires the agency to keep a list of appointed authorised officers.

Sub-clause (3) requires the agency to give notice to the CHO regarding any appointment immediately after appointing an authorised officer.

Clause 75 Failure by enforcement agency to act

Sub-clause (1) states that this clause applies if the CHO is satisfied that an enforcement agency failure to exercise a delegated power or function is likely to be a public risk.

Sub-clause (2) specifies that the CHO may exercise the power or perform the function.

Sub-clause (3) provides that 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

Clause 76 Who is authorised officer

Sub-clause (1) outlines who is an authorised officer.

Sub-clause (2) allows the CHO to appoint a person to be an authorised officer.

Clause 77 Qualifications for appointment

This clause specifies that the appointed person must hold the qualifications, knowledge, skills or experience approved by the CHO.

Clause 78 Identity card

Sub-clause (1) states that an authorised officer must carry an identity card. This sub-clause also details the information to be included on identity cards.

Sub-clause (2) outlines the responsibility of the CHO regarding identity cards.

Sub-clause (3) specifies the responsibility of the enforcement agency regarding identity cards.

Sub-clause (4) makes it an offence for a person who ceases to be an authorised officer and does not return the identity card to the issuing authority within 2 weeks after the cessation. The maximum penalty is 20 penalty units.

Sub-clause (5) states that an offence against sub-clause (4) is an offence of strict liability.

Sub-clause (6) provides a defence to a prosecution for an offence against sub-clause (4) if the defendant has a reasonable excuse.

Sub-clause (7) provides that an authorised officer is required to produce an identity card when requested to do so during the exercise of a power under this Bill.

Sub-clause (8) defines *issuing authority*.

Clause 79 Functions and powers

Sub-clause (1) sets out the functions of an authorised officer.

Sub-clause (2) specifies when an authorised officer appointed under clause 74 can exercise a power or perform a function.

Sub-clause (3) allows the CHO to impose conditions and limitations on the exercise of powers or the performance of functions of authorised officers.

Sub-clause (4) outlines that when exercising a power or performing a function, that an authorised officer does so, subject to the directions of whoever appointed them.

Sub-clause (5) specifies which authorised officers are also subject to the CHO's directions if an emergency declaration is in force.

Division 4 Powers of entry, inspection, seizure

Clause 80 Entry, inspection and seizure

Sub-clause (1) states that this clause applies subject to sub-clauses 78(7) and 81(7).

Sub-clause (2) outlines the circumstances in which an authorised officer may enter a place.

Sub-clause (3) details the activities an authorised officer may undertake upon entering a place.

Sub-clause (4) provides that an officer may not do anything authorised by this clause unless the officer believes that doing so may disclose evidence of or relates to, an offence against this Bill or is necessary for this Bill.

Sub-clause (5) outlines how the officer may exercise powers.

Sub-clause (6) allows the officer to enter a vehicle and require a person to assist.

Clause 81 Warrants

Sub-clause (1) clarifies when an authorised officer may apply to a Justice for a warrant to enter a place.

Sub-clause (2) details how an application for a warrant may be made.

Sub-clause (3) provides that the Justice may issue a warrant to an officer if satisfied that there are reasonable grounds for entering the place by evidence on oath.

Sub-clause (4) outlines what the warrant authorises.

Sub-clause (5) specifies who may execute the warrant.

Sub-clause (6) specifies that an authorised officer must, when asked, display the warrant to a person at a place.

Sub-clause (7) states that if an officer does not display the warrant when asked, the officer is not authorised to remain at the place.

Clause 82 Obtaining warrant by telephone or other electronic method

Sub-clause (1) states that this clause applies if a Justice issues a warrant on an application under sub-clause 81(2)(b).

Sub-clause (2) sets out the requirements on a Justice.

Sub-clause (3) sets out the requirements on an authorised officer.

Sub-clause (4) further outlines the requirements for a Justice.

Sub-clause (5) clarifies that if the form of the warrant prepared under sub-clause (3)(a) is identical to the warrant signed by the Justice under sub-clause (2)(a), it has the same authority as a warrant issued under sub-clause 81(3).

Clause 83 Entering Aboriginal land

Sub-clause (1) provides that an authorised officer can enter Aboriginal land.

Sub-clause (2) specifies that the officer may stay on the land for as long as reasonably necessary.

Sub-clause (3) provides that the officer can enter Aboriginal land even if the officer does not have a permit to do so.

Clause 84 Requirement to provide information

This clause provides that an authorised officer can stop a person and require the person to provide certain information.

Clause 85 Requirement to produce documents or things

Sub-clause (1) allows an authorised officer to request a person to produce an authority, record, other document or thing.

Sub-clause (2) outlines what the officer may do to the authority, other document or thing.

Sub-clause (3) provides that the officer cannot do an act authorised by this clause unless the officer reasonably believes that doing so may disclose evidence of or relates to an offence against this Bill or is necessary for this Bill.

Clause 86 Failing to comply with requirement of authorised officer

Sub-clause (1) makes it an offence if a person fails to comply with a requirement made by an authorised officer. The maximum penalty is 100 penalty units.

Sub-clause (2) specifies that a defence to a prosecution against sub-clause (1) is if the defendant has a reasonable excuse.

Clause 87 Obstructing and threatening authorised officer

Sub-clause (1) makes it an offence for a person to obstruct or threaten an authorised officer. The maximum penalty is 100 penalty units.

Sub-clause (2) specifies that it is a defence to a prosecution for an offence against sub-clause (1) is if the defendant has a reasonable excuse.

Sub-clause (3) defines *obstruct*.

Clause 88 False representation

This clause makes it an offence for a person to falsely represent that the person, or another person, is an authorised officer. The maximum penalty is 200 penalty units or imprisonment for 2 years.

Division 5 Seizure and forfeiture of things

Subdivision 1 Seizure

Clause 89 Detention of thing seized

Sub-clause (1) specifies that this clause applies, if an authorised officer seizes an authority, record, document or thing under clause 80 or 85.

Sub-clause (2) outlines what the authorised officer may do in relation to the seized thing and during the proceedings.

Sub-clause (3) provides for the steps which must be undertaken if that seized thing is kept at the place where it was found.

Clause 90 Notification of seizure of thing

Sub-clause (1) provides that as soon as practicable after the thing has been seized, an authorised officer must give notice of the seizure to the person from whom the thing was seized.

Sub-clause (2) details the information that must be included in the notification.

Clause 91 Return of thing seized

This clause states that if, before the seized thing is forfeited to the Territory under clause 97, the CHO is satisfied no offence has been committed against this Bill, the CHO must return the thing to the person who appears to the CHO to be entitled to the thing seized.

Subdivision 2 Order disallowing seizure

Clause 92 Application for order disallowing seizure

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

Clause 93 CHO entitled to answer application

This clause provides that the CHO is entitled to answer the application.

Clause 94 Order disallowing seizure of seized thing

Sub-clause (1) states that the Local Court must make an order disallowing the seizure of the thing seized if it is satisfied that certain circumstances have been met, or there are exceptional circumstances justifying the making of the order.

Sub-clause (2) states that if the Local Court does not make an order disallowing seizure of the seized thing, then the Court must dismiss the application.

Clause 95 Ancillary orders

Sub-clause (1) outlines that the Local Court must make specific orders after having disallowed the seizure of the seized thing.

Sub-clause (2) allows the Court to make the orders as to costs as it considers appropriate.

Clause 96 Adjournment pending hearing of other proceedings

Sub-clause (1) allows the Local Court to adjourn the hearing of an application.

Sub-clause (2) outlines when an adjournment may be made.

Subdivision 3 Forfeiture

Clause 97 Forfeiture of seized thing

Sub-clause (1) specifies when a seized thing is forfeited to the Territory.

Clause 98 Destruction or disposal of forfeited thing

Sub-clause (1) allows an authorised officer, with the CHO's approval, to destroy, sell or dispose of a thing forfeited to the Territory.

Sub-clause (2) specifies that the person who was the owner of the thing, before the thing was forfeited to the Territory is liable for the costs incurred for the destruction or disposal (including storage costs).

Sub-clause (3) states that the costs can be recovered as a debt due to the Territory by the owner.

Sub-clause (4) states that in proceedings for the recovery of the debt, a certificate signed by the CHO detailing the costs and the manner in which they were incurred is evidence of the matters certified.

Clause 99 Return of forfeited thing

Sub-clause (1) states that this clause applies if the CHO becomes satisfied no offence relating to the forfeited thing has been committed against this Bill and the thing has not been destroyed or disposed of in a manner that would prevent its return.

Sub-clause (2) specifies that the CHO must return the thing to the person from whom it was seized or if the CHO is satisfied that another person is entitled to it, the other person.

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

Clause 100 Compensation to be paid in certain circumstances

Sub-clause (1) allows a person to apply to the CHO for compensation for the forfeited thing.

Sub-clause (2) outlines when the Territory is liable to pay just compensation to the applicant in relation to the thing.

Sub-clause (3) specifies that the CHO must decide the amount of compensation to be paid and give notice to the applicant as to the CHO's decision.

Sub-clause (4) allows the applicant, if dissatisfied with the CHO's decision, to apply to the Local Court to review the merits of the decision.

Sub-clause (5) specifies that an application for review must be made within 72 hours.

Sub-clause (6) specifies what the Court may do when determining the review.

Sub-clause (7) requires the Court to state the reasons for its determination in writing.

Part 7 Guidelines and standards

Clause 101 Guidelines

Sub-clause (1) specifies that the CHO can make guidelines relating to any matter under this Bill except for declared activities.

Sub-clause (2) requires the CHO to consult with the Minister in the preparation of the guidelines.

Sub-clause (3) states that the guidelines may apply, adopt or incorporate a matter contained in another document or instrument as in force or existing at a particular time or from time to time.

Sub-clause (4) requires the CHO to give notice of making the guidelines by notice in the *Gazette*.

Sub-clause (5) details the information to be provided in the notice.

Clause 102 Standards

Sub-clause (1) allows the Minister, by *Gazette* notice to declare a standard.

Sub-clause (2) specifies that the Minister must consult with the CHO regarding the making of a standard.

Sub-clause (3) specifies that the standard may apply, adopt or incorporate a matter contained in another document or instrument as in force or existing at a particular time or from time to time.

Sub-clause (4) details the information to be provided in the standard declaration.

Sub-clause (5) makes it an offence if a person contravenes a standard.
The maximum penalty is 400 penalty units.

Clause 103 Inspection and purchase of copies of guidelines, standards and related documents

This clause specifies that the CHO must make copies of guidelines, standards and related documents available for public inspection or purchase.

Part 8 Reviews and Appeals

Clause 104 Reviewable decisions and affected persons

This clause defines *reviewable decision* and *affected person*.

Clause 105 Review by CHO

Sub-clause (1) allows an affected person for a reviewable decision to request the CHO to review the merits of the decision.

Sub-clause (2) specifies when a review request must be made.

Sub-clause (3) specifies how the request must be made.

Sub-clause (4) outlines how the CHO must conduct the review.

Sub-clause (5) specifies what the CHO must do after reviewing decision.

Sub-clause (6) requires the CHO as soon as practicable after making a decision on the review, to provide notice of the decision to the affected person.

Sub-clause (7) details the information which must be provided in the notice.

Sub-clause (8) states that the validity of a decision under this clause is not affected by a contravention of sub-clause (6) or (7).

Sub-clause (9) clarifies that a decision under sub-clause (5)(b) or (d) is taken to be the decision of the person who made the reviewable decision.

Clause 106 Appeal against decision on review

Sub-clause (1) allows the affected person, for a decision reviewed under clause 105 to appeal to the Local Court against the CHO's decision on the review.

Sub-clause (2) specifies when an appeal lodgement must be made.

Clause 107 Appeal against decision relating to emergency declaration

Sub-clause (1) enables a person to appeal to the Local Court against decisions in relation to an emergency declaration.

Sub-clause (2) specifies that the appeal must be lodged within 24 hours.

Clause 108 Conduct of appeal

Sub-clause (1) states that fresh evidence or evidence in addition to or in substitution for the evidence before the CHO may be given during the hearing of an appeal.

Sub-clause (2) specifies what the Local Court may do when in deciding the appeal.

Sub-clause (3) provides what the Court must advise the Minister or CHO of, if the matter is referred to the Minister or CHO.

Sub-clause (4) allows the Court to make the orders it considers appropriate to give effect to its decision and the orders as to costs it considers appropriate.

Sub-clause (5) clarifies that a decision under sub-clause (2)(b) or (d) is taken to be the decision of the person who made the decision appealed against.

Clause 109 Operation and implementation of decision pending review or appeal

Sub-clause (1) clarifies that a request under clause 105 for a review of a reviewable decision does not affect the operation or implementation of the decision.

Sub-clause (2) specifies that the CHO may provide notice to the affected person regarding the operation and implementation of a decision pending review or appeal.

Sub-clause (3) clarifies that an appeal under clause 106 or 107 against a decision does not affect the operation or implementation of the decision.

Sub-clause (4) specifies that the Local Court can make an order staying or affecting the operation or implementation of the decision as the Court considers appropriate to effectively hear and decide the appeal.

Sub-clause (5) outlines that the order is subject to any conditions stated, for the period stated or until the Court has decided the appeal.

Part 9 General offences and procedural matters

Division 1 General offences

Clause 110 Contravention of exemption

This clause makes it an offence if the person or the person's business, activity or property is exempt from the application of this Bill and the person contravenes a condition of the exemption. The maximum penalty is 200 penalty units.

Clause 111 Bribery

This clause makes it an offence if a person gives, procures, offers or promises a bribe or reward to influence an official. The maximum penalty is 400 penalty units or 2 years imprisonment.

Clause 112 Confidentiality of information

Sub-clause (1) makes it an offence if a person who obtained information in the course of carrying out functions related to the administration of this Bill, discloses the information to someone else. The maximum penalty is 200 penalty units.

Sub-clause (2) outlines the circumstances in which sub-clause (1) does not apply to a person disclosing information.

Sub-clause (3) allows the CHO to authorise the disclosure of health information to a stated person for a specified purpose.

Sub-clause (4) clarifies who a stated person may be for sub-clause (3).

Clause 113 Misleading information and documents

Sub-clause (1) makes it an offence for a person to provide misleading information to an authorised officer. The maximum penalty is 400 penalty units or imprisonment for 2 years.

Sub-clause (2) makes it an offence for a person to provide a document containing misleading information to an authorised officer. The maximum penalty is 400 penalty units or imprisonment for 2 years.

Sub-clause (3) provides that it is not an offence against sub-clause (2), if the person, when supplying the document to the authorised officer draws the misleading aspect of the document to the officer's attention and, to the extent the person can reasonably do so, provides the information necessary to correct the misleading document.

Division 2 Criminal liability for offences

Clause 114 Definitions

This clause outlines the provisions which mean *declared provision* under the Bill or a provision prescribed by regulation in this Division.

In this clause, *representative* is defined.

Clause 115 Liability of representative

Sub-clause (1) outlines what is not a defence to a prosecution for an offence against a provision of this Bill.

Sub-clause (2) outlines what can be considered as a defence by the defendant.

Clause 116 Conduct of representative

Sub-clause (1) specifies that this clause applies to a prosecution for an offence against a provision of this Bill.

Sub-clause (2) specifies that a representative's conduct is taken to have been also engaged in by the person.

Sub-clause (3) states that sub-clause (2) does not apply if the person proves the person took reasonable steps to prevent that conduct.

Sub-clause (4) sets out matters that can be taken into account by the court in considering whether a person took reasonable steps to prevent certain conduct by the representative.

Sub-clause (5) states that sub-clause (4) does not limit the matters the court may consider.

Sub-clause (6) outlines what is required to be shown if it is relevant to prove a person had a fault element in relation to a physical element of an offence.

Sub-clause (7) outlines when a person may rely on section 43AX of the Criminal Code.

Sub-clause (8) provides for when a person may not rely on section 43BA of the Criminal Code.

Sub-clause (9) provides that if the person would not have been convicted of an offence without sub-clause (2) or (6), the person cannot be punished by imprisonment.

Sub-clause (10) defines *fault element* and *person*.

Clause 117 Criminal liability of partner in partnership

Sub-clause (1) outlines the circumstances in which a partner in a partnership commits an offence. The maximum penalty is what may be imposed on an individual for the relevant offence.

Sub-clause (2) states that this clause does not affect the liability of the offender.

Sub-clause (3) provides further details on when this clause does and does not apply.

Sub-clause (4) defines *partner* and *partnership*.

Clause 118 Criminal liability of manager of unincorporated association

Sub-clause (1) outlines the circumstances in which a manager of an unincorporated association commits an offence. The maximum penalty is what may be imposed on an individual for the relevant offence.

Sub-clause (2) states that this clause does not affect the liability of the offender.

Sub-clause (3) provides further details on when this clause does and does not apply.

Sub-clause (4) defines *manager*.

Clause 119 Criminal liability of executive officer of body corporate

Sub-clause (1) outlines the circumstances in which an executive officer of a body corporate commits an offence. The maximum penalty is what may be imposed on an individual for the relevant offence.

Sub-clause (2) provides guidance as to what should be taken into account by the Court in considering whether a director has taken reasonable steps to prevent a contravention of the Bill from occurring.

Sub-clause (3) states that sub-clause (2) does not limit the matters the court may consider.

Sub-clause (4) states that this clause does not affect the liability of the body corporate.

Sub-clause (5) states that this clause applies whether or not the body corporate is prosecuted for, or convicted of, the relevant offence.

Sub-clause (6) states that this clause does not apply if the body corporate would have a defence to a prosecution for the relevant offence.

Sub-clause (7) defines **executive officer**.

Division 3 Legal proceedings

Clause 120 Who may start proceedings under Act

This clause outlines who may initiate prosecutions under this Bill.

Clause 121 When proceedings under Act started

This clause provides for the timeframe in which prosecutions must be commenced.

Clause 122 Offender liable for certain costs

Sub-clause (1) provides that if a person is found guilty of an offence against this Bill, that the person is liable to pay the Territory and enforcement agency, the costs incurred to the Territory or enforcement agency in relation to the commission of the offence.

Sub-clause (2) states that the costs incurred under sub-clause (1) is a debt due to the Territory or enforcement agency.

Clause 123 Publication of names of offenders and other information

Sub-clause (1) allows the CHO to publish in an approved newspaper or other publication, the name of the person or their employee or agent if found guilty of an offence against this Bill in relation to a public health risk or public health nuisance.

Sub-clause (2) details the information that may be specified in the notice.

Sub-clause (3) provides for when the CHO can publish the notice.

Sub-clause (4) provides that the person who publishes the edition in a newspaper or other publication in good faith, does not incur any liability for doing so.

Part 10 Miscellaneous matters

Clause 124 Approved forms

This clause allows the CHO to approve forms for this Bill.

Clause 125 Administering Agency registers

Sub-clause (1) outlines what the CHO must keep a register of.

Sub-clause (2) allows the register to be in any form, including electronic form.

Sub-clause (3) allows the CHO, for the purpose of correcting an error, to alter an entry in the register in a manner the CHO considers appropriate.

Clause 126 Information in Administering Agency registers

Sub-clause (1) requires the register of declared activities to state the type of each declared activity.

Sub-clause (2) sets out the information which must be specified in the register of registered businesses.

Sub-clause (3) sets out the information which must be specified in the register of directions given under sub-clause 58(1).

Sub-clause (4) sets out the information which must be specified in the register of enforcement agencies regarding agency appointments.

Sub-clause (5) sets out the information which must be specified in the register of authorised officers.

Sub-clause (6) sets out the information which must be specified in the register of exemptions given under clause 129.

Sub-clause (7) provides that the register may contain other information the CHO considers appropriate.

Clause 127 Inspection of Administering Agency registers

This clause provides that a person may, on payment of the prescribed fee search an Administering Agency register or take an extract of an entry in an Administering Agency register.

Clause 128 Enforcement agency registers

Sub-clause (1) allows the CHO to direct an enforcement agency to establish and maintain a register concerning a public health matter.

Sub-clause (2) states that the agency must establish and maintain the register in accordance with the CHO's direction.

Sub-clause (3) outlines matters regarding enforcement agency registers that the regulation may provide for.

Sub-clause (4) states that a regulation may limit the liability of a person who carries out duties in relation to establishing and maintaining a register for any direct or indirect loss or injury suffered because of the way in which the person carried out or failed to carry out the duties.

Clause 129 Exemption from application of Act

Sub-clause (1) outlines who and what the CHO may exempt from the application of this Bill or a stated provision of this Bill by *Gazette* notice.

Sub-clause (2) sets out how an exemption may be made.

Sub-clause (3) states that an exemption may be subject to conditions (including payment of a fee) the CHO considers appropriate.

Clause 130 Powers of police officers

This clause provides that the powers conferred by this Bill on a police officer, are in addition to their policing powers under another law in force in the Territory.

Clause 131 Protection from liability

Sub-clause (1) protects a person from any civil or criminal liability for an act done or omitted to be done in good faith when exercising a power or performing a function under this Bill.

Sub-clause (2) clarifies that sub-clause (1) does not affect any liability the Territory would, apart from that sub-clause, have for the act or omission.

Sub-clause (3) specifies that this clause applies to the civil liability of an authorised officer who is a police officer subject to Part VIIA of the *Police Administration Act*.

Sub-clause (4) defines *exercise* and *performance*.

Clause 132 Acquisition on just terms

This clause outlines how acquisition on just terms under this Bill is undertaken.

Clause 133 Regulations

Sub-clause (1) allows the Administrator to make regulations under this Bill.

Sub-clause (2) lists specific matters which may be provided for in the regulations.

Sub-clause (3) provides further details on what a regulation may also do.

Part 11 Repeals and transitional matters

Division 1 Repeals of Acts

Clause 134 Repeal of Acts

This clause states that the Acts specified in schedule 2 are repealed.

Division 2 Transitional matters for the Public and Environmental Health Act 2010

Clause 135 Definitions

This clause defines key terms used in this Division. For example: “commencement date”, “former CHO”, “former health officer” and “repealed Act”.

Clause 136 Registration of business carrying out declared activity

This clause clarifies when a business carrying out a declared activity will be taken to be registered for 3 months under this Bill.

Clause 137 Appointments

Sub-clause (1) states that the former CHO under the repealed Act will be the Chief Health Officer as though appointed under sub-clause 67(1).

Sub-clause (2) states that a former health officer under the repealed Act will be an authorised officer as though appointed under sub-clause 76(2).

Sub-clause (3) states that any matter or thing done or omitted to be done by, to or in relation to the former CHO or a former health officer under the repealed Act, apart from clause 134, will be taken to have been done or omitted to be done by, to or in relation to the Chief Health Officer or an authorised officer.

Sub-clause (4) states that in an Act or another document, a reference to a former health officer will be taken to be a reference to an authorised officer.

Clause 138 Notices under clause 7C

This clause states that a notice issued under clause 7C of the repealed Act will be taken to be a public health notice.

Clause 139 Regulations and other instruments

Sub-clause (1) states that regulations and statutory instruments in force under the repealed Act will be taken to be regulations and statutory instruments under this Bill.

Sub-clause (2) clarifies that a regulation or statutory instrument under the repealed Act will end 2 years after the commencement day or when it would have ended had this Bill not been enacted.

Sub-clause (3) sets out that despite clause 7, Part IIAA of the Criminal Code does not apply to an offence against a regulation continued in force under sub-clause (1).

Part 12 Consequential amendments

Clause 140 Other Acts amended

This clause states that Schedule 3 amends the Acts mentioned in it.

Clause 141 *Public Health (Barbers’ Shops) Regulations* amended

This clause outlines the Regulations amendments and repeals under this Bill.

Clause 142 *Public Health (General Sanitation, Mosquito Prevention, Rat Exclusion and*

Prevention) Regulations amended

This clause outlines the Regulations amendments and repeals under this Bill.

Clause 143 *Public Health (Night-soil, Garbage, Cesspits, Wells and Water) Regulations amended*

This clause outlines the Regulations amendments and repeals under this Bill.

Clause 144 *Public Health (Noxious Trades) Regulations amended*

This clause outlines the Regulations amendments and repeals under this Bill.

Clause 145 *Public Health (Nuisance Prevention) Regulations amended*

This clause outlines the Regulations amendments and repeals under this Bill.

Clause 146 *Public Health (Shops, Boarding-houses, Hostels and Hotels) Regulations amended*

This clause outlines the Regulations amendments and repeals under this Bill.

Clause 147 *Regulations amended*

This clause states that Schedule 4 amends the regulations mentioned in it.

Clause 148 *Expiry of Part*

This clause states that this Part will expire on the day after the Bill commences.

Schedule 1

This Schedule outlines the decisions under this Bill which can be reviewed and who may appeal.

Schedule 2

This Schedule nominates the Acts and ordinances repealed by this Bill.

Schedule 3

This Schedule nominates the other Acts to be amended by this Bill.

Schedule 4

This Schedule nominates the Regulations to be amended by this Bill.