

(Reprint No. 2)

SOUTH AUSTRALIA

PUBLIC AND ENVIRONMENTAL HEALTH ACT, 1987

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 March 1993.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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PUBLIC AND ENVIRONMENTAL HEALTH ACT, 1987

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Public and Environmental Health Act, 1987, No. 36 of 1987 [Assented to 23 April 1987]¹

as amended by

Statutes Amendment (Water Resources) Act 1991 No. 7 of 1991 [Assented to 28 March 1991]²
Statutes Amendment (Expiation of Offences) Act 1992 No. 71 of 1992 [Assented to 19 November 1992]³

An Act dealing with public and environmental health; to repeal the Health Act, 1935, the Noxious Trades Act, 1943, and the Venereal Diseases Act, 1947; and for other purposes.

The Parliament of South Australia enacts as follows:

PART I PRELIMINARY

Short title

1. This Act may be cited as the *Public and Environmental Health Act, 1987*.

Commencement

2. (1) This Act will come into operation on a day to be fixed by proclamation.
(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—
“the authority” means—
(a) in relation to a local government area—the local council for that area;
and

¹ Came into operation (except ss. 7, 13-29, 39, 44, cl. 2(b), (c) and (f) of Third Sched., the repeal of the Noxious Trades Act, 1943, and the repeal of certain sections of the Health Act, 1935) 7 December 1989: *Gaz.* 7 December 1989, p. 1700; remainder of Act (except the repeal of certain other sections of the Health Act, 1935) came into operation 1 July 1991: *Gaz.* 6 June 1991, p. 1774.

² Came into operation (except s. 7) 15 July 1991: *Gaz.* 11 July 1991, p. 244.

³ Came into operation 1 March 1993: *Gaz.* 18 February 1993, p. 600.

Note: 1. Asterisks indicate repeal or deletion of text.

2. For the legislative history of the Act see Appendix 1. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

(b) in relation to a part of the State that is not within a local government area—the Commission,

(but where powers are withdrawn from a local council and vested in the Commission or the Commission is, by agreement with a local council, discharging duties of the council, a reference to the authority in relation to those powers or duties is a reference to the Commission rather than that council):

“authorized officer” means a person—

(a) holding an appointment as an authorized officer under Part II;

or

(b) authorized by the Commission to exercise the powers of an authorized officer under this Act:

“building” includes a structure:

“the Commission” means the South Australian Health Commission:

“controlled notifiable disease” means—

(a) a notifiable disease included in the second schedule;

or

(b) a notifiable disease prescribed by regulation to be a controlled notifiable disease:

“controlling authority” means a controlling authority constituted under the *Local Government Act, 1934*:

“the Council” means the Public and Environmental Health Council constituted under Part II:

“director” of a body corporate includes any member of the governing body of the body corporate:

“local council” means a council constituted under the *Local Government Act, 1934*:

“medical practitioner” means a legally qualified medical practitioner:

“notifiable disease” means—

(a) a disease included in the first schedule;

or

(b) a disease prescribed by regulation to be a notifiable disease:

“occupier”, in relation to premises, means a person who has, or is entitled to, possession or control of the premises and includes a person who is in charge of the premises:

“owner”, in relation to premises, includes an occupier of the premises:

“place of public assembly” includes a building (in public or private ownership) at which more than 20 persons gather on a regular or irregular basis:

“pollution”, in relation to water, connotes a degree of impurity that renders the water unfit for human consumption:

“premises” means—

(a) any land, building or place (including a public place, or a movable building or structure);

or

(b) a part of premises:

“public place” includes a place to which the public ordinarily has access:

“refuse” includes rubbish and other forms of waste material:

“vehicle” includes an aircraft or vessel:

“water supply” includes any natural or artificial accumulation or source of water.

(2) Premises are in an insanitary condition if—

(a) the condition of the premises gives rise to a risk to health;

(b) the premises are so filthy or neglected that there is a risk of infestation by rodents or other pests;

(c) the condition of the premises is such as to cause justified offence to the owner of any land in the vicinity;

(d) offensive material or odours are emitted from the premises;

or

(e) the premises are for some other reason justifiably declared by the authority to be in an insanitary condition.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Act to bind the Crown

4. This Act binds the Crown.

PART II
ADMINISTRATION
DIVISION I—GENERAL

Commission responsible for administration of Act

5. (1) Subject to this Act, the Commission is responsible for the administration and enforcement of this Act throughout the State.

(2) The Commission is, in relation to the administration and enforcement of this Act, subject to the control and direction of the Minister.

Delegation

6. (1) The Commission may, by instrument in writing, delegate any of its powers or functions under this Act.

(2) A delegation under this section—

(a) may be absolute or conditional;

(b) does not derogate from the powers of the Commission itself;

and

(c) is revocable at will.

(3) No delegation may be made to a local council under this section without the concurrence of the local council.

(4) The Commission must not revoke a delegation made to a local council under this section without first consulting with the local council.

Authorized officers

7. (1) Authorized officers may be appointed by the Commission or a local council.

(2) Subject to subsection (3), a person is not eligible for appointment as an authorized officer unless the person—

(a) holds qualifications approved by the Commission;

or

(b) held, immediately before the commencement of this Act, an appointment as an officer or health surveyor under the *Health Act, 1935*.

(3) Where, in the opinion of the Commission, a local council cannot reasonably be expected to appoint a qualified person as an authorized officer, the local council may, with the consent of the Commission, appoint a person as an authorized officer even though he or she does not comply with subsection (2).

(4) The Commission must not appoint an officer or employee of a local council as an authorized officer unless the local council consents to the appointment.

(5) Every authorized officer must be furnished with a certificate of authority and the certificate must be produced by the authorized officer on demand.

DIVISION II—THE PUBLIC AND ENVIRONMENTAL HEALTH COUNCIL

The Public and Environmental Health Council

8. (1) The Public and Environmental Health Council is established.
- (2) The Council will consist of six members appointed by the Governor, of whom—
- (a) one (the presiding member) will be a member of the staff of the Commission;
 - (b) two will be persons selected by the Minister from a panel of five nominated by the Executive Council of the Local Government Association of South Australia;
 - (c) two will be persons nominated by the Commission, being persons who are qualified in, and have extensive experience in, public and environmental health;
- and
- (d) one will be an officer or employee of a local council, selected by the Minister from a panel of three nominated by the Australian Institute of Health Surveyors (South Australian Division).
- (3) Where the Minister, by notice in writing, requests a body to make nominations for the purposes of this section, and the body fails to make the nominations within the time allowed in the notice, a person may be appointed to the Council on the Minister's nomination and that member will be taken to have been appointed on the nomination of the body in default.
- (4) The Governor may appoint a suitable person to be the deputy of a member of the Council, and the deputy may, in the absence of that member, act as a member of the Council.
- (5) The provisions of this section relating to the qualification and nomination of a member extend to a deputy to that member.

Term of office of members

9. (1) Subject to this section, a member of the Council will be appointed for a term of three years.
- (2) Of the first members of the Council to be appointed, the following will be appointed for a term of two years—
- (a) one of the persons appointed on the nomination of the Local Government Association of South Australia;
 - (b) one of the persons appointed on the nomination of the Commission on account of their qualifications and experience in public and environmental health;
- and
- (c) the person appointed on the nomination of the Australian Institute of Health Surveyors (South Australian Division).
- (3) A member of the Council is, on the expiration of a term of office, eligible for reappointment.
- (4) The Governor may remove a member of the Council from office if the member—
- (a) becomes mentally or physically incapable of carrying out official duties satisfactorily;
- or
- (b) is guilty of neglect of duty or dishonourable conduct.

(5) The office of a member of the Council becomes vacant if the member—

- (a) dies;
- (b) completes a term of office and is not reappointed;
- (c) resigns by written notice addressed to the Minister;

or

(d) is removed from office by the Governor pursuant to subsection (4).

(6) On the office of a member of the Council becoming vacant, a person must be appointed to that office in accordance with this Act (but a person who is to fill a casual vacancy in the office of a member will only be appointed for the balance of the term of the person's predecessor).

Conduct of business

10. (1) The presiding member will, if present at a meeting of the Council, preside at that meeting and, in the absence of that member, his or her deputy will preside.

(2) If a person is not available to preside at a meeting of the Council in accordance with subsection (1), the members present may elect one of their number to preside at the meeting.

(3) Four members constitute a quorum of the Council.

(4) A decision carried by a majority of the votes cast by the members present at a meeting of the Council is a decision of the Council.

(5) Each member present at a meeting of the Council is entitled to one vote on a question arising for decision at the meeting and, in the event of an equality of votes, the person presiding is entitled to a second, or casting, vote.

(6) Subject to this Act, the business of the Council may be conducted in such manner as it determines.

Validity of acts of Council and immunity of members

11. (1) An act or proceeding of the Council is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

(2) No liability attaches to a member of the Council for an act or omission by that member or the Council in good faith in the exercise, performance or discharge, or purported exercise, performance or discharge, of the member's or the Council's powers, functions or duties under this Act.

(3) A liability that would, but for subsection (2), lie against a member of the Council lies against the Crown.

Functions of the Council

12. (1) The functions of the Council are—

- (a) to report (on its own initiative or at the request of the Commission or the Minister) to the Commission or the Minister on any matter relating to public or environmental health;
- (b) to initiate, carry out or oversee programmes and activities designed to improve or promote public and environmental health;
- (c) to promote or, with the approval of the Minister, conduct inquiries into any aspect of public and environmental health;

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- (d) to keep the operation, administration and enforcement of this Act under review and to recommend to the Minister any legislative or administrative change that appears necessary or appropriate;
 - (e) to consider and report to the Minister on regulations proposed to be made under this Act;
 - (f) to carry out any other function or duty assigned to the Council by the Minister or by or under this Act.

(2) The Council may establish such committees and sub-committees as it thinks fit (which may, but need not consist of, or include, members of the Council) to advise it on any aspect of its functions under this Act.

(3) The Council may, by instrument in writing, delegate any of its powers or functions under this Act.

(4) A delegation under subsection (3)—

- (a) may be absolute or conditional;
 - (b) does not derogate from the powers of the Council itself;
- and
- (c) is revocable at will.

PART III

PROTECTION OF PUBLIC HEALTH

DIVISION I—ENFORCEMENT OF STANDARDS RELATING TO
PUBLIC HEALTH**Powers and duties of relevant authorities**

13. (1) It is the duty of the Commission—

(a) to promote proper standards of public and environmental health in the State generally;

and

(b) to take adequate measures to ensure that the provisions of this Part are observed in those parts of the State that are not within local government areas.

(2) Subject to this section, it is the duty of a local council—

(a) to promote proper standards of public and environmental health in its area;

and

(b) to take adequate measures to ensure that the provisions of this Part are observed in its area.

(3) If, in the opinion of the Council, a local council fails to discharge its duty under this Part, the Council may take such action as appears appropriate on account of the council's failure.

(4) Without limiting the generality of subsection (3), the Council may withdraw powers from a local council and transfer them to the Commission.

(5) Before taking action under subsection (3), the Council must consult with the local council with a view to establishing the reason for the local council's failure to discharge its duty.

(6) The Commission may agree to discharge on behalf of a local council any part of its duty under subsection (2).

(7) An agreement under subsection (6) may be made subject to conditions and limitations.

(8) Where the Commission enters into an agreement under subsection (6), the Commission is, to the extent contemplated by the agreement, vested with the powers of the local council in respect of which the agreement is made.

(9) A breach of duty under this section does not give rise to any civil liability.

Delegation

14. (1) The Commission or a local council may, by instrument in writing, delegate to any authorized officer any of its powers, functions or duties under this Part (including, in the case of a local council, powers or functions delegated to the local council by the Commission).

(2) A local council may delegate to a controlling authority any of its powers, functions or duties under this Part (including powers or functions delegated to the local council by the Commission).

(3) A delegation under this section—

(a) may be absolute or conditional;

(b) does not derogate from the powers of the Commission or the local council itself;

and

(c) is revocable at will.

DIVISION II—PROVISIONS RELATING TO SANITATION, DRAINAGE, ETC.

Prevention of insanitary conditions on premises

15. (1) If premises are in an insanitary condition, the authority may, by notice in writing, require an owner of the premises or any other person who is apparently responsible for causing the insanitary condition or allowing the insanitary condition to occur—

(a) to take specified action to improve the condition of the premises;

or

(b) to desist from a specified activity to which the condition of the premises is apparently attributable.

(2) If residential premises are, by reason of their insanitary condition, unfit for human habitation, the authority may include in a notice under subsection (1), a direction that, after a date specified in the notice, the premises must not be occupied until—

(a) specified action to render the premises fit for human habitation has been taken;

and

(b) the authority is satisfied that the premises are fit for human habitation.

(3) A person to whom a notice under subsection (1) is addressed shall not, without reasonable excuse, fail to comply with the notice.

Penalty: \$5 000.

Expiation fee: Division 6 fee.

(4) Where a notice under subsection (1) includes a direction under subsection (2), the authority must have a copy of the notice affixed to a conspicuous part of the premises to which it relates.

(5) A person shall not, knowing that a direction exists under subsection (2), occupy premises in contravention of that direction.

Penalty: \$2 500.

Expiation fee: Division 7 fee.

(6) The authority may, by further notice in writing, vary or revoke a notice given under this section.

Offence in relation to insanitary conditions on premises

16. (1) If premises are in an insanitary condition, any person who is responsible for causing the condition or allowing the condition to occur is guilty of an offence.

Penalty: \$5 000.

Expiation fee: Division 6 fee.

(2) It is a defence to a charge for an offence against subsection (1) to prove that there is a reasonable excuse for the condition of the premises.

Control of offensive activities

17. (1) If an activity—

(a) gives rise to a risk to health;

or

(b) results in the emission of offensive material or odours,

the authority may, by notice in writing to the person responsible for the activity, require that person to desist from the activity or to observe requirements stipulated in the notice in relation to the carrying on of the activity.

(2) A person who, without reasonable excuse, fails to comply with a notice under subsection (1) is guilty of an offence.

Penalty: \$5 000.

Expiation fee: Division 6 fee.

Discharge of wastes in a public place

18. (1) A person who discharges waste into a public place is guilty of an offence.

Penalty: \$10 000.

(2) A person who, without lawful permission, discharges waste into premises of which he or she is not an owner is guilty of an offence.

Penalty: \$10 000.

(3) The authority may, by notice in writing, require the owner to take specified action (immediately or within a period specified in the notice)—

(a) to prevent the discharge or potential discharge of waste from those premises into a public place or other premises;

or

(b) to remove waste discharged by the owner into a public place or other premises.

(4) A person to whom a notice under subsection (3) is addressed shall not, without reasonable excuse, fail to comply with the notice.

Penalty: \$10 000.

Expiation fee: Division 6 fee.

(5) The authority may, by further notice in writing, vary or revoke a notice given under this section.

Private thoroughfare

19. (1) The owner of a private thoroughfare shall keep the thoroughfare clean and free of refuse.

Penalty: \$2 500.

Expiation fee: Division 7 fee.

(2) Where the owner of a private thoroughfare fails to comply with subsection (1), the authority may, by notice in writing, require the owner to take specified action to remedy the default within such time as the authority allows in the notice.

(3) A person to whom a notice under subsection (2) is addressed shall not, without reasonable excuse, fail to comply with the notice.

Penalty: \$2 500.

Expiation fee: Division 7 fee.

(4) The authority may, by further notice in writing, vary or revoke a notice given under this section.

(5) In this section—

“private thoroughfare” means a private street, road, lane, footway, alley, court or thoroughfare that the public is allowed to use.

Provision of adequate sanitation

20. (1) Where the authority is of the opinion that premises have inadequate facilities for sanitation or personal hygiene, the authority may, by notice in writing, require an owner of the premises to take such action as the authority thinks necessary, and specifies in the notice, to provide adequate facilities within such time, and in such manner, as is specified in the notice.

(2) A person to whom a notice under subsection (1) is addressed shall not, without reasonable excuse, fail to comply with the notice.

Penalty: \$2 500.

Expiation fee: Division 7 fee.

(3) The authority may, by further notice in writing, vary or revoke a notice given under this section.

(4) The owner of a building that is used as a place of public assembly shall keep the building clean and properly ventilated.

Penalty: \$2 500.

Expiation fee: Division 7 fee.

DIVISION III—PROTECTION OF WATER SUPPLIES

Pollution of water

21. (1) A person who pollutes a water supply is guilty of an offence.

Penalty: \$10 000.

(2) If the authority is of the opinion that a water supply may become polluted in consequence of a particular activity, the authority may, by notice in writing addressed to the person responsible for the activity, require the person—

(a) to take specified action to prevent pollution of the water supply within such time as the authority specifies in the notice;

or

(b) to desist from the activity.

(3) A person to whom a notice under subsection (2) is addressed shall not, without reasonable excuse, fail to comply with the notice.

Penalty: \$10 000.

(4) The authority may, by further notice in writing, vary or revoke a notice given under this section.

- (5) This section does not apply to, or in relation to—
- (a) the pollution of water supply that is authorized by or under the *Water Resources Act 1990*;
 - (b) a person in relation to the pollution of a water supply if that person is exempted by or under the *Water Resources Act 1990* from the operation of Division II of Part V of that Act in relation to the pollution of that water supply;
 - (c) the pollution of a water supply if the pollution does not constitute an offence under the *Water Resources Act 1990* because of a regulation under that Act declaring that the Act, or a particular provision of the Act, does not apply to, or in relation to, the water supply.

Sources of water supply may be closed

22. (1) If the authority is of the opinion that a water supply is polluted and that action is necessary under this subsection to prevent human consumption of the water, it may, by notice published in the *Gazette*, restrict or prohibit the taking of water from that water supply, or the use of water taken from that water supply, for human consumption.

(2) A person, knowing that a notice has been given under subsection (1), shall not, without reasonable excuse, contravene the notice.

Penalty: \$7 500.

(3) The authority may, by further notice in the *Gazette*, vary or revoke a notice given under this section.

DIVISION IV—ACTION ON DEFAULT, RECOVERY OF COSTS, ETC.

Action on default

23. (1) Where the requirements of a notice under this Part are not complied with, the authority may cause the requirements to be carried out.

(2) A person authorized to do so by the authority may enter premises at any reasonable time for the purposes of carrying out the requirements of a notice, but shall not break into the premises unless authorized to do so by warrant of a justice.

(3) A justice may issue a warrant under subsection (2) if satisfied, by affidavit or other sworn evidence, that the warrant is reasonably required in the circumstances of the case.

(4) The authority may recover the costs and expenses reasonably incurred in exercising the powers under subsection (1) from the person who failed to comply with the notice, as a debt.

(5) Any costs and expenses reasonably incurred in exercising powers under subsection (1) in respect of land will be a charge against the land and may be recovered as if they were rates in arrear.

Recovery of costs by one person from another

24. Where—

(a) a person is required by a notice under this Part to take any action;

and

(b) the circumstances out of which the requirement arose are attributable to the act or default of another,

the person may recover the amount of the costs and expenses reasonably incurred in complying with the notice from that other person as a debt.

DIVISION V—APPEALS

Grounds for, and manner of, appeal

25. (1) A person may appeal against a requirement imposed under this Part.

(2) An appeal under this section lies to the Council and must be instituted by a written notice of appeal setting out, in detail, the grounds of appeal.

(3) An appeal must be instituted within 14 days of the requirement being imposed under this Part unless the Council, in its discretion, allows an extension of time for instituting the appeal.

(4) Subject to a determination by the Council to the contrary in relation to a particular appeal, where an appeal has been instituted, the requirement appealed against is suspended until the appeal has been determined or withdrawn.

(5) An appeal under this section is to be conducted as a full review of the matter to which the appeal relates.

(6) An appeal under this section must be dealt with as expeditiously as possible.

Constitution of special committee

26. (1) An appeal will be heard and determined by a review committee, constituted by the Council, consisting of—

(a) the member of the staff of the Commission appointed to the Council (who will preside);

(b) one of the members of the Council who were appointed on the nomination of the Local Government Association of South Australia;

and

(c) either one of the members of the Council who were appointed on the nomination of the Commission on account of their qualifications and experience in public and environmental health or the member of the Council appointed on the nomination of the Australian Institute of Health Surveyors (South Australian Division).

(2) A decision in which two members of a review committee concur is a decision of the Council and takes effect without further action by the Council.

Proceedings of review committee

27. (1) For the purposes of dealing with an appeal, a review committee may adopt such procedures as it thinks appropriate.

(2) A party is entitled to appear personally or, with leave of the committee, by representative, in proceedings before a review committee.

(3) A review committee may proceed to determine an appeal in the absence of a party if the party has had notice of the time and place of the proceedings and fails to appear.

(4) In any proceedings before a review committee, the review committee is not bound by the rules of evidence but may inform itself upon any matter relating to the proceedings in such manner as it thinks fit.

Determination of an appeal

28. Upon hearing an appeal, a review committee may—

- (a) revoke the requirement appealed against and, where appropriate, discharge any notice given to the appellant;
- (b) substitute any requirement or notice that could have been made or given in the first instance;
- (c) dismiss the appeal;
- (d) refer the matter back to the authority for re-consideration;
- (e) make an order for costs;
- (f) make any ancillary order that the committee thinks fit.

Right of appeal against decision of Council

29. (1) A right of appeal exists to the District Court against a decision of the Council under this Division.

(2) On an appeal, the District Court may—

- (a) vary or quash the Council's decision;
- (b) make any order that the justice of the case may require.

PART IV

NOTIFIABLE DISEASES AND THE PREVENTION OF INFECTION

DIVISION I—NOTIFICATION OF DISEASES

Notification

30. (1) Where a medical practitioner becomes aware that a person is suffering from a notifiable disease or has died from a notifiable disease the medical practitioner—

(a) shall as soon as practicable and, in any event, within five days of becoming so aware, report the existence of the disease to the Commission;

and

(b) shall furnish the Commission with such further information as the Commission may require.

Penalty: \$1 000.

Expiation fee: Division 8 fee.

(2) A report under subsection (1)—

(a) must be made in a manner and form determined by the Commission;

and

(b) must be accompanied by the required information.

(3) On the receipt of a report under subsection (1) that relates to a person in a local government area, the Commission must, where there is an immediate threat to public health in the area, immediately communicate the contents of the report to the local council for the area.

(4) No report is required under subsection (1) with respect to a particular case if the medical practitioner knows or reasonably believes that a report has already been made to the Commission.

(5) A medical practitioner who makes a report to the Commission in accordance with this section is, subject to any prescribed exception, entitled to be paid the prescribed fee.

(6) No civil liability arises from a statement made honestly and without malice in a report under this section.

(7) In this section—

“medical practitioner” includes a person of a prescribed class.

DIVISION II—EXAMINATION AND TREATMENT OF DISEASES

Power of Commission to require a person to undergo an examination

31. (1) Where the Commission has reasonable grounds to suspect that a person is or may be suffering from a controlled notifiable disease, the Commission may, by notice in writing addressed to the person, require the person to present himself or herself for examination by a medical practitioner at such time and place as is specified in the notice.

(2) If a person who has been served with a notice under subsection (1) fails to comply with the notice, a magistrate may issue a warrant for the apprehension and examination of that person.

(3) Reasonable force may be exercised in the execution of a warrant under subsection (2).

(4) A person apprehended in pursuance of a warrant may be detained for a period not exceeding 48 hours for the purpose of examination.

(5) Where—

(a) a person is examined pursuant to this section;

and

(b) the examination discloses that the person is not suffering from a controlled notifiable disease,

the person is entitled to reasonable compensation from the Commission for costs and expenses directly incurred by the person in attending for the examination.

(6) Compensation payable under subsection (5) may be recovered as a debt.

Power of Commission, in the interests of public health, to detain persons suffering from diseases

32. (1) Where—

(a) a medical practitioner has certified that a person is suffering from a controlled notifiable disease;

and

(b) the Commission is of the opinion that in the interests of public health the person should be kept at a suitable place of quarantine,

a magistrate may, on the application of the Commission, issue a warrant for the detention of the person at a suitable place of quarantine.

(2) An application for a warrant under subsection (1) may, in an emergency, be made by telephone.

(3) A person held in detention under subsection (1) must be given a notice setting out the reason for his or her detention and such other information as may be prescribed.

(4) A person may not be held in detention under subsection (1) for more than 72 hours unless—

(a) the Commission applies to a magistrate for an extension of the period of detention;

and

(b) the magistrate, after considering any representations made by or on behalf of the person under detention, extends the period of detention.

(5) Subject to subsection (6), a person must not be detained under this section for more than six months.

(6) A person may be detained for more than six months on the authorization of a Supreme Court judge.

(7) A person who is being detained pursuant to the decision of a magistrate under subsection (4) or the authorization of a Supreme Court judge under subsection (6) must be examined by a medical practitioner at intervals not exceeding—

(a) four weeks;

or

(b) such shorter period or periods as the magistrate or judge may determine having regard to the nature of the particular notifiable disease and the extent of the infection.

(8) An examination under subsection (7) is not to proceed if the person objects to being examined.

Power of Commission to give directions to persons suffering from diseases

33. (1) Where—

(a) a medical practitioner has certified that a person is suffering from a controlled notifiable disease;

and

(b) the Commission is of the opinion that the person should take or refrain from certain action to prevent the risk of infection spreading to others,

the Commission may, by notice in writing, give appropriate directions to the person.

(2) The directions that may be given to a person under subsection (1) include—

(a) a direction that the person reside at a specified place;

(b) a direction that the person place himself or herself under the supervision of a member of the staff of the Commission or a medical practitioner nominated by the Commission and obey the reasonable directions of that person;

(c) a direction that the person submit himself or herself to examination by a medical practitioner at such intervals as the Commission may require;

(d) a direction that the person refrain from performing specified work or any work other than specified work;

(e) such other directions as to the person's conduct or supervision that the Commission considers should apply in order to prevent the spread of infection.

(3) A person to whom a direction is given under this section may apply to a magistrate for a review of the direction.

(4) On a review under subsection (3), the magistrate may—

(a) confirm, vary or quash the direction;

(b) make any further or other direction.

(5) A person who, without reasonable excuse, contravenes or fails to comply with a direction under this section is guilty of an offence.

Penalty: \$5 000.

Expiation fee: Division 6 fee.

(6) If a person fails to comply with a direction under this section, a magistrate may issue a warrant for the apprehension of that person.

(7) A person apprehended in pursuance of a warrant must be brought as soon as practicable before the magistrate who may—

(a) add to, or vary, the directions;

or

(b) issue a warrant for the detention of the person under this Part in a place of quarantine.

Right of appeal against a decision of a magistrate

34. (1) A right of appeal exists to the Supreme Court (constituted of a single judge) against a decision of a magistrate under this Division.

- (2) On an appeal, the Supreme Court may—
- (a) vary or quash the magistrate's decision;
 - (b) make any order that the justice of the case may require.

DIVISION III—CONTROL AND PREVENTION OF INFECTION

Reporting to local councils

35. The Commission—

- (a) shall, on a monthly basis, provide each local council with a report on the occurrence of notifiable diseases in its area and any problems caused by such diseases that may exist in the area;

and

- (b) shall inform a local council of the occurrence of any notifiable disease in its area that constitutes, or may constitute, a threat to public health.

Action to prevent the spread of infection

36. (1) Where there is danger to public health from the possible spread of a controlled notifiable disease, the Commission or an authorized officer authorized by the Commission for the purposes of this section may give directions and take such action as may be appropriate to avert that danger.

(2) Without limiting the generality of subsection (1), the Commission or authorized officer may—

- (a) direct that any premises, vehicle or article be cleansed or disinfected;
- (b) direct the destruction of any article, substance or food;
- (c) seize any vehicle, article, substance or food;
- (d) impose areas of quarantine or close premises;
- (e) restrict movement into and out of any place or premises;
- (f) take such other action as may be prescribed.

(3) A person who is given a direction under subsection (1) or (2) shall not, without reasonable excuse, fail to comply with the direction.

Penalty: \$5 000.

Expiation fee: Division 6 fee.

(4) For the purpose of exercising a power under subsection (1) or (2), an authorized officer may be accompanied by such assistants as may be necessary or desirable in the circumstances.

(5) Where a person fails to take action in accordance with a direction, the Commission or an authorized officer may take that action or cause it to be taken.

(6) The Commission may recover as a debt costs and expenses reasonably incurred in exercising powers under subsection (5) from the person who failed to take the required action.

(7) For the purpose of exercising any power under this section, a person authorized to do so by the Commission may enter premises at any reasonable time, but shall not break into the premises unless authorized to do so by warrant of a justice.

(8) A justice may issue a warrant under subsection (7) if satisfied, by affidavit or other sworn evidence, that the warrant is reasonably required in the circumstances of the case.

(9) Where the Commission informs a local council of the occurrence of a controlled notifiable disease in its area that constitutes a threat to public health, the local council must take such action as is reasonably open to the local council to assist in preventing the spread of that disease.

Person infected with disease must prevent transmission to others

37. (1) A person infected with a controlled notifiable disease shall take all reasonable measures to prevent transmission of the disease to others.

Penalty: \$10 000.

(2) A person infested with vermin shall take all reasonable measures to prevent transmission of the vermin to others.

Penalty: \$200.

(3) If a child is infested with vermin, a parent of the child shall take all reasonable measures to prevent transmission of the vermin to others.

Penalty: \$200.

(4) In this section—

“child” means a person under the age of 16 years;

“vermin” includes lice, fleas and mites.

PART V
MISCELLANEOUS**Inspections, etc.**

38. (1) An authorized officer may, for purposes connected with the exercise, performance or discharge of any power, function or duty under this Act—

- (a) (i) after giving reasonable notice to the occupier of premises, enter and inspect the premises;
- or
- (ii) inspect any vehicle;
- (b) during the course of the inspection of any premises or vehicle—
 - (i) ask questions of any person found in the premises or vehicle;
 - (ii) inspect any article or substance found in the premises or vehicle;
 - (iii) take and remove samples of any substance found in the premises or vehicle;
 - (iv) require any person to produce any plans, specifications, books, papers or documents;
 - (v) examine, copy and take extracts from any plans, specifications, books, papers or documents;
 - (vi) take photographs, films or video recordings;
 - (vii) take measurements, make notes and carry out tests;
- and
- (viii) remove any article that may constitute evidence of the commission of an offence against this Act;

and

- (c) require any person to answer any question that may be relevant to—
 - (i) ascertaining whether the person is suffering from a notifiable disease;
 - or
 - (ii) the administration or enforcement of this Act.

(2) In the exercise of powers under subsection (1), an authorized officer may be accompanied by such assistants as may be necessary or desirable in the circumstances.

(3) Where an authorized officer is inspecting premises or a vehicle under this section, the person in charge of the premises or vehicle shall provide such assistance as the authorized officer reasonably requires to facilitate the inspection.

(4) A person who—

- (a) hinders or obstructs an authorized officer, or a person assisting an authorized officer, in the exercise of a power under this section;
- (b) having been asked a question under this section, does not answer the question to the best of his or her knowledge, information and belief;

or

- (c) being the person in charge of premises or a vehicle subject to an inspection and having been required to provide reasonable assistance to facilitate the inspection, refuses or fails to provide such assistance,

is guilty of an offence.

Penalty: \$2 500.

(5) A person is not required to answer a question under this section if the answer would tend to incriminate him or her.

Councils may appoint officers of health

39. A local council may appoint a person to act as the officer of health for its area.

Immunity from liability

40. (1) No personal liability attaches to—

(a) an authorized officer or a person assisting an authorized officer in the exercise or purported exercise of a power under this Act;

or

(b) a member of the staff of the Commission or any other person authorized by the Commission to act on behalf of the Commission,

for an act or omission on his or her part in good faith in the exercise, performance or discharge, or purported exercise, performance or discharge, of any power, function or duty conferred or imposed by this Act.

(2) A liability that would, but for subsection (1), lie against a person on whom an immunity is conferred by that subsection lies instead against the Crown.

Power to require information

41. (1) The Commission or a local council may require a person to furnish such information relating to public or environmental health as it reasonably requires for the purposes of this Act.

(2) Subject to subsection (3), a person who fails to comply with a requirement under subsection (1) is guilty of an offence.

Penalty: \$2 500.

Expiation fee: Division 7 fee.

(3) A person is not required to furnish information under subsection (1) if the information would tend to incriminate him or her.

Confidentiality

42. Where a person, in the course of official duties, obtains—

(a) medical information relating to another;

or

(b) information the disclosure of which would involve the disclosure of information relating to the personal affairs of another,

the person shall not intentionally disclose that information unless—

(c) the disclosure is made in the course of official duties;

(d) the disclosure is made with the consent of the other person;

or

(e) the disclosure is required by a court or tribunal constituted by law.

Penalty: \$2 000.

Manner of giving notice

43. A notice required or authorized by this Act may be given or served—

(a) personally;

(b) by post;

or

(c) if the notice relates to premises and is to be served on an owner of those premises—by affixing the notice to a conspicuous part of the premises.

Reporting

44. (1) Every local council shall, on or before the thirtieth day of September in each year, submit to the Council a report on the work of the local council under this Act during the financial year ending on the thirtieth day of June in that year, and the report must include, in respect of that financial year—

(a) a report on the standard of public and environmental health in the local council's area;

(b) details of the measures that the local council has taken under Part III.

(2) The Council shall, on or before the thirtieth day of October in each year, submit to the Commission—

(a) a report on the work of the Council under this Act during the financial year ending on the thirtieth day of June in that year;

and

(b) a copy of each report of a local council submitted to the Council under subsection (1).

(3) The Commission shall, on or before the thirty-first day of December in each year, submit to the Minister a report on the work of the Commission under this Act during the financial year ending on the thirtieth day of June in that year, and the report must include, in respect of that financial year a report on the standard of public and environmental health in the State generally and be accompanied by a copy of the Council's report.

(4) The Minister shall within 12 sitting days after the receipt of the two reports under subsection (3), cause a copy of each report to be laid before each House of Parliament.

Offences

45. (1) The offences constituted by this Act are summary offences.

(2) Proceedings for an offence against this Act cannot be commenced except upon the complaint of—

(a) an authorized officer;

(b) a member of the staff of the Commission;

(c) the chief executive officer of a local council;

(d) a member of the police force;

or

(e) a person acting on the written authority of the Minister.

(3) Proceedings for an offence against this Act must be commenced within one year after the date on which the offence is alleged to have been committed.

(4) Where a person is convicted of an offence against this Act and after that conviction the act or omission of the person that constituted the offence continues, that person is guilty of a separate and further offence in respect of each day during which the act or omission continues.

Penalty: \$100 for each separate and further offence.

Offences by bodies corporate

46. Where a body corporate is guilty of an offence against this Act, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the director could not by the exercise of reasonable diligence have prevented the commission of the offence by the body corporate.

Regulations

47. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

- (a) provide for the removal or destruction of any object or substance that creates a risk to public health;
- (b) prohibit, restrict or regulate the manufacture, possession or use of substances that may create a risk to public health;
- (c) prohibit or restrict the construction of premises that may create a risk to public health;
- (d) prohibit or regulate the keeping of animals of a particular class;
- (e) authorize or require the taking of specified measures to prevent the occurrence or spread of any notifiable disease;
- (f) require the furnishing of reports to the Commission relating to notifiable diseases;
- (g) regulate the construction, installation, maintenance and operation, and provide for the inspection, of swimming pools, spa pools, waterslides, wave pools or any other similar structure designed for human use;
- (h) prescribe standards that must be observed in relation to the installation and operation of septic tanks and common effluent drainage systems;
- (i) provide for the provision of returns and information to the Commission or the Council by prescribed persons or persons of prescribed classes;
- (j) on the recommendation of the Council, prescribe codes of practice that may be used by local councils as guides to assist in the administration of this Act;
- (k) prescribe fees for the purposes of this Act;
- (l) prescribe forms for the purposes of this Act;
- (m) exempt, either absolutely or subject to prescribed conditions or limitations—
 - (i) persons or classes of persons;
 - (ii) areas of the State,from this Act or specified provisions of this Act.
- (n) prescribe penalties not exceeding \$2 500 for breach of any regulation.

(3) Regulations made under subsection (2)(d) in relation to the keeping of animals may provide for—

- (a) the nature and condition of land or buildings in which the animals may be kept;
- (b) the inspection of any place where the animals are kept;
- (c) the maximum number of animals that may be kept per unit area;
- (d) the storage of animal food;
- (e) the control of vermin;
- (f) the disposal of wastes.

(4) A regulation may not be made under subsection (2)(d) unless the Governor is satisfied—

- (a) that the regulation is reasonably necessary to prevent the transmission of disease from the animals to humans or to prevent insanitary conditions;

and

- (b) that there has been reasonable consultation with the persons who would be directly affected by the regulation, or with their representatives.

(5) A regulation under this Act may incorporate or operate by reference to any code or standard prepared or approved by a body or authority referred to in the regulation.

(6) A regulation under this Act may be of general or limited application.

FIRST SCHEDULE
NOTIFIABLE DISEASES

Acquired Immune Deficiency Syndrome
AIDS—Related Complex
Amoebiasis
Ankylostomiasis
Anthrax
Arbovirus Infection
Atypical Mycobacterium Infection
Bacterial Meningitis
Brucellosis
Campylobacter Infection
Cholera
Congenital Rubella Syndrome
Diphtheria
Ebola Fever
Food Poisoning
Giardiasis
Gonococcal Ophthalmia Neonatorum
Gonorrhoea
Hepatitis A
Hepatitis B
Hepatitis Unspecified
Hydatid Disease
Lassa Fever
Lead Poisoning
Legionnaires Disease
Leprosy
Leptospirosis
Lymphadenopathy Syndrome
Malaria
Marburg Disease
Measles
Meningococcal Infection
Ornithosis
Paratyphoid Fever
Pertussis
Plague
Poliomyelitis
Q Fever
Rabies
Rubella
Salmonella Infection
Shigella Infection
Smallpox
Syphilis
Tetanus
Trachoma
Tuberculosis
Typhoid Fever
Typhus Fever
Vibrio Parahaemolyticus Infection
Yellow Fever
Yersinia Infection

SECOND SCHEDULE
CONTROLLED NOTIFIABLE DISEASES

Acquired Immune Deficiency Syndrome
AIDS-Related Complex
Anthrax
Cholera
Diphtheria
Ebola Fever
Hepatitis a
Hepatitis B
Lassa Fever
Leprosy
Lymphadenopathy Syndrome
Marburg Disease
Measles
Meningococcal Infection
Paratyphoid Fever
Plague
Poliomyelitis
Rabies
Salmonella Infection
Shigella Infection
Smallpox
Tuberculosis
Typhoid Fever
Typhus Fever
Yellow Fever

THIRD SCHEDULE

REPEAL OF CERTAIN ACTS AND TRANSITIONAL PROVISIONS

Repeal of certain acts

1. (1) The following acts are repealed:
The *Health Act, 1935*
The *Noxious Trades Act, 1943*
The *Venereal Diseases Act, 1947*.
- (2) The Governor may, by proclamation, suspend the repeal of specified provisions of the *Health Act, 1935*, until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.
2. The following transitional provisions apply in relation to the repeal of the *Health Act, 1935*:
 - (a) a proclamation made by the Governor under the *Health Act, 1935*, declaring a disease to be an infectious disease or a notifiable disease and in force immediately before the repeal of the provisions of that act providing for the making of the proclamation shall be deemed to be a prescription under this act that the disease is a notifiable disease;
 - (b) a resolution passed by a local board of health under the *Health Act, 1935*, and in force immediately before the repeal of the provisions of that Act providing for the passing of the resolution shall be deemed to be a resolution passed pursuant to this Act by the local council that constituted that local board;
 - (c) where a county board of health was in existence immediately before the repeal of those provisions of the *Health Act, 1935*, that provide for county boards of health, the assets and liabilities of the county board shall be divided—
 - (i) by agreement, between the local councils in respect of which the county board was constituted;
or
 - (ii) if agreement cannot be reached by those local councils, according to the directions of the Minister of Local Government;
 - (d) all actions and proceedings which but for the repeal of provisions of the *Health Act, 1935*, could have been taken or commenced by an authorized officer or local board of health may be taken or commenced by an authorized officer or a local council;
 - (e) all actions and proceedings which before the repeal of provisions of the *Health Act, 1935*, had been taken or commenced by an authorized officer or local board of health under that act may be continued in all respects by the authorized officer or a local council;
- and
- (f) the Council may require a local council to provide a report (in a form approved by the Council) on the sanitary condition of its area immediately before the repeal of any of the provisions of the *Health Act, 1935*.
3. The *Acts Interpretation Act, 1915*, shall, except to the extent of any inconsistency with the provisions of this schedule, apply to the repeal of the Acts referred to in clause 1.

APPENDIX 1**LEGISLATIVE HISTORY**

(entries in bold type indicate amendments incorporated since the last reprint)

| | |
|------------------------|---------------------------------------|
| Section 15(3) and (5): | amended by 71, 1992, s. 3(1) (Sched.) |
| Section 16(1): | amended by 71, 1992, s. 3(1) (Sched.) |
| Section 17(2): | amended by 71, 1992, s. 3(1) (Sched.) |
| Section 18(4): | amended by 71, 1992, s. 3(1) (Sched.) |
| Section 19(1) and (3): | amended by 71, 1992, s. 3(1) (Sched.) |
| Section 20(2) and (4): | amended by 71, 1992, s. 3(1) (Sched.) |
| Section 21(5): | inserted by 7, 1991, s. 6(a) |
| Section 22(1): | substituted by 7, 1991, s. 6(b) |
| Section 30(1): | amended by 71, 1992, s. 3(1) (Sched.) |
| Section 33(5): | amended by 71, 1992, s. 3(1) (Sched.) |
| Section 36(3): | amended by 71, 1992, s. 3(1) (Sched.) |
| Section 41(2): | amended by 71, 1992, s. 3(1) (Sched.) |

APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28a of the *Acts Interpretation Act 1915*, as follows:

| Division | Maximum imprisonment | Maximum fine | Expiation fee |
|----------|----------------------|--------------|---------------|
| 1 | 15 years | \$60 000 | — |
| 2 | 10 years | \$40 000 | — |
| 3 | 7 years | \$30 000 | — |
| 4 | 4 years | \$15 000 | — |
| 5 | 2 years | \$8 000 | — |
| 6 | 1 year | \$4 000 | \$300 |
| 7 | 6 months | \$2 000 | \$200 |
| 8 | 3 months | \$1 000 | \$150 |
| 9 | — | \$500 | \$100 |
| 10 | — | \$200 | \$75 |
| 11 | — | \$100 | \$50 |
| 12 | — | \$50 | \$25 |

Note: This appendix is provided for convenience of reference only.