

South Australia

South Australian Public Health Act 2011

An Act to promote and to provide for the protection of the health of the public of South Australia and to reduce the incidence of preventable illness, injury and disability; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *South Australian Public Health Act 2011*.

3—Interpretation

(1) In this Act, unless the contrary intention appears—

appointed member of SAPHC means a member of SAPHC other than the Chief Public Health Officer;

authorised officer means a person appointed to be a State or local authorised officer under Part 3 Division 5;

building includes a structure;

Chief Executive means the Chief Executive of the Department and includes a person for the time being acting in that position;

Chief Public Health Officer includes a person for the time being acting in that position;

contaminant means any of the following prescribed by regulation:

- (a) an antibiotic;
- (b) a pathogen;
- (c) another thing that may contaminate food or any other prescribed substance or material;

controlled notifiable condition means a disease or medical condition that is a controlled notifiable condition, or taken to be a controlled notifiable condition, under Part 10;

council means a council within the meaning of the *Local Government Act 1999*;

council subsidiary means a subsidiary of a council established under the *Local Government Act 1999*;

the Department means the administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act;

District Court means the Administrative and Disciplinary Division of the District Court;

emergency has the same meaning as in the *Emergency Management Act 2004*;

emergency officer means a police officer or a person holding an appointment as an emergency officer under Part 3 Division 6;

food has the same meaning as in section 5 of the *Food Act 2001*;

food business has the same meaning as in section 4 of the *Food Act 2001*;

legal practitioner means a person admitted and enrolled as a practitioner of the Supreme Court of South Australia;

LGA means the Local Government Association of South Australia;

local authorised officer—see section 44;

local government area means the area of a council;

medical condition includes—

- (a) a medical symptom or pattern of medical symptoms, including symptoms discerned from any signs or results of investigations, that indicate a disease (whether defined or yet to be determined);
- (b) an illness or injury arising from a person being contaminated by 1 or more substances or biological pathogens;
- (c) an injury or any death that gives rise to a public health concern;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

notifiable condition means a disease or medical condition that is a notifiable condition under Part 9;

pathology service means a service in which human tissue, human fluids or human body products are subjected to analysis for the purposes of the prevention, diagnosis or treatment of disease in human beings;

premises means—

- (a) any land, building (including residential premises) or place (including a public place, or a movable building or structure); or
- (b) a part of premises;

public authority means—

- (a) a department under the *Public Sector Act 2009*; or
- (b) a body, whether incorporated or unincorporated, established for a public purpose by the State, regardless of the way in which it is established; or
- (c) a council or council subsidiary; or
- (d) the Police Force of South Australia; or
- (e) a member or officer of a body referred to in a preceding paragraph; or
- (f) a person or body, or a person or body of a class, brought within the ambit of this definition by the regulations;

public health means the health of individuals in the context of the wider health of the community;

public health emergency—see section 87;

Public Health Emergency Management Plan means a plan (or a series of plans) prepared by the Chief Executive and approved by the Minister comprising strategies to be administered by the Department for the prevention of emergencies in this State and for ensuring adequate preparation for emergencies in this State, including strategies for the containment of emergencies, response and recovery operations and the orderly and efficient deployment of resources and services in connection with response and recovery operations;

Note—

It is contemplated that the Public Health Emergency Management Plan will form part of, or be recognised in, the State Emergency Management Plan prepared under the *Emergency Management Act 2004*.

public health incident—see section 86;

public notice means notice given in accordance with requirements prescribed by the regulations for the purposes of this definition;

public place includes a place to which the public ordinarily has access;

recovery operations has the same meaning as in the *Emergency Management Act 2004*;

response operations has the same meaning as in the *Emergency Management Act 2004*;

SAPHC means the South Australian Public Health Council established under Part 3 Division 3;

State authorised officer—see section 43;

State Co-ordinator means the person holding or acting in the position of State Co-ordinator under the *Emergency Management Act 2004*;

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*;

vehicle includes an aircraft or vessel;

wastewater means water that has been used in any form of human activity and includes—

- (a) water containing any form of waste or other matter or substance that may detract from its safety or from public health; and
- (b) without limiting paragraph (a), human waste either alone or in combination with water;

wastewater system means a system for collecting and managing wastewater (including through treatment, reuse and disposal), whether or not connected to the undertaking within the meaning of the *Sewerage Act 1929*.

- (2) Without limiting the definition of **public health** in subsection (1), public health may involve a combination of policies, programs and safeguards designed—
 - (a) to protect, maintain or promote the health of the community at large, including where 1 or more persons may be the focus of any safeguards, action or response; or

- (b) to prevent or reduce the incidence of disease, injury or disability within the community.
- (3) For the purposes of this Act, ***harm*** includes physical or psychological harm, or potential harm, to individuals, whether of long term or immediate impact or effect.
- (4) For the purposes of this Act, ***potential harm*** includes risk of harm and future harm.
- (5) For the purposes of this Act, a person may cause something if he or she—
 - (a) contributes to something happening or proceeding, or allows or permits something to happen or proceed; or
 - (b) contributes to the continuation of a condition for which the person is responsible, or allows or permits a condition for which the person is responsible to continue.

Part 2—Objects, principles and interaction with other Acts

4—Objects of Act

- (1) The objects of the Act are—
 - (a) to promote health and well being of individuals and communities and to prevent disease, medical conditions, injury and disability through a public health approach; and
 - (b) to protect individuals and communities from risks to public health and to ensure, so far as is reasonably practicable, a healthy environment for all South Australians and particularly those who live within disadvantaged communities; and
 - (c) to provide for the development of effective measures for the early detection, management and amelioration of risks to public health; and
 - (d) to promote the provision of information to individuals and communities about risks to public health; and
 - (e) to encourage individuals and communities to plan for, create and maintain a healthy environment; and
 - (f) to provide for or support policies, strategies, programs and campaigns designed to improve the public health of communities and special or vulnerable groups (especially Aboriginal people and Torres Strait Islanders) within communities; and
 - (g) to provide for the prevention, or early detection, management and control, of diseases, medical conditions and injuries of public health significance; and
 - (h) to provide for the monitoring of any disease or medical condition of public health significance in order to provide for the prevention or early detection of any such disease or medical condition and for the protection of individuals and the community from the threat of any such disease or medical condition and from public health threats more generally; and
 - (i) to provide for the collection of information about incidence and prevalence of diseases and other risks to health in South Australia for research or public health purposes; and

- (j) to establish a scheme for the performance of functions relating to public health by the State and local governments.
- (2) The Minister and other persons or bodies involved in the administration of this Act must have regard to, and seek to further, the objects of this Act.

5—Principles to be recognised under Act

In the administration of this Act and in seeking to further the objects of this Act, regard should be given to the principles set out in the following sections (insofar as may be relevant in the circumstances).

6—Precautionary principle

- (1) If there is a perceived material risk to public health, lack of full scientific certainty should not be used as a reason for postponing measures to prevent, control or abate that risk.
- (2) In the application of this principle, decision-making and action should be proportionate to the degree of public health risk and should be guided by—
 - (a) a careful evaluation of what steps need to be taken to avoid, where practicable, serious harm to public health; and
 - (b) an assessment of the risk-weighted consequences of options; and
 - (c) an aim to ensure minimum disruption to an individual's activities, a community's functioning and commercial activity consistent with providing any necessary protection from identified public health risks.

7—Proportionate regulation principle

Regulatory measures should take into account and, to the extent that is appropriate, minimise adverse impacts on business and members of the community while ensuring consistency with requirements to protect the community and to promote public health.

8—Sustainability principle

Public health, social, economic and environmental factors should be considered in decision-making with the objective of maintaining and improving community well-being and taking into account the interests of future generations.

9—Principle of prevention

Administrative decisions and actions should be taken after considering (insofar as is relevant) the means by which public health risks can be prevented and avoided.

10—Population focus principle

Administrative decisions and actions should focus on the health of populations and the actions necessary to protect and improve the health of the community and, in so doing, the protection and promotion of the health of individuals should be considered.

11—Participation principle

Individuals and communities should be encouraged to take responsibility for their own health and, to that end, to participate in decisions about how to protect and promote their own health and the health of their communities.

12—Partnership principle

- (1) The protection and promotion of public health requires collaboration and, in many cases, joint action across various sectors and levels of government and the community.
- (2) People acting in the administration of this Act should seek ways to develop and strengthen partnerships aimed at achieving identified public health goals consistent with the objects of this Act.

13—Equity principle

Decisions and actions should not, as far as is reasonably practicable, unduly or unfairly disadvantage individuals or communities and, as relevant, consideration should be given to health disparities between population groups and to strategies that can minimise or alleviate such disparities.

14—Specific principles—Parts 10 and 11

- (1) The principles set out in this section apply for the purposes of Part 10 and Part 11.
- (2) The overriding principle is that members of the community have a right to be protected from a person whose infectious state or whose behaviour may present a risk, or an increased risk, of the transmission of a controlled notifiable condition.
- (3) A person who has a controlled notifiable condition that is capable of being transmitted to 1 or more other persons has a responsibility to take reasonable steps or precautions to avoid placing others at risk on account of the controlled notifiable condition.
- (4) A person must not, insofar as is reasonably practicable, act in a manner that will place himself or herself at risk of contracting a controlled notifiable condition that is capable of being transmitted.
- (5) Subject to the overriding principle and any steps reasonably necessary to protect, or to minimise risks to, public health, and without limiting any power under Part 10 or Part 11, a person who may be the subject of an order, direction or requirement under either Part is entitled to expect—
 - (a) to have his or her privacy respected and to have the benefit of patient confidentiality; and
 - (b) to be afforded appropriate care and treatment, and to have his or her dignity respected, without any discrimination other than that reasonably necessary to protect public health; and
 - (c) insofar as is reasonably practicable and appropriate, to be given a reasonable opportunity to participate in decision-making processes that relate to the person on an individual basis, and to be given reasons for any decisions made on such a basis; and
 - (d) to be allowed to decide freely for himself or herself on an informed basis whether or not to undergo medical treatment or, in a case involving a child under the age of 16 years, to have his or her parent or guardian allowed to decide freely on an informed basis whether or not the child should undergo medical treatment; and

- (e) to be subject to restrictions (if any) that are proportionate to any risks presented to others (taking into account the nature of the disease or medical condition, the person's state of health, the person's behaviour or proposed or threatened behaviours, and any other relevant factor); and
 - (f) that the least restrictive means necessary to prevent the spread of disease be adopted when isolating or quarantining a person at the person's home or on other premises under this Act; and
 - (g) that his or her needs, including, but not limited to the provision of—
 - (i) adequate food, clothing, shelter and medical care; and
 - (ii) a telephone or other appropriate method by which the person may communicate with others,will be addressed in a reasonable and competent manner to the extent that the person is unable or restricted in his or her own capacity to meet such needs; and
 - (h) that any premises at which the person must reside as a result of an order, direction or requirement (other than the person's home), are—
 - (i) maintained according to safe and hygienic standards; and
 - (ii) to the extent possible, maintained in a way that is respectful to the person's cultural and religious beliefs; and
 - (iii) designed or managed to minimise the likelihood that—
 - (A) infection may be transmitted; and
 - (B) the person may be subjected to harm or further harm.
- (6) Any requirement restricting the liberty of a person should not be imposed unless it is the only effective way remaining to ensure that the health of the public is not endangered or likely to be endangered.
- (7) Without limiting subsection (6), if a power is to be exercised under Part 10 or Part 11, so far as is reasonably practicable, the power that least infringes on the rights of individuals must be the power that is exercised, unless to do so would involve the use of measures that are likely to be less effective in protecting or minimising risk to public health.
- (8) Any requirement restricting the liberty of 2 or more members of the 1 family should ensure, so far as is desirable and reasonably practicable and so far as is appropriate to the requirements for the protection of public health, that the family members reside at the same place.
- (9) If a requirement restricting the liberty of a person is imposed, all reasonably practicable steps must be taken to ensure that the person's next of kin, or a nominated person, is informed (unless the person to whom the requirement relates instructs otherwise).

15—Guidelines

- (1) The Minister may, from time to time, prepare or adopt guidelines that relate to the application of these principles.

- (2) The Minister should take reasonable steps to consult with SAPHC and the LGA in the preparation of any guidelines, or before adopting any guidelines, under subsection (1).
- (3) SAPHC may, as it thinks fit, request the Minister to develop guidelines with respect to a particular matter or matters.
- (4) A person or body involved in the administration of this Act must have regard to any relevant guidelines under this section.

16—Interaction with other Acts

- (1) Except as specifically provided by this Act, the provisions of this Act are in addition to, and do not limit, the provisions of any other law of the State.
- (2) Without limiting the generality of subsection (1), this Act is not intended to be construed so as to prevent any person from being prosecuted under any other enactment for an offence that is also punishable by this Act, or from being liable under any other law of the State to any penalty or punishment that is higher than a penalty or punishment provided by this Act.
- (3) Nothing in this Act affects or limits a right or remedy that exists apart from this Act.

Part 3—Administration

Division 1—Minister

17—Minister

- (1) The Minister's functions in connection with the administration of this Act include the following (to be performed to such extent as the Minister considers appropriate):
 - (a) to further the objects of this Act by taking action to preserve, protect or promote public health within the State;
 - (b) to promote proper standards of public and environmental health within the State by ensuring that adequate measures are taken to give effect to the provisions of this Act and to ensure compliance with this Act;
 - (c) to develop policies or codes of practice that are relevant to—
 - (i) the scope of the duty under Part 6; or
 - (ii) identifying risks to public health; or
 - (iii) setting standards in connection with any activity, material, substance or equipment relevant to public health; or
 - (iv) providing for other matters relevant to the operation or administration of this Act, for matters that may be subject to regulations under this Act, or for such other matters as the Minister thinks fit;
 - (d) to the extent that may be necessary, practicable or desirable, to cooperate and coordinate with national or international action consistent with the objects of this Act;
 - (e) to be a primary source of advice to the Government about health preservation, protection and promotion;

- (f) any other functions assigned to the Minister by this Act, or considered by the Minister to be relevant to the operation of this or any other relevant Act.
- (2) The Minister may develop or adopt procedures for the provision of advice to the Government—
 - (a) to ensure the promotion or implementation of policies or measures that are designed to enhance the health of individuals and communities; and
 - (b) to ensure that the Minister is consulted or involved in the development of policies or measures that may have a significant impact on the public health.
- (3) In addition, the Minister has the power to do anything necessary, expedient or incidental to—
 - (a) performing the functions of the Minister under this Act; or
 - (b) administering this Act; or
 - (c) furthering the objects of this Act.

18—Power to require reports

- (1) In this section—
designated authority means—
 - (a) the Chief Public Health Officer; or
 - (b) SAPHC; or
 - (c) a government department or agency; or
 - (d) a council or council subsidiary.
- (2) The Minister may require a designated authority to provide a report on any matter relevant to the administration or operation of this Act.
- (3) In a case involving a council, the Minister may require that the council provide a combined report with 1 or more other councils.
- (4) A requirement under this section may be (but need not necessarily be) that a report be provided—
 - (a) on a periodic basis specified by the Minister; or
 - (b) on or in relation to the occurrence of an act or event specified by the Minister.
- (5) A designated authority must provide the report in accordance with the requirements of the Minister.
- (6) This section does not limit the operation of any other provision relating to the provision of reports.

19—Delegation by Minister

- (1) The Minister may delegate a function or power conferred on the Minister under this Act—
 - (a) to a specified person or body; or
 - (b) to a person occupying or acting in a specified office or position.

- (2) A delegation—
 - (a) may be made subject to conditions or limitations specified in the instrument of delegation; and
 - (b) if the instrument of delegation so provides, may be further delegated by the delegate; and
 - (c) is revocable at will and does not prevent the delegator from acting personally in a matter.

Division 2—Chief Public Health Officer

20—Office of Chief Public Health Officer

- (1) There will be a position of *Chief Public Health Officer*.
- (2) The Governor will make an appointment to the position of Chief Public Health Officer on the recommendation of the Minister.
- (3) A person appointed as the Chief Public Health Officer must have qualifications and experience in the field of public health, or a related field, determined by the Minister to be suitable for the purposes of appointment to the position of Chief Public Health Officer.
- (4) The terms on which a person is appointed to the position of Chief Public Health Officer will be determined by the Governor.
- (5) The position of Chief Public Health Officer may be held by a member of the Public Service.

21—Functions of Chief Public Health Officer

- (1) The Chief Public Health Officer's functions are as follows:
 - (a) to develop and implement strategies to protect or promote public health;
 - (b) to ensure that this Act, and any designated health legislation, are complied with;
 - (c) to advise the Minister and the Chief Executive of the Department about proposed legislative or administrative changes related to public health, and about other matters relevant to public health;
 - (d) to establish and maintain a network of health practitioners and agencies designed to foster collaboration and coordination to promote public health and the furtherance of the objects of this Act;
 - (e) at the request of the Minister or on the Chief Public Health Officer's own initiative, to investigate and report on matters of public health significance;
 - (f) after advising the Minister and the Chief Executive of the Department, to make public statements on matters relevant to public health;
 - (g) any other functions assigned to the Chief Public Health Officer by this Act or any other Act or by the Minister.
- (2) The Chief Public Health Officer must, in the performance of functions under this Act, insofar as the Chief Public Health Officer thinks necessary and appropriate, consult with other persons or bodies involved in the administration of this Act.

- (3) In subsection (1)—

designated health legislation means—

- (a) any other Act committed to the administration of the Minister that is relevant to the objects or operation of this Act; and
- (b) any other Act, or any part of any other Act, designated by the regulations for the purposes of this paragraph.

22—Risk of avoidable mortality or morbidity

- (1) If—

- (a) the Chief Public Health Officer becomes aware of the existence of, or potential for the occurrence of, a situation putting a section of the community or a group of individuals at an increased risk of avoidable mortality or morbidity; and
- (b) the Chief Public Health Officer considers that effective solutions exist for the reduction or elimination of those risks,

the Chief Public Health Officer may request the participation of any public authority whose intervention may be useful in identifying or producing a response to the circumstances being faced.

- (2) A public authority that receives a request under subsection (1) must consider the request and then respond to the Chief Public Health Officer within a reasonable time.
- (3) A response under subsection (2) must include details about—
 - (a) any steps already being taken by the public authority that may be relevant in the circumstances; and
 - (b) any plans that the public authority may have that may be relevant in the circumstances; and
 - (c) any steps that the public authority is willing to take in the circumstances; and
 - (d) any other matter relating to the public authority that appears to be relevant.
- (4) The Chief Public Health Officer—
 - (a) must advise the Minister if or when—
 - (i) the Chief Public Health Officer makes a request of a public authority under subsection (1); or
 - (ii) a public authority provides a response under subsection (2); and
 - (b) without limiting paragraph (a), must take reasonable steps to advise the Minister from time to time on action being taken to address any situation that puts a section of the community or a group of individuals at an increased risk of avoidable mortality or morbidity.

23—Biennial reporting by Chief Public Health Officer

- (1) The Chief Public Health Officer is required to prepare a written report every 2 years about—
 - (a) public health trends, activities and indicators in South Australia; and

- (b) the implementation of the State Public Health Plan; and
 - (c) the administration of this Act.
- (2) A report must also address any issue identified by the Minister for inclusion in the report.
 - (3) A report must be furnished to the Minister within 3 months after it is prepared.
 - (4) The Minister must, within 12 sitting days after receipt of a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

24—Delegation

- (1) The Chief Public Health Officer may delegate a function or power conferred on the Chief Public Health Officer under this or any other Act—
 - (a) to a specified person or body; or
 - (b) to a person occupying or acting in a specified office or position.
- (2) A delegation—
 - (a) may be made subject to conditions or limitations specified in the instrument of delegation; and
 - (b) if the instrument of delegation so provides, may be further delegated by the delegate; and
 - (c) is revocable at will and does not prevent the delegator from acting personally in a matter; and
 - (d) to avoid doubt, may include acting as the presiding member of SAPHC.

25—Appointment of Acting Chief Public Health Officer

- (1) If the Chief Public Health Officer is temporarily absent, or the Chief Public Health Officer's position is temporarily vacant, the Chief Executive may assign a suitable person to act in the Chief Public Health Officer's position during the absence or vacancy.
- (2) The terms on which a person is appointed will be determined by the Chief Executive after consultation with the Minister.
- (3) A member of the Public Service may be appointed under this section.
- (4) A person appointed to act in the Chief Public Health Officer's position has, while so acting, all the functions and powers of the Chief Public Health Officer.

Division 3—South Australian Public Health Council

26—Establishment of SAPHC

The *South Australian Public Health Council* (SAPHC) is established.

27—Composition of SAPHC

- (1) SAPHC consists of—
 - (a) the Chief Public Health Officer *ex officio* (who will be the presiding member); and

- (b) 9 other members appointed by the Governor on the nomination of the Minister, of whom—
- (i) 2 must have experience in local government selected by the Minister from a panel of 5 nominated by the LGA; and
 - (ii) 1 must have qualifications in public health and experience in the administration of public health at the local government level selected by the Minister from a panel of 5 nominated by Environmental Health Australia (South Australia) Incorporated; and
 - (iii) 2 must be persons nominated by the Minister who have qualifications in public health; and
 - (iv) 1 must have experience in the administration of environment protection laws or strategies or in environmental management, selected by the Minister from a panel of 5 nominated by the Presiding Member of the Board of the Environment Protection Authority; and
 - (v) 1 must be a person nominated by the Minister who has experience in the field of health promotion; and
 - (vi) 1 must be a person nominated by the Minister who has experience in the prevention and control of communicable diseases; and
 - (vii) 1 must be a person nominated by the Minister who has experience in non-government community sector activities relevant to public health.
- (2) If 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 SAPHC on the Minister's nomination and that member will be taken to have been appointed on the nomination of the body in default.
- (3) The Governor may appoint a suitable person to be the deputy of a member of SAPHC and the deputy may, in the absence of that member, act as a member of SAPHC.
- (4) The provisions of this section relating to the qualification and nomination of a member extend to a deputy of that member.

28—Conditions of appointment

- (1) An appointed member of SAPHC will hold office on conditions determined by the Governor for a term, not exceeding 3 years, specified in the instrument of appointment and will, at the expiration of a term of office, be eligible for reappointment.
- (2) The Governor may remove an appointed member of SAPHC from office—
- (a) for breach of, or non-compliance with, a condition of appointment; or
 - (b) for mental or physical incapacity to carry out duties of office satisfactorily; or
 - (c) for neglect of duty; or
 - (d) for dishonourable conduct.

- (3) The office of an appointed member of SAPHC becomes vacant if the member—
- (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice addressed to the Minister; or
 - (d) is found guilty of an indictable offence; or
 - (e) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - (f) is removed from office by the Governor under subsection (2).
- (4) On the office of a member of SAPHC becoming vacant, a person must be appointed to that office in accordance with this Act.

29—Allowances and expenses

An appointed member of SAPHC is entitled to fees, allowances and expenses approved by the Governor.

30—Validity of acts

An act or proceeding of SAPHC is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

31—Functions of SAPHC

SAPHC's functions are as follows:

- (a) to assist and advise the Chief Public Health Officer in relation to—
 - (i) the protection and promotion of public health; and
 - (ii) the development and maintenance of a system of strategic planning for public health at the local, regional and State-wide levels; and
 - (iii) the development of health plans under this Act; and
 - (iv) strategies to ensure that a sufficiently trained and skilled workforce is in place for the purposes of this Act; and
 - (v) programs to promote public health research in the State; and
 - (vi) the preparation of the biennial report under Division 2; and
 - (vii) the setting of standards and qualifications for authorised officers;
- (b) any other functions assigned to SAPHC by this or any other Act or by the Minister or the Chief Public Health Officer.

32—Conduct of business

- (1) The presiding member of SAPHC will, if present at a meeting of SAPHC, preside at the meeting and, in the absence of that member, the members present may elect 1 of their number to preside.
- (2) 6 members constitute a quorum of SAPHC.
- (3) A decision carried by a majority of the votes cast by the members of SAPHC present at a meeting of SAPHC is a decision of SAPHC.

- (4) Each member present at a meeting of SAPHC is entitled to 1 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.
- (5) A conference by telephone or other electronic means between the members of SAPHC will, for the purposes of this Act, be taken to be a meeting of SAPHC at which the participating members are present if—
 - (a) notice of the conference is given to all members in the manner determined by the members of SAPHC for that purpose; and
 - (b) each participating member is capable of communicating with every other participating member during the conference.
- (6) Subject to this Act, the business of SAPHC may be conducted in such way as it determines.

33—Committees and subcommittees

- (1) SAPHC may establish committees or subcommittees as SAPHC thinks fit to advise SAPHC on any aspect of its functions, or to assist SAPHC in the performance of its functions.
- (2) A committee or subcommittee established under subsection (1) may, but need not, consist of, or include, members of SAPHC.
- (3) The procedures to be observed in relation to the conduct of a business of a committee or subcommittee will be—
 - (a) as determined by SAPHC; or
 - (b) insofar as a procedure is not determined by SAPHC—as determined by the relevant committee or subcommittee.

34—Delegation by SAPHC

- (1) SAPHC may delegate a function or power conferred on SAPHC under this or any other Act—
 - (a) to a specified person or body; or
 - (b) to a person occupying or acting in a specified office or position.
- (2) A delegation—
 - (a) may be made subject to conditions or limitations specified in the instrument of delegation; and
 - (b) if the instrument of delegation so provides, may be further delegated by the delegate; and
 - (c) is revocable at will and does not prevent the delegator from acting personally in a matter.

35—Annual report

- (1) SAPHC must, on or before 31 October in each year, provide to the Minister a report on its activities for the financial year ending on the preceding 30 June.
- (2) The Minister must, within 12 sitting days after receipt of a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

36—Use of facilities

SAPHC may, by arrangement with the relevant body, make use of the services of the staff, equipment or facilities of a public authority.

Division 4—Councils

37—Functions of councils

- (1) A council is the local public health authority for its area.
- (2) In connection with subsection (1), the following functions are conferred on a council by this Act:
 - (a) to take action to preserve, protect and promote public health within its area;
 - (b) to cooperate with other authorities involved in the administration of this Act;
 - (c) to ensure that adequate sanitation measures are in place in its area;
 - (d) insofar as is reasonably practicable, to have adequate measures in place within its area to ensure that activities do not adversely affect public health;
 - (e) to identify risks to public health within its area;
 - (f) as necessary, to ensure that remedial action is taken to reduce or eliminate adverse impacts or risks to public health;
 - (g) to assess activities and development, or proposed activities or development, within its area in order to determine and respond to public health impacts (or potential public health impacts);
 - (h) to provide, or support the provision of, educational information about public health and to provide or support activities within its area to preserve, protect or promote public health;
 - (i) such other functions assigned to the council by this Act.

38—Immunisation services

- (1) In addition to its other functions, a council must provide, or support the provision of, immunisation programs for the protection of public health within its area.
- (2) Services associated with the provision of immunisation programs will be provided with the support of the Department.
- (3) The Minister must take reasonable steps to enter into and maintain a memorandum of understanding with the LGA about the provision of immunisation services and support under this section.

39—Cooperation between councils

- (1) A council may, in performing its functions or exercising its powers under this Act, act in conjunction or partnership with, or cooperate or coordinate its activities with, 1 or more other councils.
- (2) The Chief Public Health Officer may request a council to cooperate with 1 or more other councils if the Chief Public Health Officer considers that the councils share a common area of concern.

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- (3) If a council receives a request under subsection (2), the council must, within 28 days after receiving the request or such longer period as the Chief Public Health Officer may specify, furnish the Chief Public Health Officer with a written report on the action that the council intends to take in response to the request.

40—Power of Chief Public Health Officer to act

- (1) If—
- (a) the Chief Public Health Officer considers that a public health risk exists that has significance in relation to the areas of 2 or more councils; or
 - (b) the Chief Public Health Officer considers that action under this section is warranted in order to support or enhance the Minister's functions to preserve, protect or promote public health within the State,
- the Chief Public Health Officer may exercise any power conferred on a council under this Act (as if the Chief Public Health Officer were a council).
- (2) Subject to subsection (3), before taking action under subsection (1) the Chief Public Health Officer must take reasonable steps to consult with the council or councils for the area or areas where the Chief Public Health Officer intends to act, and with SAPHC.
- (3) If the Chief Public Health Officer considers that urgent action is required, the Chief Public Health Officer may, after informing the Minister of his or her proposed course of action, take action under subsection (1) without complying with subsection (2) (but the Chief Public Health Officer must then, within a reasonable time after taking the action, advise the relevant council or councils of the action that has been taken).

41—Council failing to perform a function under Act

- (1) If, in the opinion of the Minister, a council has failed, in whole or in part, to perform a function conferred on the council under this Act, the Minister may consult with the council in relation to the matter.
- (2) If, after consulting under subsection (1), the Minister considers that the council's failure is significant, the Minister may, after consulting with SAPHC, direct the council to perform a function under this Act.
- (3) A direction under subsection (2)—
- (a) must be in writing; and
 - (b) must set out the grounds on which the Minister is acting; and
 - (c) must set out the action that the Minister considers should be taken by the council.
- (4) The Minister must cause a copy of the direction to be published in the Gazette within a reasonable time after it is furnished to the council.
- (5) If a council fails to comply with a direction under this section, the Minister may, by notice served on the council, withdraw powers of the council under this Act and transfer them to the Chief Public Health Officer (and any such notice will have effect according to its terms).
- (6) Before taking action under subsection (5)—
- (a) the Minister must, by notice in writing—

- (i) inform the council of the Minister's proposed course of action (setting out the grounds on which the action is proposed); and
 - (ii) invite the council to make written submissions to the Minister in relation to the matter within a period specified by the Minister; and
 - (b) if the council so requests in its written submissions to the Minister—the Minister must discuss the matter with a delegation representing the council; and
 - (c) the Minister must, at such time as the Minister thinks fit, consult with the Chief Public Health Officer and SAPHC.
- (7) The Minister must cause a copy of the notice under subsection (5) to be published in the Gazette within a reasonable time after it is served on the council.
- (8) A member of the staff of the council must comply with any request or direction of the Chief Public Health Officer in or in connection with the exercise of a power transferred to the Chief Public Health Officer under this section.
- (9) Insofar as is reasonably practicable, the Chief Public Health Officer must give any direction under subsection (8) through the chief executive officer of the council.
- (10) The Chief Public Health Officer, or a person acting under the authorisation of the Chief Public Health Officer, is entitled to make use of the equipment or facilities of the council, without any other authority, in connection with the exercise of a power transferred to the Chief Public Health Officer under this section.
- (11) An act of the Chief Public Health Officer in the exercise of a power transferred to the Chief Public Health Officer will be taken to be an act of the council.
- (12) The Chief Public Health Officer must, in acting under this section, have due regard to the role and responsibilities of the council to its community in other respects.
- (13) The Minister may recover as a debt costs and expenses reasonably incurred in the Chief Public Health Officer exercising powers under this section from the council.
- (14) The Minister may, after consultation with the Chief Public Health Officer and SAPHC, by notice served on the council, vary or revoke a notice under subsection (5).
- (15) The Minister must cause a notice under subsection (14) to be published in the Gazette within a reasonable time after it is served on the council.
- (16) In this section—
function includes a power or duty.

42—Transfer of function of council at request of council

- (1) A council may request that a function of the council under this Act be performed by the Chief Public Health Officer.
- (2) A request under subsection (1)—
 - (a) must be made to the Minister; and
 - (b) must be in writing; and
 - (c) must be accompanied or supported by such information that the Minister may require.

- (3) The Minister must, after receiving a request, consult with the Chief Public Health Officer and SAPHC.
- (4) The Minister may then, if the Minister thinks fit, by notice in the Gazette, transfer a specified function of the council to the Chief Public Health Officer (and any such notice will have effect according to its terms).
- (5) A member of the staff of the council must comply with any request or requirement of the Chief Public Health Officer in or in connection with the performance of a function transferred to the Chief Public Health Officer under this section.
- (6) Insofar as is reasonably practicable, the Chief Public Health Officer must impose any requirement under subsection (5) through the chief executive officer of the council.
- (7) The Chief Public Health Officer, or a person acting under the authorisation of the Chief Public Health Officer, is entitled to make use of the equipment or facilities of the council, without any other authority, in connection with the performance of a function transferred to the Chief Public Health Officer under this section.
- (8) An act of the Chief Public Health Officer in the performance of a function transferred to the Chief Public Health Officer will be taken to be an act of the council.
- (9) The Chief Public Health Officer must, in acting under this section, have due regard to the role and responsibilities of the council to its community in other respects.
- (10) The Minister may recover costs and expenses associated with the Chief Public Health Officer acting under this section under an agreement with the council.
- (11) The Minister may, at the request of the council, or on the Minister's own initiative after consultation with the council, the Chief Public Health Officer and SAPHC, vary or revoke a notice under subsection (4) by further notice in the Gazette.
- (12) In this section—
function includes a power or duty.

Division 5—Authorised officers

43—State authorised officers

- (1) The Minister may appoint a suitably qualified person to be a State authorised officer.
- (2) An appointment under this section may be made subject to such conditions or limitations as the Minister thinks fit.
- (3) Without limiting subsection (2), the powers conferred on a State authorised officer under this or any other Act may be exercised in the whole of the State or such part or parts of the State as may be specified in the instrument of appointment.
- (4) A State authorised officer is subject to direction by the Chief Public Health Officer.
- (5) The Minister may vary or revoke an appointment at any time.

44—Local authorised officers

- (1) A council may, by instrument in writing, appoint a suitably qualified person to be a local authorised officer.
- (2) An appointment under this section may be made subject to such conditions or limitations as the council thinks fit.

- (3) Without limiting subsection (2), the powers conferred on a local authorised officer under this or any other Act may be exercised within the area of the council.
- (4) A local authorised officer is subject to direction by the council.
- (5) A person may hold an appointment as a local authorised officer from more than 1 council.
- (6) The council may vary or revoke an appointment at any time.
- (7) A council must notify the Chief Public Health Officer if the council—
 - (a) makes an appointment under this section; or
 - (b) revokes an appointment under this section.
- (8) A notification under subsection (7) must be accompanied by such information as the Chief Public Health Officer thinks fit and specifies for the purposes of this section from time to time.
- (9) A council must, in determining the number of local authorised officers who should be appointed for its area, take into account any policy developed by the Chief Public Health Officer for the purposes of this section.

45—Qualifications

- (1) Subject to subsection (2), a person is not eligible for appointment as an authorised officer unless the person holds qualifications approved by the Minister for the purposes of this Division (being qualifications or classes of qualifications that may vary according to factors determined by the Minister).
- (2) The Minister may grant exemptions from the operation of subsection (1).
- (3) An exemption may be granted on conditions determined by the Minister.

46—Identity cards

- (1) An authorised officer appointed under this Act must be issued with an identity card in a form approved by the Chief Public Health Officer—
 - (a) containing the person's name and a photograph of the person; and
 - (b) stating that the person is an authorised officer for the purposes of this Act; and
 - (c) setting out the name or office of the issuing authority.
- (2) The identity card must be issued as soon as is reasonably practicable after the appointment is made (but an authorised officer is not prevented from exercising powers under this Act just because an identity card is yet to be issued).
- (3) An authorised officer must, at the request of a person in relation to whom the officer intends to exercise any powers under this Act, produce for the inspection of the person his or her identity card (unless the identity card is yet to be issued).
- (4) An authorised officer appointed under this Act must, on ceasing to be an authorised officer for any reason, surrender his or her identity card to the Chief Public Health Officer (if a State authorised officer) or the council that made the appointment (if a local authorised officer).

Maximum penalty: \$250.

47—Powers of authorised officers

- (1) An authorised officer may, for any purpose connected with the administration or operation of this Act or with the performance, exercise or discharge of a function, power or duty under this Act—
 - (a) at any reasonable time, enter or inspect any premises or vehicle; and
 - (b) during the course of the inspection of any premises or vehicle—
 - (i) ask questions of any person found in the premises or vehicle; and
 - (ii) inspect any article or substance found in the premises or vehicle; and
 - (iii) take and remove samples of any substance or other thing found in the premises or vehicle; and
 - (iv) require any person to produce any plans, specifications, books, papers or documents; and
 - (v) examine, copy and take extracts from any plans, specifications, books, papers or documents; and
 - (vi) take photographs, films or video recordings; and
 - (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 condition; or
 - (ii) the administration or enforcement of this Act.
- (2) In the exercise of powers under this Act, an authorised officer may be accompanied by such assistants as may be necessary or desirable in the circumstances.
- (3) An authorised officer may use reasonable force to enter any premises or vehicle—
 - (a) on the authority of a warrant issued by a magistrate; or
 - (b) if the officer believes, on reasonable grounds, that the circumstances require immediate action to be taken.
- (4) A magistrate must not issue a warrant under subsection (3) unless satisfied—
 - (a) that there are reasonable grounds to suspect that an offence against this Act has been, is being, or is about to be, committed; or
 - (b) that the warrant is reasonably required in the circumstances.
- (5) If an authorised officer is inspecting premises or a vehicle under this section, the person in charge of the premises or vehicle must provide such assistance as the authorised officer reasonably requires to facilitate the inspection.
- (6) A person who—
 - (a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of a power under this section; or

- (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.

Maximum penalty: \$25 000.

- (7) A person who furnishes information under this section cannot, by virtue of doing so, be held to have breached any law or any principle of professional ethics.
- (8) It is not an excuse for a person to refuse or fail to furnish information under this section on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (9) However, if compliance with a requirement to furnish information might tend to incriminate a person or make a person liable to a penalty, then—
 - (a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of, the document or the information (as distinct from the contents of the documents or the information); or
 - (b) in any other case—any answer given in compliance with the requirement,is not admissible in evidence against the person for an offence or for the imposition of a penalty (other than proceedings in respect of the provision of information that is false or misleading).

Division 6—Emergency officers

48—Emergency officers

- (1) The Chief Executive may appoint, individually or by class, such persons to be emergency officers for the purposes of this Act as the Chief Executive thinks fit.
- (2) An appointment under subsection (1) may be subject to conditions or limitations specified by the Chief Executive.
- (3) An emergency officer, other than a police officer, must be issued with an identity card in a form approved by the Chief Executive—
 - (a) containing the person's name and a photograph of the person; and
 - (b) stating that the person is an emergency officer for the purposes of this Act.
- (4) An emergency officer must, at the request of a person in relation to whom the officer intends to exercise any powers under this Act, produce for the inspection of the person—
 - (a) in the case of an emergency officer who is a police officer and is not in uniform—his or her certificate of authority; or
 - (b) in the case of an emergency officer who is not a police officer—his or her identity card.

- (5) An emergency officer appointed under this Act must, on ceasing to be an emergency officer for any reason, surrender his or her identity card and any insignia or special apparel or equipment issued to the emergency officer for the purposes of this Act to the Chief Executive or a person nominated by the Chief Executive.

Maximum penalty: \$250.

Division 7—Specific power to require information

49—Specific power to require information

- (1) The Minister, the Chief Public Health Officer, a council or an authorised officer may require a person to furnish such information relating to public health as may be reasonably required for the purposes of this Act.

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

Maximum penalty: \$25 000.

Expiation fee: \$750.

- (3) A person who furnishes information under this section cannot, by virtue of doing so, be held to have breached any law or any principle of professional ethics.

- (4) It is not an excuse for a person to refuse or fail to furnish information under this section on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

- (5) However, if compliance with a requirement to furnish information might tend to incriminate a person or make a person liable to a penalty, then—

- (a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of, the document or the information (as distinct from the contents of the documents or the information); or

- (b) in any other case—any answer given in compliance with the requirement,

is not admissible in evidence against the person for an offence or for the imposition of a penalty (other than proceedings in respect of the provision of information that is false or misleading).

Part 4—Public health plans

Division 1—State public health plan

50—State public health plan

- (1) The Minister must prepare and maintain a plan to be called the *State Public Health Plan*.
- (2) The State Public Health Plan is to set out principles and policies for achieving the objects of this Act and implementing the principles established under this Act.

- (3) In connection with the operation of subsection (2), the State Public Health Plan should—
- (a) —
 - (i) comprehensively assess the state of public health in South Australia; and
 - (ii) identify existing and potential public health risks and develop strategies for addressing and eliminating or reducing those risks; and
 - (b) identify opportunities and outline strategies for promoting public health in this State; and
 - (c) include information about issues identified in regional public health plans established under this Part or any other plan or policy that the Minister considers to be appropriate.
- (4) The State Public Health Plan may also take into account any plan, policy or strategy determined to be appropriate by the Minister.
- (5) The Minister must review the State Public Health Plan at least once in every 5 years.
- (6) Subject to subsection (7), the Minister may amend the State Public Health Plan at any time.
- (7) The Minister must, in relation to any proposal to create or amend the State Public Health Plan—
- (a) prepare a draft of the proposal; and
 - (b) take reasonable steps to consult with SAPHC, the LGA, and any other person or body considered relevant by the Minister, in relation to the proposal; and
 - (c) by public notice, give notice of the place or places at which copies of the draft are available for inspection (without charge) and purchase and invite interested persons to make written representations on the proposal within a period specified by the Minister.
- (8) Subsection (7) does not apply in relation to an amendment that is being made—
- (a) in order to ensure that the State Public Health Plan is consistent with any plan, policy or strategy that—
 - (i) has been prepared, adopted or applied under another Act; and
 - (ii) falls within a class prescribed by the regulations for the purposes of this provision; or
 - (b) in order to remove or replace information in the State Public Health Plan that has been superseded by information that the Minister considers to be more reliable or accurate; or
 - (c) in order to make a change of form (without altering the effect of an underlying policy reflected in the State Public Health Plan); or
 - (d) in order to take action considered by the Minister to be—
 - (i) addressing or removing irrelevant material or any duplication or inconsistency (without altering the effect of an underlying policy reflected in the State Public Health Plan); or

- (ii) correcting an error; or
 - (e) in any circumstances prescribed by the regulations.
- (9) The State Public Health Plan, or an amendment to the State Public Health Plan, has no force or effect until published by the Minister in accordance with the regulations.
 - (10) The Minister must ensure that copies of the State Public Health Plan are reasonably available for inspection (without charge) and purchase by the public at a place or places determined by the Minister.
 - (11) The State Public Health Plan is an expression of policy and does not in itself affect rights or liabilities (whether of a substantive, procedural or other nature).
 - (12) A failure of the Minister to comply with a requirement of this section cannot be taken to affect the validity of the State Public Health Plan, or any other plan or instrument under this Act.

Division 2—Regional public health plans

51—Regional public health plans

- (1) A council or, if the Minister so determines or approves, a group of councils, must prepare and maintain a plan for the purposes of the operations of the council or councils under this Act (a *regional public health plan*).
- (2) A regional public health plan must be in a form determined or approved by the Minister.
- (3) If a group of councils are to prepare and maintain a regional public health plan, a reference in this Part to a council is to be taken to be a reference to the group of councils.
- (4) Notwithstanding that a group of councils are to prepare and maintain a regional public health plan, any council within the group may also prepare its own plan that relates to 1 or more matters that are to apply specifically within its area (and then this Part will apply accordingly).
- (5) A plan should be consistent with the State Public Health Plan.
- (6) The Minister may, from time to time, prepare or adopt guidelines to assist councils in the preparation of regional public health plans.
- (7) The Minister should take reasonable steps to consult with SAPHC and the LGA in the preparation of any guidelines, or before adopting any guidelines, under subsection (6).
- (8) A regional public health plan must—
 - (a) comprehensively assess the state of public health in the region; and
 - (b) identify existing and potential public health risks and provide for strategies for addressing and eliminating or reducing those risks; and
 - (c) identify opportunities and outline strategies for promoting public health in the region; and
 - (d) address any public health issues specified by the Minister following consultation with SAPHC and the LGA; and
 - (e) include information as to—

- (i) the state and condition of public health within the relevant region, and related trends; and
 - (ii) environmental, social, economic and practical considerations relating to public health within the relevant region; and
 - (iii) other prescribed matters; and
- (f) include such other information or material contemplated by this Act or required by the regulations.
- (9) In addition, a plan must—
 - (a) include information about issues identified in any plan, policy or strategy specified by the Minister or SAPHC; and
 - (b) address, and be consistent with, any intergovernmental agreement specified by the Minister.
- (10) Subject to subsection (11), a council may amend a regional public health plan at any time.
- (11) A council must, in relation to any proposal to create or amend a regional public health plan—
 - (a) prepare a draft of the proposal; and
 - (b) when the draft plan is completed, a council must—
 - (i) give a copy of it to—
 - (A) the Minister; and
 - (B) any incorporated hospital established under the *Health Care Act 2008* that operates a facility within the region; and
 - (C) any relevant public health partner authority under subsection (23); and
 - (D) any other body or group prescribed by the regulations; and
 - (ii) take steps to consult with the public.
- (12) The Minister may require that a council consult with the Minister, or any other person or body specified by the Minister, before a council releases a draft plan under subsection (11).
- (13) Before bringing a regional public health plan into operation, a council must submit the plan to the Chief Public Health Officer for consultation.
- (14) The Chief Public Health Officer may refer the plan to SAPHC or any other body determined by the Chief Public Health Officer for further consultation.
- (15) A council must take into account any comments made by the Chief Public Health Officer, SAPHC, and any other body within the ambit of a determination under subsection (14), at the conclusion of the consultation processes envisaged by subsections (13) and (14).
- (16) A council may then adopt a plan or amend a plan with or without alteration.

- (17) A council may undertake the processes set out in the preceding subsections in conjunction with the preparation and adoption of its strategic management plans under section 122 of the *Local Government Act 1999* (and may, if the council thinks fit, incorporate a regional public health plan into its strategic management plans under that Act).
- (18) A regional public health plan may, by agreement with the public health partner authority, provide for a public health partner authority to take responsibility for undertaking any strategy, or for attaining any priority or goal, under the plan.
- (19) A regional public health plan must be reviewed at least once in every 5 years.
- (20) A council must, in preparing and reviewing its regional public health plan and insofar as is reasonably practicable, give due consideration to the plans of other councils insofar as this may be relevant to issues or activities under its plan.
- (21) A council or council subsidiary must, when performing functions or exercising powers under this or any other Act, insofar as may be relevant and reasonable, have regard to the State Public Health Plan, any regional public health plan that applies within the relevant area and any other requirement of the Minister, and in particular must give consideration to the question whether it should implement changes to the manner in which, or the means by which, it performs a function or exercises a power or undertakes any other activity that has been identified in the State Public Health Plan as requiring change.
- (22) A public health partner authority must, when performing a function that is relevant to the State Public Health Plan or a regional public health plan, insofar as is relevant and reasonable, have regard to the provision of the plans.
- (23) For the purposes of this section—
 - (a) the regulations may provide for an entity to be a public health partner authority for the purposes of this section; and
 - (b) the Minister may, after consultation with the relevant entity, by notice in the Gazette, declare an entity to be a public health partner authority for the purposes of this section (and may, after consultation with the entity, revoke any such declaration by notice in the Gazette).

52—Reporting on regional public health plans

- (1) A council responsible for a regional public health plan must, on a 2 yearly basis, prepare a report that contains a comprehensive assessment of the extent to which, during the reporting period, the council has succeeded in implementing its regional public health plan to the Chief Public Health Officer.
- (2) In a year in which a report is required (a *reporting year*), the report must be provided to the Chief Public Health Officer on or before 30 September in the reporting year.
- (3) The report must relate to a reporting period of 2 years ending on 30 June in the reporting year.
- (4) The Chief Public Health Officer may, from time to time, issue guidelines to assist in the preparation of reports on regional public health plans by councils.
- (5) The Chief Public Health Officer must provide a copy of each report provided under this section to the Minister by 30 October in each reporting year.

Part 5—Public health policies

53—Public health policies

- (1) The Minister may prepare and maintain policies under this Part (to be called *State Public Health Policies*) that relate to any area of public health in the State.
- (2) A policy may do 1 or more of the following:
 - (a) specify matters that are to be taken to constitute risks to public health for the purposes of this Act;
 - (b) specify the scope of the duty under Part 6 in specified cases or circumstances (including so as to specify that a breach of the policy will be taken to be a breach of that duty);
 - (c) set out or establish standards that are to apply to any activity, condition, equipment or circumstance in order to prevent or manage a risk to public health;
 - (d) provide for other measures or matters that are relevant to promoting or achieving an improvement in public health in the State.
- (3) A policy may adopt, wholly or partially and with or without modification, a standard or other document prepared or published by another person or body, either as in force at the time that the policy is made or as in force from time to time.
- (4) A policy may—
 - (a) be of general or limited application (including so as to apply only to a specified part of the State); or
 - (b) make different provision according to the persons, things or circumstances to which it is expressed to apply.

54—Procedure for making policies

- (1) The Minister must, in relation to any proposal to create or amend a State Public Health Policy—
 - (a) prepare a draft of the proposal; and
 - (b) take reasonable steps to consult with SAPHC, the LGA, and any other person or body considered relevant by the Minister, in relation to the proposal; and
 - (c) by public notice, give notice of the place or places at which copies of the draft are available (without charge) and purchase and invite interested persons to make written representations on the proposal within a period specified by the Minister.
- (2) Subsection (1) does not apply if the Minister considers that urgent action is required in the circumstances but, in such a case, the Minister must, within 3 months after the publication of the policy or any amendment, initiate the consultation requirements of subsection (1) as if the policy or amendment were a draft proposal.
- (3) An amendment to a policy arising from consultation under subsection (2) may be given effect by the Minister without the need for further consultation.

- (4) A policy, or an amendment to a policy, will take effect when published by the Minister in accordance with the regulations.
- (5) A policy, or an amendment to a policy, may take effect on a day specified in the policy or amendment (being a day that falls on or after publication).
- (6) The Minister must ensure that copies of a policy are reasonably available for inspection (without charge) and purchase by the public at a place or places determined by the Minister.

55—Reference of policies to Parliament

- (1) The Minister must, within 14 sitting days after the publication of a State Public Health Policy, or an amendment to a State Public Health Policy, cause a copy of the policy or the amendment (as the case may be) to be laid before both Houses of Parliament.
- (2) If either House of Parliament—
 - (a) passes a resolution disallowing a policy laid before it under subsection (1), then the policy ceases to have effect;
 - (b) passes a resolution disallowing an amendment laid before it under subsection (1), then the amendment ceases to have effect (and the relevant policy will, from that time, apply as if it had not been amended by that amendment).
- (3) A resolution is not effective for the purposes of subsection (2) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not fall within the same session of Parliament) after the day on which the policy or amendment (as the case may be) is laid before the House.
- (4) If a resolution is passed under subsection (2), notice of that resolution must forthwith be published in the Gazette.

Part 6—General duty

56—General duty

- (1) A person must take all reasonable steps to prevent or minimise any harm to public health caused by, or likely to be caused by, anything done or omitted to be done by the person.
- (2) In determining what is reasonable for the purposes of subsection (1), regard must be had, amongst other things, to the objects of this Act, and to—
 - (a) the potential impact of a failure to comply with the duty; and
 - (b) any environmental, social, economic or practicable implications; and
 - (c) any degrees of risk that may be involved; and
 - (d) the nature, extent and duration of any harm; and
 - (e) any relevant policy under Part 5; and
 - (f) any relevant code of practice under Part 8; and
 - (g) any matter prescribed by the regulations.

- (3) A person will be taken not to be in breach of subsection (1) if the person is acting—
 - (a) in a manner or in circumstances that accord with generally accepted practices taking into account community expectations and prevailing environmental, social and economic practices and standards; or
 - (b) in accordance with a policy or code of practice published by the Minister in connection with the operation of this Part; or
 - (c) in circumstances prescribed by the regulations.
- (4) Subject to subsections (5) and (6), a person who breaches subsection (1) is not, on account of the breach alone, liable to any civil or criminal action.
- (5) If a person breaches subsection (1), compliance with the subsection may be enforced by the issuing of a notice under Part 12.
- (6) Subsection (4) does not limit or derogate from any other provision of this Act.

Part 7—General public health offences

57—Material risk to public health

- (1) A person who causes a material risk to public health intentionally or recklessly and with the knowledge that harm to public health will result is guilty of an offence.
Maximum penalty: \$250 000 or imprisonment for 5 years or both.
- (2) A person who causes a material risk to public health in circumstances where the person ought reasonably be expected to know that harm to public health will result is guilty of an offence.
Maximum penalty: \$120 000 or imprisonment for 2 years or both.
- (3) A person who causes a material risk to public health is guilty of an offence.
Maximum penalty: \$25 000.
Expiation fee: \$750.
- (4) For the purposes of this section, a material risk to public health occurs if the health of 1 or more persons has been, or might reasonably be expected to be, harmed by an act or omission of another, but does not include a case where the harm, or risk of harm, is trivial or negligible.

58—Serious risk to public health

- (1) A person who causes a serious risk to public health intentionally or recklessly and with the knowledge that harm to public health will result is guilty of an offence.
Maximum penalty: \$1 000 000 or imprisonment for 10 years or both.
- (2) A person who causes a serious risk to public health in circumstances where the person ought reasonably be expected to know that harm to public health will result is guilty of an offence.
Maximum penalty: \$500 000 or imprisonment for 7 years or both.
- (3) A person who causes a serious risk to public health is guilty of an offence.
Maximum penalty: \$120 000.

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- (4) For the purposes of this section, a serious risk to public health occurs if there is a material risk that substantial injury or harm to the health of 1 or more persons has occurred, or might reasonably be expected to have occurred, taking into account—
- (a) the nature, scale and effects of the harm, and any associated illness, injury or disability, that may arise; and
 - (b) the location, immediacy and seriousness of the threat to human health; and
 - (c) whether the harm extends to 2 or more persons and, if so, the total number of persons affected or likely to be affected; and
 - (d) the availability and effectiveness of any precaution, safeguard, treatment or other measure that may be used to eliminate or reduce the harm.

59—Defence of due diligence

- (1) In any proceedings against a person for an offence under this Part, it is a defence to prove that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence.
- (2) Without limiting subsection (1), it is not proved that a person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence under this Part unless it is proved that the person—
- (a) had taken reasonable steps to prevent or avoid the circumstances that gave rise to the risk to public health, including by putting in place any systems or safeguards that might reasonably be expected to be provided; and
 - (b) complied with the requirements of any notice or order under this Act that related to the risk to public health; and
 - (c) as soon as becoming aware of the circumstances that gave rise to the risk to public health—
 - (i) reported those circumstances to the Chief Public Health Officer, the Department or a council; and
 - (ii) took all reasonable steps necessary to prevent or reduce the risk to public health.
- (3) This section does not apply in relation to a person who is charged with an offence under section 106.

60—Alternative finding

If in proceedings for an offence against this Part the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against this Part that carries a lower maximum penalty (determined according to relative maximum monetary penalties), the court may find the defendant guilty of the latter offence.

Part 8—Prevention of non-communicable conditions

61—Declaration of non-communicable conditions

- (1) The Minister may, by notice in the Gazette, declare a disease or medical condition to be a non-communicable condition if the Minister considers that the disease or medical condition is of significance to public health.
- (2) The Minister may, by further notice in the Gazette, revoke a declaration under subsection (1).

62—Minister may issue code of practice

- (1) The Minister may issue a code of practice in relation to preventing or reducing the incidence of a non-communicable condition.
- (2) A code of practice may relate to—
 - (a) an industry or sector;
 - (b) a section or part of the community;
 - (c) an activity, undertaking or circumstance.
- (3) Without limiting subsection (1) or (2), a code of practice may relate to the manner in which, for the purposes of public health—
 - (a) specified goods, substances or services are advertised, sponsored, promoted or marketed (including through the provision of certain information to consumers of certain goods, substances, or services);
 - (b) specified goods or substances are manufactured, distributed, supplied or sold (including the composition, contents, additives and design of specified goods or substances);
 - (c) buildings, infrastructure or other works are designed, constructed or maintained;
 - (d) the public, or certain sections of the public, are able to access specified goods, substances or services.
- (4) The Minister must, before issuing or amending a code of practice, insofar as is reasonably practicable, consult with any person or organisation that the Minister considers to be representative of any industry or sector affected by the proposed code or amendment.
- (5) The Minister may publish a report on the performance of an industry, sector or person in relation to a code.
- (6) The Minister must, before publishing a report under subsection (5) that would reasonably be expected to have an adverse impact on a person specifically identified in the report, provide a copy of the report to the person and then allow the person at least 14 days to make written representations in relation to the contents of the report.
- (7) No action lies against the Minister in respect of the contents of a report published under this section.

Part 9—Notifiable conditions and contaminants

Division 1—Notifiable conditions

63—Declaration of notifiable conditions

- (1) The regulations may declare a disease or medical condition to be a notifiable condition.
- (2) The Minister may, if the Minister considers it to be necessary in the interests of public health because of urgent circumstances, by notice in the Gazette, declare a disease or medical condition to be a notifiable condition.
- (3) A regulation or declaration under subsection (1) or (2) may be varied from time to time, or may be revoked, but a declaration of the Minister under subsection (2) will, unless revoked sooner, expire 6 months after publication in the Gazette.
- (4) The revocation or expiry of a declaration of the Minister—
 - (a) does not prevent the disease or medical condition the subject of the declaration being declared to be a notifiable condition by the regulations; and
 - (b) does not prevent the disease or medical condition being the subject of a further declaration of the Minister if the Minister considers that urgent circumstances again warrant the declaration of the disease or medical condition to be a notifiable condition.

64—Notification

- (1) If—
 - (a) a medical practitioner; or
 - (b) a pathology service; or
 - (c) a person of a class prescribed by regulation,suspects that a person has, or has died from, a notifiable condition, the responsible person must as soon as practicable and, in any event, within 3 days of that suspicion being formed, report the case to the Chief Public Health Officer.
Maximum penalty: \$10 000.
- (2) A report under subsection (1) must be—
 - (a) made in a manner and form determined by the Chief Public Health Officer; and
 - (b) accompanied by the information required by the Chief Public Health Officer to be furnished in connection with the provision of the report.
- (3) On the receipt of a report under subsection (1) that relates to a person in a local government area, the Chief Public Health Officer must, if there is an immediate threat to public health in the area, as soon as is reasonably practicable, communicate the contents of the report to the council for the area.

- (4) A medical practitioner who suspects that a person is suffering from a notifiable condition is not required to make a report under subsection (1) with respect to that case if the practitioner knows or reasonably believes that a report has already been made to the Chief Public Health Officer by another medical practitioner who is, or has been, responsible for the treatment of the person.
- (5) Following receipt of a report made under this section, the Chief Public Health Officer may from time to time require additional information about the person or the person's condition from—
- (a) the person who provided the report; and
 - (b) any other person who the Chief Public Health Officer reasonably believes could furnish the Chief Public Health Officer with information relevant to preventing, monitoring or controlling the notifiable condition.
- (6) A person must not, without reasonable excuse, fail to comply with a requirement imposed on the person under subsection (5).
Maximum penalty: \$10 000.
- (7) No civil liability arises from a statement made honestly and without malice in, or in connection with, a report under this section.
- (8) A person who furnishes information under this section cannot, by virtue of doing so, be held to have breached any law or any principle of professional ethics.
- (9) A document held or produced by the Chief Public Health Officer for the purposes of this section that relates to a particular person is not subject to access under the *Freedom of Information Act 1991*.
- (10) In this section—
- responsible person** means—
- (a) in relation to a medical practitioner—the medical practitioner;
 - (b) in relation to a pathology service—the pathologist responsible for the day to day operation of the pathology laboratory;
 - (c) in the case of a person of a class prescribed by regulation—a person identified under the regulations.

65—Report to councils

The Department—

- (a) must, on a monthly basis, provide each council with a report on the occurrence or incidence of notifiable conditions in its area and any problems or issues caused by or arising on account of such diseases or medical conditions that may exist in its area; and
- (b) must inform a council of the occurrence or incidence of any notifiable condition in its area that constitutes, or may constitute, a threat to public health.

66—Action to prevent spread of infection

- (1) If there is danger to public health from the possible spread of a disease constituting a notifiable condition, the Chief Public Health Officer or an authorised officer authorised by the Chief Public Health Officer for the purposes of this section may give such directions and take such action as may be appropriate to avert that danger.
- (2) Without limiting the generality of subsection (1), the Chief Public Health Officer or authorised officer may—
 - (a) direct that any premises, vehicle or article be cleansed or disinfected;
 - (b) direct the destruction of any article, substance, food or other thing;
 - (c) seize any vehicle, article, substance, food or other thing;
 - (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 or subject to some other form of requirement under subsection (1) or (2) must not, without reasonable excuse, contravene or fail to comply with the direction or requirement.
Maximum penalty: \$25 000.
Expiation fee: \$750.
- (4) For the purpose of exercising a power under subsection (1) or (2), an authorised officer may be assisted by such assistants as may be necessary or desirable in the circumstances.
- (5) If a person fails to take action in accordance with a direction or requirement, the Chief Public Health Officer or an authorised officer may take that action or cause it to be taken.
- (6) The Crown or a council 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 a power under this section, a person authorised to do so by the Chief Public Health Officer—
 - (a) may enter premises or any vehicle at any reasonable time; and
 - (b) may break into premises or any vehicle if authorised by a warrant issued by a magistrate.
- (8) A magistrate must not issue a warrant under subsection (7) unless satisfied that the warrant is reasonably required in the circumstances.
- (9) If the Chief Public Health Officer informs a council of the occurrence of a disease constituting a notifiable condition, the council must take such action as is reasonably open to the council to assist in preventing the spread of the disease.

Division 2—Notifiable contaminants

67—Declaration of notifiable contaminants

- (1) The regulations may declare a contaminant to be a notifiable contaminant.
- (2) The Minister may, if the Minister considers it to be necessary in the interests of public health because of urgent circumstances, by notice in the Gazette, declare a contaminant to be a notifiable contaminant.
- (3) A regulation or declaration under subsection (1) or (2) may be varied from time to time, or may be revoked, but a declaration of the Minister under subsection (2) will, unless revoked sooner, expire 6 months after publication in the Gazette.
- (4) The revocation or expiry of a declaration of the Minister—
 - (a) does not prevent the contaminant the subject of the declaration being declared to be a notifiable contaminant by the regulations; and
 - (b) does not prevent the contaminant being the subject of a further declaration of the Minister if the Minister considers that urgent circumstances again warrant the declaration of the contaminant to be a notifiable contaminant.

68—Notification of contaminant

- (1) If—
 - (a) a laboratory service; or
 - (b) a person of a class prescribed by the regulations,detects or isolates a notifiable contaminant in a circumstance prescribed by the regulations for the purposes of this subsection, the responsible person must as soon as practicable (and in any event within 24 hours) report the detection or isolation to the Chief Public Health Officer.
Maximum penalty: \$25 000.
Expiation fee: \$750.
- (2) Subsection (1) does not apply—
 - (a) if the notifiable contaminant is detected or isolated in the course of a test carried out only for—
 - (i) educational purposes; or
 - (ii) the purposes of academic research,unless the test and the circumstances of the particular case indicate the existence of a material risk to public health; or
 - (b) in any circumstance—
 - (i) specified by the Chief Public Health Officer; or
 - (ii) prescribed by regulation.
- (3) For the purposes of subsection (2)(a), a material risk to public health exists if the health of 1 or more persons has been, or might reasonably be expected to be, harmed, but does not include a case where the harm, or risk of harm, is trivial or negligible.

- (4) If a person is, in prescribed circumstances, informed at any time by a responsible person for a laboratory service (including a laboratory service outside the State) that—
- (a) tests have been carried out by that laboratory in prescribed circumstances; and
 - (b) the test conducted by the laboratory has detected or isolated a notifiable contaminant,

the person must as soon as practicable (and in any event within 24 hours) report the detection or isolation to the Chief Public Health Officer.

Maximum penalty: \$15 000.

Expiation fee: \$500.

- (5) Subsection (4) does not apply in any circumstance specified by the Chief Public Health Officer.
- (6) A report under subsection (1) or (4) must be—
- (a) made in a manner and form determined by the Chief Public Health Officer; and
 - (b) accompanied by the information required by the Chief Public Health Officer to be furnished in connection with the provision of the report.
- (7) Following receipt of a report made under this section, the Chief Public Health Officer may from time to time—
- (a) require additional information from—
 - (i) the person who provided the report;
 - (ii) any other person who the Chief Public Health Officer reasonably believes could furnish the Chief Public Health Officer with information relevant to monitoring or controlling the notifiable containment;
 - (b) require a person who provided the report to undertake, or cause to be undertaken, testing (or further testing) specified by the Chief Public Health Officer and to provide a further report or information to the Chief Public Health Officer.
- (8) A person must not, without reasonable excuse, fail to comply with a requirement imposed on the person under subsection (7).

Maximum penalty: \$15 000.

Expiation fee: \$500.

- (9) No civil liability arises from a statement made honestly and without malice in, or in connection with, a report under this section.
- (10) A person who furnishes information under this section cannot, by virtue of doing so, be held to have breached any law or any principle of professional ethics.
- (11) Any notification given by a person in compliance with this section is not admissible in evidence against the person for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).
- (12) A regulation under this section must be made on the recommendation of the Chief Public Health Officer.

- (13) A Chief Public Health Officer must not make a recommendation under subsection (12) unless or until the Chief Public Health Officer has taken reasonable steps to consult with representatives, within any industry directly affected by the regulation, considered relevant by the Chief Public Health Officer in relation to the proposal to make the relevant regulations under this section.
- (14) A document held or produced for the purposes of this section that relates to a particular person is not subject to access under the *Freedom of Information Act 1991*.
- (15) In this section—
- laboratory service* means a service which performs tests or analyses for the purpose of isolating or detecting contaminants in various substances;
- responsible person* means—
- (a) in relation to a laboratory service—the person responsible for the day to day operation of the laboratory service;
 - (b) in the case of a person of a class prescribed by the regulations—a person identified under the regulations.

Part 10—Controlled notifiable conditions

Division 1—Preliminary

69—Principles

The principles set out in section 14 have particular application to this Part.

70—Declaration of controlled notifiable conditions

- (1) The regulations may declare a disease or medical condition to be a controlled notifiable condition.
- (2) The Minister may, if he or she considers it to be necessary in the interests of public health because of urgent circumstances, by notice in the Gazette, declare a disease or medical condition to be a controlled notifiable condition.
- (3) A regulation or declaration under subsection (1) or (2) may be varied from time to time, or may be revoked, but a declaration of the Minister under subsection (2) will, unless revoked sooner, expire 6 months after publication in the Gazette.
- (4) The revocation or expiry of a declaration of the Minister—
 - (a) does not prevent the disease or medical condition the subject of the declaration being declared to be a controlled notifiable condition by the regulations; and
 - (b) does not prevent the disease or medical condition being the subject of a further declaration of the Minister if the Minister considers that urgent circumstances again warrant the declaration of the disease or medical condition to be a controlled notifiable condition.

71—Chief Public Health Officer to be able to act in other serious cases

- (1) In this section—

serious disease, in relation to a particular person, means a disease—

 - (a) which is, or may be, infectious; and
 - (b) which the Chief Public Health Officer reasonably believes to present a serious risk to public health.
- (2) This section applies to a person if—
 - (a) the Chief Public Health Officer has reason to believe that the person (the *relevant person*) has, or has been exposed to, a serious disease; and
 - (b) the disease is not a controlled notifiable condition; and
 - (c) the Chief Public Health Officer determines that it is appropriate for action to be taken under this section; and
 - (d) the Chief Public Health Officer serves notice of the determination on the relevant person.
- (3) In a case where this section applies—
 - (a) the serious disease will, in relation to the relevant person, be taken to be a controlled notifiable condition; and
 - (b) the Chief Public Health Officer may take action under this Part in relation to the relevant person as if the person had a controlled notifiable condition.
- (4) This section will cease to apply to a relevant person—
 - (a) if the Chief Public Health Officer revokes his or her determination under subsection (2)(c); or
 - (b) at the expiration of 28 days from service of the notice under subsection (2)(d); or
 - (c) if the serious disease is declared to be a controlled notifiable condition under this Part,whichever first occurs.
- (5) The fact that this section ceases to apply to a person—
 - (a) does not effect any order, requirement or direction that applies in relation to the person immediately before the time that this section ceases to apply if the serious disease that gave rise to the application of this section has been declared to be a controlled notifiable condition under this Division (and is a controlled notifiable condition at the time that the section ceases to apply); and
 - (b) does not prevent the section applying to the person again if the Chief Public Health Officer has a reason to believe that the person is again suffering from, or has been exposed to, another serious disease (and the other requirements of subsection (2) are satisfied).

72—Children

- (1) If a requirement is imposed under this Part in relation to a child—
 - (a) a parent or guardian of the child who is aware of the requirement must take such steps as are reasonably necessary and available to achieve compliance with the requirement; and
 - (b) any requirement to serve any notice or other document will be satisfied if service is effected on a parent or guardian of the child.
- (2) The regulations may make other modifications to the operation of this Part in relation to its application to children (and those modifications will have effect according to their terms).
- (3) A person who fails to comply with subsection (1)(a) is guilty of an offence.
Maximum penalty: \$25 000.
- (4) In this section—
child means a person under 16 years of age;
parent includes a person *in loco parentis*.

Division 2—Controls

73—Power to require a person to undergo an examination or test

- (1) The Chief Public Health Officer may impose a requirement under this section if subsection (2) or (3) applies.
- (2) This subsection applies if the Chief Public Health Officer has reasonable grounds to believe—
 - (a) that a person has a controlled notifiable condition and the person presents, has presented, or is likely to present, a risk to health through the transmission of a disease constituting that condition; or
 - (b) that an incident has occurred or a circumstance has arisen in which a person could have been exposed to, or could have contracted, a controlled notifiable condition.
- (3) This subsection applies if—
 - (a) an incident has occurred or a circumstance has arisen, while a caregiver or custodian is acting in that capacity, in which, if any of those involved were infected by a disease constituting a controlled notifiable condition, the disease could be transmitted to the caregiver or custodian; and
 - (b) the Chief Public Health Officer has reasonable grounds to believe that the imposition of a requirement under this section is necessary in the interests of a rapid diagnosis and, if appropriate, treatment of any person involved in the incident or connected with the circumstance (whether or not as a caregiver or custodian).

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- (4) However, the Chief Public Health Officer should not act under this section unless the Chief Public Health Officer considers—
- (a) that the person has been given a reasonable opportunity to undertake an examination or testing of the kind that will be subject to a requirement under this section but has failed to do so; or
 - (b) that the imposition of a requirement under this section is reasonably necessary for the purposes of a rapid diagnosis and, if appropriate, treatment of the relevant person.
- (5) A requirement that may be imposed on a person under this section is that the person—
- (a) present himself or herself at such place and time as may be specified by the Chief Public Health Officer in order to undergo a clinical examination or to undertake (or be the subject of) tests, or both; and
 - (b) comply with any requirement imposed by a person who may conduct the examination or carry out the tests.
- (6) Subsection (4)(a) does not apply if the person is unconscious or the Chief Public Health Officer considers that the person does not have the capacity to consent to an examination or testing of the relevant kind.
- (7) If the person is unconscious, subsection (5) is modified so as to allow the Chief Public Health Officer to arrange a clinical examination or tests (or both) for the person.
- (8) A requirement will be imposed by service of an order on the person unless—
- (a) the person is unconscious; or
 - (b) the Chief Public Health Officer considers that urgent action is required in the circumstances of the particular case, in which case an oral order may be given.
- (8a) If an oral order is given under subsection (8)(b), the Chief Public Health Officer must confirm the order by notice in writing served on the person as soon as practicable, but in any event within 48 hours, after giving the order (and a failure to serve a notice in accordance with this subsection will not affect the validity of the order).
- (9) The testing that may be undertaken under this section may include the provision or taking of a sample of blood, urine or other biological specimen.
- (10) If—
- (a) a person is examined or subject to any test under this section; and
 - (b) the examination and any test disclose that the person does not have a controlled notifiable condition,
- the person is entitled to reasonable reimbursement from the Department for costs and expenses directly incurred by the person in attending for the examination and any test.
- (11) An amount payable under subsection (10) may be recovered as a debt.
- (12) The Chief Public Health Officer is entitled to be provided with a report on the outcome of any examination or test conducted under this section (and a person who conducted the examination or test must, at the request of the Chief Public Health Officer, furnish the Chief Public Health Officer with such a report).

(13) In this section—

caregiver or custodian means—

- (a) a person who is employed by, or performs work at, a health service; or
- (b) a person who provides, or who is associated with the provision of, any medical service or other form of service designed to benefit human health; or
- (c) a person who is employed by, or performs work at, a pathology service; or
- (d) a person who—
 - (i) removes human tissue from a person, whether alive or dead; or
 - (ii) handles human tissue,
under the *Transplantation and Anatomy Act 1983*; or
- (e) a police officer; or
- (f) a legal custodian of a person who is in legal or protective custody and any person who is employed or engaged by a legal custodian in the course of keeping that person in legal or protective custody; or
- (g) a person who is within a class prescribed by the regulations for the purposes of this definition;

health service means a health service within the meaning of the *Health Care Act 2008*.

74—Power to require counselling

- (1) If the Chief Public Health Officer has reasonable grounds to believe that a person has, or has been exposed to, a controlled notifiable condition, the Chief Public Health Officer may impose a requirement on the person under this section.
- (2) However, the Chief Public Health Officer should not act under this section unless satisfied that the person has been given a reasonable opportunity to participate in the relevant counselling or activity but has failed to do so.
- (3) A requirement will be imposed by service of an order on the person unless the Chief Public Health Officer considers that urgent action is required in the circumstances of the particular case, in which case an oral order may be given.
- (3a) If an oral order is given under subsection (3), the Chief Public Health Officer must confirm the order by notice in writing served on the person as soon as practicable, but in any event within 48 hours, after giving the order (and a failure to serve a notice in accordance with this subsection will not affect the validity of the order).
- (4) A requirement that may be imposed on a person under this section is that the person participate in 1 or more of the following:
 - (a) counselling;
 - (b) education;
 - (c) other activities relevant to understanding the controlled notifiable condition or the impact or implications of the controlled notifiable condition.

- (5) Without limiting subsection (4), the order may specify the type, nature or extent of any counselling, and the type or details of any information that must be provided to the person.

75—Power to give directions

- (1) If—
- (a) the Chief Public Health Officer has reasonable grounds to believe that a person—
 - (i) has a controlled notifiable condition; or
 - (ii) has been exposed to a controlled notifiable condition; or
 - (iii) could have been exposed to a controlled notifiable condition; and
 - (b) the Chief Public Health Officer considers that an order under this section is reasonably necessary in the interests of public health,
- then the Chief Public Health Officer may give directions to the person under this section.
- (2) However, the Chief Public Health Officer should not act under this section unless satisfied—
- (a) that the person has undertaken counselling that is appropriate in the circumstances, or has refused or failed to undertake counselling that has been made reasonably available to the person; or
 - (b) that counselling is not appropriate or necessary in the circumstances of the particular case; or
 - (c) that urgent action is required in the circumstances of the particular case and that counselling can be provided after action is taken under this section.
- (3) Any direction will be imposed by service of an order on the person unless the Chief Public Health Officer considers that urgent action is required in the circumstances of the particular case, in which case an oral order may be given.
- (3a) If an oral order is given under subsection (3), the Chief Public Health Officer must confirm the order by notice in writing served on the person as soon as practicable, but in any event within 48 hours, after giving the order (and a failure to serve a notice in accordance with this subsection will not affect the validity of the order).
- (4) The directions that may be imposed by an order under this section include:
- (a) a direction that the person remain at a specified place including, without limitation, a hospital or quarantine facility and, if considered to be appropriate by the Chief Public Health Officer, that the person remain isolated;
 - (b) a direction that the person refrain from carrying out specified activities (for example, without limitation, employment, use of public transport or participation in certain events), either absolutely or unless specified conditions are satisfied;
 - (c) a direction that the person refrain from visiting a specified place, or a place within a specified class, either absolutely or unless specified conditions are satisfied;

- (d) a direction that the person refrain from associating with specified persons or specified classes of persons;
 - (e) a direction that the person take specified action to prevent or minimise any health risk that may be posed by the person;
 - (f) a direction that the person attend meetings and provide such information as may be reasonably required in the circumstances;
 - (g) a direction that the person place himself or herself under the supervision of a member of the staff of the Department or a medical practitioner or other health professional nominated by the Chief Public Health Officer and obey the reasonable directions of that person;
 - (h) a direction that the person submit himself or herself to examination by a medical practitioner nominated by the Chief Public Health Officer at such intervals as the Chief Public Health Officer may require;
 - (i) a direction that the person undergo specified medical treatment, including at a specified place and time (or times);
 - (j) such other direction as to the person's conduct or supervision that the Chief Public Health Officer considers to be appropriate in the circumstances.
- (5) The Chief Public Health Officer—
- (a) must not impose a direction under subsection (4)(h) or (i) if the Chief Public Health Officer is satisfied that the person has a conscientious objection to the relevant examination or treatment (as the case may be) due to a religious, cultural or other similar ground; and
 - (b) must not impose a direction under subsection (4)(i) if the treatment would impose a serious threat to the person's health.
- (6) However, if a direction under subsection (4)(h) or (i) would relate to a child, the Chief Public Health Officer may make a direction under either (or both) paragraphs despite a conscientious objection of a parent or guardian of the child if the Chief Public Health Officer considers that the relevant examination or treatment (as the case may be) is in the best interests of the child (and reasonably necessary in the interests of public health).

76—Review by Tribunal

- (1) A person who is the subject of an order, requirement or direction of the Chief Public Health Officer under a preceding section under this Division (including an order, requirement or direction as varied under this Division) may apply to the Tribunal for a review of the order, requirement or direction.
- (2) An application under this section may be instituted at any time during the currency of the order, requirement or direction (and, subject to subsection (3), more than 1 application may be made while the order, requirement or direction is in force).
- (3) If a second or subsequent application is made with respect to the same order, requirement or direction, the Tribunal must first consider whether there has been a significant change in the material circumstances of the case and should, unless the Tribunal in its discretion determines otherwise, decline to proceed with the application (if it appears that the proceedings would simply result in a rehearing of the matter without such a change in circumstances).

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- (5) The Tribunal is to hear and determine an application under this section as soon as is reasonably practicable.

77—Power to require detention

- (1) The Chief Public Health Officer may make an order under this section if—
- (a) the Chief Public Health Officer has reasonable grounds to believe that a person—
 - (i) has a controlled notifiable condition; or
 - (ii) has been exposed to a controlled notifiable condition; or
 - (iii) could have been exposed to a controlled notifiable condition; and
 - (b) either—
 - (i) the person is or has been the subject of 1 or more directions under section 75 and has contravened or failed to comply with a direction; or
 - (ii) the Chief Public Health Officer considers that there is a material risk the person would not comply with 1 or more directions under section 75 if they were to be imposed; or
 - (iii) the Chief Public Health Officer is satisfied that urgent action is required in the circumstances of the particular case such that a direction under section 75 is not appropriate; and
 - (c) the Chief Public Health Officer considers that the person presents, or could present, a risk to public health and that action under this section is justified.
- (2) However, the Chief Public Health Officer should not act under this section unless satisfied—
- (a) that the person has undertaken counselling that is appropriate in the circumstances, or has refused or failed to undertake counselling that has been made reasonably available to the person; or
 - (b) that counselling is not appropriate in the circumstances of the particular case; or
 - (c) that urgent action is required in the circumstances of the particular case and that counselling can be provided after action is taken under this section.
- (3) An order under this section must be served on the person unless the Chief Public Health Officer considers that urgent action is required in the circumstances of the particular case, in which case an oral order may be given.
- (3a) If an oral order is given under subsection (3), the Chief Public Health Officer must confirm the order by notice in writing served on the person as soon as practicable, but in any event within 48 hours, after giving the order (and a failure to serve a notice in accordance with this subsection will not affect the validity of the order).
- (4) An order under this section will be that the person be detained at a specified place while the order is in force.

- (5) An order under this section may contain other requirements relating to the person's conduct or supervision that the Chief Public Health Officer considers to be appropriate in the circumstances.
- (6) Subject to this section—
- (a) an order made on the grounds specified in subsection (1)(a)(i) or (ii)—
 - (i) will be for an initial period not exceeding 30 days; and
 - (ii) will be able to be extended from time to time by the Chief Public Health Officer for periods not exceeding 60 days; and
 - (b) an order made on the grounds specified in subsection (1)(a)(iii)—
 - (i) will be for an initial period not exceeding 48 hours; and
 - (ii) will be able to be extended from time to time by the Chief Public Health Officer for periods not exceeding 30 days.
- (7) If the Chief Public Health Officer considers that it will be necessary to extend an order made on the grounds specified in subsection (1)(a)(i) or (ii) beyond an initial period of 30 days, the Chief Public Health Officer must, before the expiration of that period, apply to the Supreme Court for a review of the order.
- (8) If an application is made under subsection (7)—
- (a) the order may be extended beyond the initial period of 30 days pending the outcome of the application to the Supreme Court; and
 - (b) the Supreme Court should seek to hear and determine the application as soon as is reasonably practicable after it is made to the Court; and
 - (c) the Supreme Court may, on hearing the application, confirm, vary or revoke the order that has been made by the Chief Public Health Officer.
- (8a) If the Chief Public Health Officer considers that it will be necessary to extend an order made on the grounds specified in subsection (1)(a)(iii) beyond an initial period of 48 hours, the Chief Public Health Officer must, before the expiration of that period, apply to the Magistrates Court for a review of the order.
- (8b) If an application is made under subsection (8a)—
- (a) the order may be extended beyond the initial period of 48 hours pending the outcome of the application to the Magistrates Court; and
 - (b) the Magistrates Court should seek to hear and determine the application as soon as is reasonably practicable after it is made to the Court; and
 - (c) the Magistrates Court may, on hearing the application, confirm, vary or revoke the order that has been made by the Chief Public Health Officer.

Note—

See also the power in subsection (13) to determine examination periods.

- (9) Furthermore, a person must not be detained under this section for a period exceeding 6 months in total unless the Supreme Court has, on application by the Chief Public Health Officer made for the purposes of this subsection, confirmed the order (with or without any variation made by the Court).

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- (10) The Supreme Court will be constituted of a single Judge for the purposes of proceedings under subsections (7), (8) and (9).
 - (11) A Judge, in acting under a preceding subsection, may make any consequential or ancillary order or direction, or impose any conditions, the Judge considers appropriate (including that the relevant person be released pending the outcome of the hearing of the matter (if the Judge thinks fit) on such conditions, if any, as the Judge may determine, or that the matter be brought back before the Supreme Court constituted of a single Judge at a time, or within a period or periods, specified by the Judge (and, if a matter is brought back before the Court, then a Judge may make such orders as the Judge thinks fit)).
 - (12) The preceding subsections do not limit the ability of a person to apply for a review of an order under this section under section 78.
 - (13) A person who is detained under this section must be examined by a medical practitioner at intervals not exceeding—
 - (a) 30 days; or
 - (b) such shorter period or periods as a Supreme Court Judge or Magistrate may determine having regard to the nature of the controlled notifiable condition and the extent to which the person has been affected by that condition.
 - (14) The Chief Public Health Officer must facilitate any reasonable request for communication made by a person detained under this section.

78—Review of detention orders by Supreme Court

- (1) A person who is the subject of an order of the Chief Public Health Officer under section 77 may apply to the Supreme Court for a review of the order.
- (2) An application under this section may be instituted at any time during the currency of the order (and, subject to subsection (3), more than 1 application may be made while the order is in force).
- (3) If a second or subsequent application is made under this section with respect to the same order, the Supreme Court must first consider whether there has been a significant change in the material circumstances of the case and should, unless the Supreme Court in its discretion determines otherwise, decline to proceed with the application (if it appears that the proceedings would simply result in a rehearing of the matter without such a change in circumstances).
- (4) Subject to complying with subsection (3), the Supreme Court may, on hearing an application under this section—
 - (a) confirm, vary or revoke the order, or substitute any order;
 - (b) remit the subject matter to the Chief Public Health Officer for further consideration;
 - (c) dismiss the matter;
 - (d) make any consequential or ancillary order or direction, or impose any conditions, that it considers appropriate.
- (5) The Supreme Court will be constituted of a single Judge for the purposes of this section.

79—Warrants

- (1) If the Chief Public Health Officer considers it necessary to do so, the Chief Public Health Officer may apply to a magistrate—
 - (a) for the issue of a warrant for the apprehension by an authorised person of a person—
 - (i) who has failed to comply with an order, requirement or direction under this Division; or
 - (ii) who is the subject of an order that has not been served on the person despite reasonable efforts to do so; or
 - (iii) who—
 - (A) has a controlled notifiable condition, has been exposed to a controlled notifiable condition or could have been exposed to a controlled notifiable condition; and
 - (B) is engaging in, or has engaged in, conduct that creates a risk to others in respect of the controlled notifiable condition.
 - (b) for the person to whom the warrant relates—
 - (i) to be subject to any examination, test or other action required by the order, requirement or direction to which the warrant relates; or
 - (ii) to be brought before a magistrate.
- (2) If or when a person is brought before a magistrate, the magistrate may take such action as the magistrate thinks appropriate in the circumstances including (without limitation) action to achieve compliance with the relevant order, requirement or direction, including—
 - (a) by making such orders as the magistrate thinks fit;
 - (b) by issuing a warrant for the detention of the relevant person until the person is willing to comply with the order, requirement or direction.
- (3) Without limiting subsection (1) or (2), a warrant under this section may provide that the person be held in a place of quarantine or isolation—
 - (a) for a period determined by the magistrate, or from time to time subject to periodic reviews by a magistrate; or
 - (b) until otherwise determined by a magistrate.
- (4) An authorised person is authorised to take any action contemplated by a warrant under this section (including to take a person to any place and to restrain a person while any examination or testing is undertaken (including testing involving the taking of a blood, urine or other biological sample)).
- (5) Without limiting subsection (4), reasonable force may be used in the execution of a warrant under this section.
- (6) In the exercise of powers under a warrant, an authorised person may be accompanied by such assistants as may be necessary or desirable in the circumstances.
- (7) A right of appeal exists to the Supreme Court (constituted of a single judge) against a decision of a magistrate under this section.

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- (8) On an appeal, the Supreme Court may—
- (a) confirm, vary or quash the magistrate's decision;
 - (b) make any order that the justice of the case may require.
- (9) Subject to an appeal, an order of a magistrate under this section will be taken to be an order of the Magistrates Court.
- (10) In this section—
- authorised person* means—
- (a) a police officer; or
 - (b) a person authorised by the Chief Public Health Officer to act as an authorised person under this section.

80—General provisions relating to orders, requirements and directions

- (1) An order, requirement or direction under this Division may be given or imposed on a person on 1 or more occasions.
- (2) Any combination of orders, requirements or directions under this Division may be given or imposed on a person at any time.
- (3) The Chief Public Health Officer may at any time, by notice served on a person, vary or rescind an order, requirement or direction under this Division.
- (4) If the Chief Public Health Officer serves an order or notice on a person under this Division, the order or notice must be accompanied by a notice in a form determined by the Chief Public Health Officer that—
 - (a) sets out the grounds on which the order or notice is made; and
 - (b) contains a statement of the person's rights under this Act (including a person's right to apply for a review under this Division); and
 - (c) contains any other information determined by the Chief Public Health Officer to be relevant or appropriate.

81—Duty to comply

A person who is the subject of an order, requirement or direction under this Division must not, without reasonable excuse, contravene or fail to comply with the order, requirement or direction.

Maximum penalty: \$25 000.

Expiation fee: \$750.

Division 3—Related matters

82—Advisory Panels

- (1) The Chief Public Health Officer may establish a Case Management and Co-ordination Advisory Panel (an *Advisory Panel*) to advise the Chief Public Health Officer on the management of a person who is, or a group of persons who are, the subject of an order, requirement or direction under this Part.

- (2) An Advisory Panel will consist of—
 - (a) a legal practitioner; and
 - (b) a person who is considered by the Chief Public Health Officer to be an expert in infectious diseases; and
 - (c) any other person who is considered by the Chief Public Health Officer to be an appropriate member of the Advisory Panel.
- (3) A person will be appointed to an Advisory Panel on conditions determined by the Chief Public Health Officer after consultation with the Minister.
- (4) An Advisory Panel must perform its functions—
 - (a) after taking into account any determination of the Chief Public Health Officer as to the scope or performance of its functions in the circumstances of the particular case; and
 - (b) in accordance with any protocols under subsection (5).
- (5) The Minister may, as the Minister thinks fit, determine various protocols that must be complied with by Advisory Panels in the performance of their functions.
- (6) Information (including confidential information) may be disclosed to an Advisory Panel in connection with the performance of its functions without the breach of any law or principle of professional ethics.
- (7) A member of an Advisory Panel must not make use of or disclose information gained as a result of, or in connection with, the functions of the Advisory Panel except—
 - (a) to the extent necessary for the proper performance of those functions; or
 - (b) to the extent allowed by the regulations.

83—Interstate orders

- (1) In this section—

corresponding law means a law of another State declared by the regulations to be a corresponding law;

order includes a notice, requirement or direction;

State includes a Territory.
- (2) If—
 - (a) a person is subject to an order under a corresponding law; and
 - (b) the terms of an order provide for matters that could be the subject (wholly or substantially) of an order under this Part; and
 - (c) the person enters the State,then, subject to subsections (3) and (4), the order will have effect in this State as if the order had been made under this Part.
- (3) An order that has effect in this State under subsection (2)—
 - (a) may, by notice served on the relevant person, be varied by the Chief Public Health Officer, as it applies in this State, in such manner as the Chief Public Health Officer thinks fit; and

- (b) will cease to have effect in this State if—
 - (i) the order expires or is revoked under the corresponding law; or
 - (ii) the order is revoked by the Chief Public Health Officer acting under this provision.
- (4) The cessation of the operation of an order under this section does not prevent an order subsequently being made under this Part in relation to the same person.

84—Protection of information

A document held or produced by the Chief Public Health Officer, or any other person acting in the course of official duties, for the purposes of this Part that relates to a particular person is not subject to access under the *Freedom of Information Act 1991*.

Part 11—Management of significant emergencies

85—Principles

The principles set out in section 14 have particular application to this Part.

86—Public health incidents

- (1) If it appears to the Chief Executive that the nature or scale of an emergency that has occurred, is occurring or is about to occur, is such that it should be declared to be a public health incident, the Chief Executive may, with the approval of the Minister, declare the emergency to be a public health incident.
- (2) A declaration under this section—
 - (a) may be made orally (but if made orally must, as soon as is reasonably practicable, be reduced to writing and a copy provided to the Minister); and
 - (b) subject to this section, remains in force while response operations are being carried out in relation to the emergency (but not for a period exceeding 12 hours).
- (3) The Chief Executive may, at any time, revoke a declaration under this section.

87—Public health emergencies

- (1) If it appears to the Chief Executive that an emergency has occurred, is occurring or is about to occur, the Chief Executive may, with the approval of the Minister, declare the emergency to be a public health emergency (whether or not the emergency has previously been declared to be a public health incident under section 86).
- (2) A declaration under this section—
 - (a) must be in writing and published in a manner and form determined by the Minister; and
 - (b) remains in force for a period specified in the declaration (which must not exceed 14 days) and for such further periods (which may be of any length) as may be approved by the Governor.
- (3) The Chief Executive may, at any time, revoke a declaration under this section.

88—Making and revocation of declarations

- (1) The Public Health Emergency Management Plan may contain guidelines setting out circumstances in which an emergency should be declared to be a public health incident or to be a public health emergency.
- (2) Before making a declaration under this Part, the Chief Executive must consult with—
 - (a) the Chief Public Health Officer; and
 - (b) the State Co-ordinator.
- (3) The Chief Executive must revoke a declaration under this Part at the request of the State Co-ordinator.

89—Powers and functions of Chief Executive

- (1) On the declaration of a public health incident or public health emergency, and while that declaration remains in force, the Chief Executive must take any necessary action to implement the Public Health Emergency Management Plan and cause such response and recovery operations to be carried out as he or she thinks appropriate.
- (2) The Chief Executive must provide information relating to a public health incident or public health emergency to the State Co-ordinator in accordance with any requirements of the State Co-ordinator.

90—Application of Emergency Management Act

- (1) On the declaration of a public health incident or public health emergency, the following provisions of the *Emergency Management Act 2004* apply in relation to the emergency as if those provisions formed part of this Act but subject to the modifications specified in subsection (2) and any other prescribed modifications:
 - (a) Part 4 Division 4 (Powers that may be exercised in relation to declared emergencies) except section 25(1) and (2)(n);
 - (b) Part 4 Division 5 (Recovery operations);
 - (c) Part 5 (Offences);
 - (d) Part 6 (Miscellaneous) except sections 37 and 38;
 - (e) definitions in section 3 of terms used in the above provisions.
- (2) The provisions of the *Emergency Management Act 2004* applied under subsection (1) are modified as follows:
 - (a) a reference to the Minister is to be read as a reference to the Minister responsible for the administration of this Act;
 - (b) a reference to the State Co-ordinator is to be read as a reference to the Chief Executive;
 - (c) a reference to an authorised officer is to be read as a reference to an emergency officer;
 - (d) a reference to the State Emergency Management Plan is to be read as a reference to the Public Health Emergency Management Plan;
 - (e) a reference to an identified major incident is to be read as a reference to a public health incident;

- (f) a reference to a major emergency is to be read as a reference to a public health emergency;
 - (g) a reference to a declaration is to be read as a reference to a declaration under this Part;
 - (h) a reference to this Act (meaning the *Emergency Management Act 2004*) is to be read as a reference to this Part;
 - (i) a reference to section 25(1) of the *Emergency Management Act 2004* is to be read as a reference to section 89(1) of this Act;
 - (j) section 25(2)(m) is to be read as if it did not include the words in brackets.
- (3) An authorised officer may only exercise a power of direction under section 25(2) of the *Emergency Management Act 2004* applied under subsection (1)—
- (a) that the person be isolated or segregated from other persons; or
 - (b) that the person must remain in a particular place,
- if—
- (c) there is no cause, or no reasonable cause, to act under Part 10 or under the *Mental Health Act 2009*; or
 - (d) there are significant public health advantages in acting under the *Emergency Management Act 2004* as applied under this section rather than under Part 10 or under the *Mental Health Act 2009*.
- (4) If—
- (a) a person is subject to a direction under section 25(2) of the *Emergency Management Act 2004* applied under subsection (1)—
 - (i) that the person be isolated or segregated from other persons; or
 - (ii) that the person remain in a particular place; and
 - (b) an authorised officer is satisfied that the person is no longer an immediate risk to public health, or is no longer at risk on account of a public health incident or public health emergency, (as the case requires),
- the direction must be revoked in relation to the person.
- (5) If—
- (a) a person is subject to a direction, or a series of directions, under section 25(2) of the *Emergency Management Act 2004* applied under subsection (1)—
 - (i) that the person be isolated or segregated from other persons; or
 - (ii) that the person must remain in a particular place; and
 - (b) the direction has effect, or the directions together have effect, for a period exceeding 24 hours,
- the person may apply to the Magistrates Court for a review of the direction or directions.
- (6) An application under subsection (5) may be instituted at any time during the currency of a direction (and, subject to subsection (7), more than 1 application may be made while a direction is in force).

- (7) If a second or subsequent application is made with respect to the same direction or directions, the Magistrates Court must first consider whether there has been a significant change in the material circumstances of the case and should, unless the Magistrates Court in its discretion determines otherwise, decline to proceed with the application (if it appears that the proceedings would simply result in a rehearing of the matter without such a change in circumstances).
- (8) The following provisions will apply in connection with an application under subsection (5):
- (a) the making of an application does not suspend the operation of a direction to which the application relates (and the Magistrates Court must not suspend or stay the operation of the direction pending the outcome of the proceedings);
 - (b) the Magistrates Court must consider whether 2 or more applications by separate individuals may be joined or heard together taking into account:
 - (i) the extent to which it is impractical or unreasonable for individual applications to be heard separately in view of the number of applications before the court; and
 - (ii) the extent to which there are questions of fact or law that are sufficiently similar or common across a series of applications; and
 - (iii) the extent to which the directions across a series of applications are the same or similar; and
 - (iv) such other matters as the court thinks fit in order to best manage the applications in the circumstances of the emergency;
 - (c) the Chief Magistrate may make such orders as the Chief Magistrate thinks fit (either in a specific case, in a specific class of cases, or generally with respect to applications under subsection (5)) to assist in dealing with the management and hearing of applications under subsection (5) (and any such order will have effect according to its terms).
- (9) Subject to complying with subsection (7), the Magistrates Court may, on hearing an application under subsection (5)—
- (a) confirm, vary or revoke a direction;
 - (b) remit the subject matter to the person who gave a direction for further consideration;
 - (c) dismiss the matter;
 - (d) make any consequential or ancillary order or direction, or impose any conditions, that it considers appropriate.
- (10) The Magistrates Court may only revoke a direction under subsection (9) if satisfied that the direction is no longer reasonably necessary in the interests of public health.
- (11) The Magistrates Court is to hear and determine an application under subsection (5) as soon as is reasonably practicable.
- (12) A party to proceedings on an application under subsection (5) may appeal against a decision of the Magistrates Court under subsection (9).
- (13) An appeal under subsection (12) will be to the District Court.

- (14) The following provisions will apply in connection with an appeal under subsection (12):
- (a) the making of the appeal does not suspend the operation of a direction that has been confirmed by the Magistrates Court and the District Court may, as it thinks fit, make any other order with respect to the operation of any other direction that has been varied or revoked by the Magistrates Court (including, if the District Court thinks fit, to reinstate or vary an original direction on an interim basis pending the outcome of the appeal);
 - (b) the District Court must consider whether 2 or more appeals by separate individuals may be joined or heard together taking into account:
 - (i) the extent to which it is impracticable or unreasonable for individual appeals to be heard separately in view of the number of appeals before the court; and
 - (ii) the extent to which there are common questions or issues across a series of appeals; and
 - (iii) such other matters as the court thinks fit in order to best manage the appeals in the circumstances of the emergency;
 - (c) the Chief Judge may make such orders as the Chief Judge thinks fit to assist in dealing with the management and hearing of appeals under subsection (12) (and any such order will have effect according to its terms).
- (15) The District Court may, on an appeal under subsection (12)—
- (a) confirm or vary the decision of the Magistrates Court, or substitute its own decision;
 - (b) make any consequential or ancillary order or direction that it considers appropriate.
- (16) The District Court is to hear and determine an appeal under subsection (12) as soon as is reasonably practicable.
- (17) An appeal under subsection (12) will be heard in the Administrative and Disciplinary Division of the District Court (but will not be subject to the application of Subdivision 2 of Part 6 Division 2 of the *District Court Act 1991*).
- (18) A person subject to a direction who is a party to proceedings before a court under this section is not entitled to attend those proceedings but is entitled to be represented at any hearing by a person (who need not be a legal practitioner) nominated by him or her.
- (19) A court must, in dealing with proceedings under this section, take into account the need to ensure that its proceedings do not unduly hamper the work of public officials in dealing with an emergency.
- (20) In this section—
- Magistrates Court*** means the Magistrates Court of South Australia.

Part 12—Notices and emergency situations

Division 1—Interpretation

91—Interpretation

In this Part—

relevant authority means—

- (a) the Chief Public Health Officer; or
- (b) a council.

Division 2—Notices and emergencies

92—Notices

- (1) A relevant authority may issue a notice under this section for the purpose of—
 - (a) securing compliance with a requirement imposed by or under this Act (including the duty under Part 6 or a requirement imposed under a regulation or a code of practice under this Act); or
 - (b) averting, eliminating or minimising a risk, or a perceived risk, to public health.
- (2) Before issuing a notice to secure compliance with the general duty under Part 6, a relevant authority—
 - (a) must have regard to—
 - (i) the number of people affected, or potentially affected, by the breach of the duty;
 - (ii) the degree of harm, or potential degree of harm, to public health on account of the breach of the duty;
 - (iii) any steps that a person in breach of the duty has taken, or proposed to take, to avoid or address the impact of the breach of the duty,and may have regard to such other matters as the relevant authority thinks fit; and
 - (b) subject to this section, must give the person to whom it is proposed that the notice be given a preliminary notice in writing—
 - (i) stating the proposed action, including the terms of the proposed notice and the period within which compliance with the notice will be required; and
 - (ii) stating the reasons for the proposed action; and
 - (iii) inviting the person show, within a specified time (of a reasonable period), why the proposed action should not be taken (by making representations to the relevant authority or a person nominated to act on behalf of the relevant authority).

- (3) In a case where subsection (2)(b) applies, a relevant authority may, after considering representations made within the time specified under subsection (2)(b)—
- (a) issue a notice in accordance with the terms of the original proposal; or
 - (b) issue a notice with modifications from the terms of the original proposal; or
 - (c) determine not to proceed further under this section.
- (4) A relevant authority—
- (a) is not required to give notice under subsection (2)(b) if it considers that urgent or immediate action is required in the circumstances of the particular case; and
 - (b) is not required to give further notice before issuing a notice with modifications under subsection (3)(b).
- (5) A notice under this section—
- (a) subject to subsection (6), must be in the form of a written notice served on the person to whom it is issued; and
 - (b) must specify the person to whom it is issued (whether by name or by a description sufficient to identify the person); and
 - (c) may direct 2 or more persons to do something specified in the notice jointly; and
 - (d) without limiting any other provision, in the case of a notice that relates to the condition of any premises, may be issued to any person who—
 - (i) is the owner or occupier of the premises; or
 - (ii) has the management or control of the premises; or
 - (iii) is the trustee of a person referred to in subparagraph (i) or (ii), or is managing the affairs of such a person on some other basis; and
 - (e) must state the purpose for which the notice is issued and give notice of the requirement or the risk to which it relates; and
 - (f) may impose any requirement reasonably required for the purpose for which the notice is issued including 1 or more of the following:
 - (i) a requirement that the person discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from a relevant authority;
 - (ii) a requirement that the person not carry on a specified activity except at specified times or subject to specified conditions;
 - (iii) a requirement that the person take specified action in a specified way, and within a specified period or at specified times or in specified circumstances;
 - (iv) a requirement that the person take action to prevent, eliminate, minimise or control any specified risk to public health, or to control any specified activity;

- (v) a requirement that the person comply with any specified code or standard prepared or published by a body or authority referred to in the notice;
 - (vi) a requirement that the person undertake specified tests or monitoring;
 - (vii) a requirement that the person furnish to a relevant authority specified results or reports;
 - (viii) a requirement that the person prepare, in accordance with specified requirements and to the satisfaction of the relevant authority, a plan of action to secure compliance with a relevant requirement or to prevent, eliminate, minimise or control any specified risk to public health;
 - (ix) a requirement prescribed under or for the purposes of the regulations; and
 - (g) must state that the person may, within 14 days, apply for a review of the notice under the provisions of this Act.
- (6) An authorised officer may, if of the opinion that urgent action is required, issue an emergency notice imposing a requirement of a kind referred to in subsection (5)(f) as reasonably required in the circumstances.
- (7) An emergency notice may be issued orally (and without compliance with a requirement to give preliminary notice) but, in that event, the person to whom the notice is issued must be advised forthwith of the person's right to apply to the Tribunal for a review of the order.
- (8) If an emergency notice is issued by an authorised officer, the notice will cease to have effect on the expiration of 72 hours from the time of issuing unless confirmed by a notice issued by a relevant authority and served on the relevant person.
- (9) A relevant authority may, by written notice served on a person to whom a notice under this section has been issued by the relevant authority, vary or revoke the notice.
- (10) A person to whom a notice is issued under this section must not, without reasonable excuse, fail to comply with the notice.
- Maximum penalty: \$25 000.
Expiation fee: \$750.
- (11) A person must not hinder or obstruct a person complying with a notice under this section.
- Maximum penalty: \$25 000.
- (12) The Minister may, as the Minister thinks fit, determine various protocols that should be taken into account by a relevant authority under this section.
- (13) A protocol may include guidance as to which relevant authority should act under this section in various classes of cases.
- (14) The Minister should not adopt or vary a protocol under this section except after consultation with—
- (a) the Chief Public Health Officer; and
 - (b) the LGA.

- (15) A relevant authority is not required to comply with any other procedure, or to hear from any other person, except as provided by this section before it issues a notice under this section.

93—Action on non-compliance with notice

- (1) If the requirements of a notice under this Part are not complied with, a relevant authority may take any action required by the notice.
- (2) Action to be taken by a relevant authority under subsection (1) may be taken on the relevant authority's behalf by an authorised officer, a member of the Department, or another person authorised by the relevant authority for the purpose.
- (3) A person taking action under this section may enter any relevant premises at any reasonable time.
- (4) The reasonable costs and expenses incurred by a relevant authority in taking action under this section may be recovered by the relevant authority as a debt from the person who failed to comply with the requirements of the notice.
- (5) If an amount is recoverable from a person by a relevant authority under this section, the relevant authority may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid.
- (6) In addition, where an amount recoverable under this section relates to action taken in relation to any land (including a building or other structure on land), the amount will be a charge on the land in favour of the relevant authority in accordance with a scheme prescribed by the regulations (with a priority determined in accordance with the regulations).

94—Action in emergency situations

- (1) If an authorised officer believes, on reasonable grounds—
 - (a) that a situation is creating, or likely to create, a risk to public health; and
 - (b) that immediate action is required,the authorised officer may, after giving such notice (if any) as may be reasonable in the circumstances, take action or cause action to be taken as necessary to avert, control or eliminate the risk.
- (2) In the exercise of powers under this section, an authorised officer has, in addition to any other powers of an authorised officer under this Act, power to—
 - (a) enter and take possession of any premises or vehicle (taking such action as is reasonably necessary for the purpose); and
 - (b) seize, retain, move or destroy or otherwise dispose of any substance or thing.
- (3) The action taken under subsection (2) may include the use of force to enter any premises or vehicle without a warrant if the authorised officer believes, on reasonable grounds, that the circumstances requires such a step to be taken.
- (4) Action may be taken under this section whether or not a notice has been given to a person in relation to the risk under a preceding section.

- (5) The reasonable costs and expenses incurred by an authorised officer in taking action under this section may be recovered by—
 - (a) in the case of action taken by a State authorised officer—the Crown; or
 - (b) in the case of action taken by a local authorised officer—the relevant council, from any person who caused the risk to which the action relates, as a debt.

Division 3—Reviews and appeals

95—Reviews—notices relating to general duty

- (1) This section applies if a person has been issued with a notice under this Part to secure compliance with the duty under Part 6.
- (2) A person to whom a notice has been issued may apply for a review of the notice under this section.
- (3) The review will be to the *Public Health Review Panel* (the **Review Panel**) constituted under this section.
- (4) The application must be made within 14 days after the notice is served on the person unless the Review Panel, in its discretion, allows an extension of time.
- (5) Subject to a determination of the Review Panel to the contrary in relation to a particular matter, the operation of a notice subject to a review is not suspended pending the outcome of the proceedings.
- (6) A review under this section is to be conducted as a full review of the matter to which the review relates.
- (7) For the purposes of this section, the Review Panel will from time to time, in relation to a particular review, be constituted by—
 - (a) the Chief Public Health Officer (who will be the presiding member); and
 - (b) 2 members of SAPHC selected by the Chief Public Health Officer for the purposes of the particular review; and
 - (c) any other person or persons selected by the Chief Public Health Officer in order to provide additional expertise on the panel.
- (8) If the review relates to a notice issued by the Chief Public Health Officer, a delegate of the Chief Public Health Officer must act in place of the Chief Public Health Officer under subsection (7).
- (9) A reference to a member of SAPHC under subsection (7)(b) extends to a deputy of a member of SAPHC.
- (10) 3 members of the Review Panel constitute a quorum of the Review Panel.
- (11) A decision carried by a majority of the votes cast by the members of the Review Panel present at any proceedings of the Review Panel is a decision of the Review Panel.
- (12) Each member present at a meeting of the Review Panel is entitled to 1 vote on a question arising for decision and, in the event of an equality of votes, the person presiding has a second, or casting, vote.
- (13) A party is entitled to appear personally or, with leave of the Review Panel, by representative, in proceedings before the Review Panel.

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- (14) The Review Panel may proceed to determine a matter in the absence of a party if the party has had notice of the time and place of the proceedings and fails to appear.
- (15) The Review Panel may, on its own initiative or on application by a party to the relevant proceedings—
- (a) dismiss or determine any proceedings that appear—
 - (i) to be frivolous or vexatious; or
 - (ii) to have been instituted for the purpose of delay or obstruction, or for some other improper purpose;
 - (b) bring any proceedings to an end that appear—
 - (i) to be more appropriately suited to proceedings before the Tribunal rather than the Review Panel; or
 - (ii) to be unable to be satisfactorily resolved (or resolved within a reasonable period) by proceedings before the Review Panel; or
 - (c) bring any proceedings to an end for any other reasonable cause.
- (16) In any proceedings, the Review Panel is not bound by the rules of evidence but may inform itself about any matter relating to the proceedings in such manner as it thinks fit.
- (17) The Review Panel may, on hearing any proceedings under this section—
- (a) confirm, vary or revoke any requirement to which the review relates and, if appropriate, discharge the relevant notice;
 - (b) substitute any requirement or notice that could have been made or given in the first instance;
 - (c) remit the subject matter to the relevant authority for further consideration;
 - (d) dismiss the matter;
 - (e) make an order for costs, but only to the extent that may be necessary in the interests of justice;
 - (f) make any consequential or ancillary order or direction, or impose any conditions, that it considers appropriate.
- (18) The Review Panel is to hear and determine an application under this section as soon as is reasonably practicable and in any event within 2 months unless the Chief Public Health Officer allows an extension of time in a particular case.

96—Review by Tribunal

- (1) A person who has been issued with a notice under this Part (including a notice to secure compliance with the duty under Part 6) may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for review—
- (a) of the notice; or
 - (b) if review proceedings have been taken under section 95—of the outcome of the review (including any order or other matter made or imposed at the end of the proceedings on the review).

- (2) To avoid doubt, a person who has been issued with a notice to secure compliance with the general duty may apply to the Tribunal for a review under this section without the need to have already applied to the Review Panel for review of the notice under section 95.
- (3) A council may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of the outcome of review proceedings by the Review Panel under section 95.
- (4) An application for review must be made within 14 days after—
 - (a) in the case of a review under subsection (1)(a)—the notice is served on the person;
 - (b) in the case of a review under subsection (1)(b) or (3)—the review proceedings under section 95 end.
- (5) A relevant authority is entitled to be a party to any proceedings under this section.

Part 12A—Immunisation and Early Childhood Services

96A—Interpretation

In this Part—

early childhood service means a service for the education or care (or both) of a child under the age of 6 years but does not include the following services:

- (a) the provision of primary education provided at or in connection with a primary school;
- (b) a service comprising a person engaged by a parent or guardian of a child to babysit the child in the child's home;
- (c) a babysitting, playgroup or childminding service that is organised informally by the parents or guardians of the children concerned;
- (d) a service provided for a child by a family member of the child or friend of the family of the child personally under an informal arrangement where no offer to provide that service was advertised;
- (e) a service principally conducted to provide tuition to 1 child or a number of children who ordinarily reside together;
- (f) a service principally conducted to provide instruction in a particular activity (such as sport, dance and music);
- (g) a service where a parent or guardian of each child remains on site and is available to care for their child if required;
- (h) a service comprising out of school care;
- (i) care provided to a child by a person in accordance with a parenting order under the *Family Law Act 1975* of the Commonwealth or the *Family Court Act 1997* of the Commonwealth;
- (j) care provided to a child under the *Children and Young People (Safety) Act 2017*;
- (k) any other service, or service of a kind, prescribed by the regulations;

Example—

Childcare, family day care, pre-school, kindergarten and early learning centre services are early childhood services for the purposes of this Part.

immunisation record means any of the following records and documents relating to the immunisation status of a child:

- (a) an extract, or extracts, from the Australian Immunisation Register under the *Australian Immunisation Register Act 2015* of the Commonwealth;
- (b) a document of a kind approved by the Chief Public Health Officer;
- (c) a certificate in writing issued by the Chief Public Health Officer;

vaccine preventable disease has the same meaning as in the *Australian Immunisation Register Act 2015* of the Commonwealth.

96B—Requirement to provide immunisation records to service provider

- (1) The parent or guardian of a child that is enrolled or attends at premises for the purposes of the provision of an early childhood service must provide immunisation records relating to the child to the provider of the service in accordance with the requirements of the Chief Public Health Officer.
- (2) Requirements of the Chief Public Health Officer made for the purposes of subsection (1)—
 - (a) must be published in the Gazette; and
 - (b) may be varied, revoked or substituted by subsequent notice in the Gazette; and
 - (c) may, without limitation, make provision in relation to—
 - (i) the times at which documents must be provided under that subsection; and
 - (ii) the currency of such documents.
- (3) A provider of an early childhood service must take reasonable steps to ensure that the parent or guardian of a child that is enrolled or attends at premises for the purposes of the provision of the early childhood service complies with the requirements of subsection (1).
Maximum penalty: \$ 2 500.
- (4) A provider of an early childhood service must, for the period of a child's enrolment for the provision of the service, keep a copy of all immunisation records provided to the provider in respect of the child under subsection (1).
Maximum penalty: \$ 2 500.

96C—Provision of information to Chief Public Health Officer on outbreak of vaccine preventable disease

- (1) The Chief Public Health Officer may, if satisfied that there is an outbreak, or a risk of an outbreak, of a vaccine preventable disease at premises at which early childhood services are provided, require the person with responsibility for providing the service at the premises to provide to the Chief Public Health Officer—
 - (a) the name and date of birth of each child that is enrolled, or routinely attends, at the premises for the provision of an early childhood service; and
 - (b) immunisation records relating to each child referred to in paragraph (a) provided pursuant to section 96B(1); and
 - (c) the contact details for a parent or guardian of a child referred to in paragraph (a); and
 - (d) any other prescribed information.
- (2) Information required to be provided under subsection (1) must be provided to the Chief Public Health Officer within 24 hours of the receipt of the request for the information.
- (3) A person who fails to comply with a requirement of the Chief Public Health Officer to provide information in accordance with this section is guilty of an offence.
Maximum penalty: \$30 000.

96D—Exclusion of children from premises on outbreak of vaccine preventable disease

- (1) The Chief Public Health Officer may, by notice in writing, direct that a specified child is excluded from attending at specified premises at which early childhood services are provided if satisfied that—
 - (a) the child has been diagnosed with a vaccine preventable disease; or
 - (b) there is an outbreak of a specified vaccine preventable disease at the premises and the child would, if the child attended at the premises, be at a material risk of contracting the vaccine preventable disease.
- (2) For the purposes of subsection (1)(b), an outbreak of a vaccine preventable disease may (without limitation) exist at premises if 1 or more persons who routinely attend at the premises have been diagnosed with the specified vaccine preventable disease.
- (3) A direction of the Chief Public Health Officer under subsection (1)—
 - (a) remains in force for the period specified in the direction; and
 - (b) may be varied or revoked by the Chief Public Health Officer at any time by subsequent notice in writing.
- (4) A direction under subsection (1) in respect of a specified child and any subsequent variation or revocation of such a direction must be served on the person responsible for the provision of early childhood services at the premises by—
 - (a) personal service on the person or an agent of the person; or

- (b) leaving it at the premises specified in the notice with a person apparently employed or engaged in the provision of an early childhood service at the premises; or
 - (c) email, fax or text message to an email address, fax number or telephone number known to be used by the person (in which case the direction will be taken to have been served at the time of transmission); or
 - (d) if the person serving the notice has made a reasonable attempt to serve the direction under paragraphs (a), (b) and (c) but has been unsuccessful—affixing it to the premises at or near to the entrance of the premises.
- (5) A copy of a direction under subsection (1) in respect of a specified child and any subsequent variation or revocation of such a direction must be given to a parent or guardian of the child by the Chief Public Health Officer as soon as is reasonably practicable after making the direction.
- (6) A person must not provide an early childhood service to a child at premises from which the child is excluded pursuant to a direction under subsection (1).
- Maximum penalty: \$30 000.

96E—Exemptions

- (1) The Chief Public Health Officer may, by notice in writing, grant an exemption from this Part or specified provisions of this Part—
- (a) in relation to a specified child or children of a specified class; or
 - (b) to specified persons or persons of a specified class; or
 - (c) in relation to specified early childhood services or early childhood services of a specified class.
- (2) An exemption under subsection (1) may—
- (a) be subject to such conditions as the Chief Public Health Officer thinks fit; and
 - (b) apply for a specified period, until further notice or indefinitely; and
 - (c) vary according to the circumstances to which it is expressed to apply.
- (3) The Chief Public Health Officer may, by subsequent notice in writing—
- (a) vary or revoke an exemption;
 - (b) vary or revoke a condition of an exemption or attach new conditions to an exemption;
 - (c) vary the circumstances to which an exemption is expressed to apply.
- (4) A person who contravenes or fails to comply with a condition of an exemption imposed under this section is guilty of an offence.
- Maximum penalty: \$2 500.

Part 13—Miscellaneous

97—Tests on deceased persons

- (1) If the Chief Public Health Officer has reasonable grounds to believe that a deceased person has had a condition of public health concern, the Chief Public Health Officer may, by instrument in writing, authorise the carrying out of any test or procedure specified in the instrument on the body of the deceased person.
- (2) If the Chief Public Health Officer has authorised the carrying out of a test or procedure under this section, an authorised officer, accompanied by such assistants as the authorised officer thinks necessary, may—
 - (a) enter premises (using such force as is necessary) in which the authorised officer reasonably believes the body of the deceased person is located; and
 - (b) search the premises for the body,and, on finding the body, the authorised tests or procedure may be carried out in accordance with this section.
- (3) However, an authorised officer must not exercise a power to enter premises under subsection (2) unless—
 - (a) the authorised officer has made a reasonable attempt to contact the occupier of the premises and advise the occupier of the intention to exercise such powers; and
 - (b) if force is required to enter premises—the authorised officer is accompanied by a police officer.
- (4) A test or procedure authorised under this section must be carried out by—
 - (a) a medical practitioner; or
 - (b) a person who is qualified as required by the regulations to carry out tests or procedures of the relevant type.
- (5) A person carrying out a test or procedure under this section may be assisted by any other person.
- (6) Nothing in this section authorises the exhumation of a body.

98—Delegation by Chief Executive

- (1) The Chief Executive may delegate a function or power conferred on the Chief Executive under this Act—
 - (a) to a specified person or body; or
 - (b) to a person occupying or acting in a specified office or position.
- (2) A delegation—
 - (a) may be made subject to conditions or limitations specified in the instrument of delegation; and
 - (b) if the instrument of delegation so provides, may be further delegated by the delegate; and

- (c) is revocable at will and does not prevent the delegator from acting personally in a matter.

99—Confidentiality

- (1) If a person, in the course of official duties, obtains personal information relating to another, the person must not intentionally disclose that information except to the extent that the person is authorised to do so under subsection (2).

Maximum penalty: \$25 000.

- (2) A person is authorised to disclose information if the person is—
- (a) disclosing information in the course of official duties, or for any other purpose connected with the administration of this Act or a law of another State or a Territory of the Commonwealth or of the Commonwealth; or
 - (b) disclosing information as required by law; or
 - (c) without limiting paragraph (b), disclosing information as required by a court or tribunal constituted by law; or
 - (d) disclosing information at the request, or with the consent, of the person to whom the information relates or a guardian or medical agent of the person; or
 - (e) disclosing information to a relative, carer or friend of the person to whom the information relates if—
 - (i) the disclosure is reasonably required for the treatment, care or recovery of the person; and
 - (ii) there is no reason to believe that the disclosure would be contrary to the person's best interests; or
 - (f) subject to the regulations (if any)—
 - (i) disclosing information to a health or other service provider if the disclosure is reasonably required for the treatment, care or recovery of the person to whom the information relates; or
 - (ii) disclosing information by entering the information into an electronic records system established for the purpose of enabling the recording or sharing of information between persons or bodies involved in the provision of health services; or
 - (iii) disclosing information to such extent as is reasonably required in connection with the management or administration of a hospital or ambulance service; or
 - (g) without limiting a preceding paragraph, disclosing information to the extent to which it is reasonably necessary—
 - (i) to provide treatment to the person; or
 - (ii) to prevent the transmission of any disease constituting a controlled notifiable condition; or
 - (h) without limiting a preceding paragraph, disclosing information if the disclosure is reasonably required to lessen or prevent a serious threat to the life, health or safety of a person, or a serious threat to public health; or

- (i) disclosing information for medical, research or statistical purposes if—
 - (i) there is no reason to believe that the disclosure would be contrary to the person's best interests; and
 - (ii) the disclosure is of a kind approved by the Chief Public Health Officer for the purposes of this paragraph; or
- (j) disclosing information in accordance with the regulations.
- (3) Subsection (2)(e) does not authorise the disclosure of information in contravention of a direction given by the person to whom the information relates.
- (4) In this section—

domestic partner—a person is a domestic partner of another if the person is a domestic partner of the other within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

personal information means—

- (a) medical information; or
- (b) information relating to a person's personal affairs;

relative—a person is a relative of another if the person is a spouse, domestic partner or parent of the other of or over 18 years of age or a brother, sister, son or daughter of the other.

100—Confidentiality and provision of certain information

- (1) This section applies to a person employed or engaged by the State for the purpose of—
 - (a) monitoring public health in the State; or
 - (b) investigating public health problems within the State; or
 - (c) assessing and improving the quality of public health in the State.
- (2) The Minister may, by instrument in writing, authorise a person to whom this section applies to have access to personal information relating to the performance of any function referred to in subsection (1).
- (3) Personal information may be disclosed to a person authorised under subsection (2), and to any person providing technical, administrative or secretarial assistance to that person, without breach of any law or any principle of professional ethics.
- (4) A person must not disclose personal information obtained directly or indirectly pursuant to this section unless—
 - (a) the disclosure is made in the course of official duties; or
 - (b) the disclosure is made with the consent of the person to whom the information relates; or
 - (c) the disclosure is required by a court or tribunal constituted by law; or
 - (d) the disclosure is authorised under the regulations.

Maximum penalty: \$25 000.

(5) In this section—

personal information means—

- (a) medical information; or
- (b) information relating to a person's personal affairs.

101—Service of notices or other documents

- (1) Subject to this section, if this Act requires or authorises a notice, order or other document to be served on, or given to, a person, the notice, order or document may—
 - (a) be served on, or given to, the person or an agent of the person; or
 - (b) be left for the person at his or her place of residence or business with someone apparently over the age of 16 years; or
 - (c) be sent by post to the person or an agent of the person at his or her last known address; or
 - (d) if the notice, order or document is to be served on the owner of land, the land is unoccupied, and the person seeking to serve the notice, order or document has taken reasonable steps to effect service under the other paragraphs of this subsection but has been unsuccessful—be served by fixing it to some conspicuous part of the land; or
 - (e) if the notice, order or document is to be served on the occupier of land—be sent by post to the occupier at the address of the land; or
 - (f) be served on the person by fixing it to, or leaving it on, a vessel that the person is apparently in charge of, or expected to board at some stage, if the person giving or serving the notice, order or document has reasonable grounds to believe that service in this manner will bring the notice, order or document to the attention of the person to be served; or
 - (g) be sent to the person by fax or email to a fax number or email address provided by the person (in which case the notice, order or document will be taken to have been served or given at the time of transmission); or
 - (h) be served or given in some other manner prescribed by the regulations.
- (2) Without limiting subsection (1), a notice, order or document to be served on or given to a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth may be served or given in accordance with that Act.
- (3) Subject to the regulations, a notice, order or document required or authorised to be given to an owner of land may, if it is to be served personally, be served on the owner, one of any joint owners, or the agent of the owner.
- (4) Subject to this section, an order under Part 10 must be served personally on the relevant person.
- (5) In the event that personal service of an order under Part 10 is not reasonably practicable, such an order may be served in a manner contemplated by subsections (1)(a), (b) or (c).
- (6) Subsection (4) does not apply to a written notice confirming an oral order made under Part 10.

102—Immunity

- (1) No personal liability attaches to—
 - (a) the Chief Public Health Officer or Chief Executive; or
 - (b) a member of a body constituted under this Act; or
 - (c) an authorised officer or any other person engaged in the administration of this Act,
for an honest act or omission in the performance, exercise or discharge, or purported performance, exercise or discharge, of a function, power or duty under this Act.
- (2) Subject to subsection (3), a liability that would, but for subsection (1), lie against a person lies instead against the Crown.
- (3) A liability that would, but for subsection (1), lie against an officer, employee, agent or contractor of a council lies instead against the council.
- (4) In addition, no action lies against a person (or an employer or contracting party with respect to a person) who in good faith and with reasonable care—
 - (a) takes a sample of blood, urine or other material in accordance with this Act;
or
 - (b) conducts a test for the purposes of this Act; or
 - (c) provides a report about any test results under this Act.

103—Protection from liability

- (1) A failure by a designated authority to perform a function under this Act, or a breach of a duty imposed on a designated authority under this Act, does not give rise to any civil liability.
- (2) In this section—

designated authority means—

 - (a) the Minister; or
 - (b) the Chief Public Health Officer; or
 - (c) a council; or
 - (d) SAPHC.

104—False or misleading information

A person must not, in connection with a requirement or direction imposed by or under this Act, provide any information or produce or furnish any document that is false or misleading in a material particular.

Maximum penalty: \$25 000.

105—Offences

- (1) Proceedings for an offence against this Act may only be commenced by—
 - (a) the Minister; or
 - (b) the Director of Public Prosecutions; or

-
- (c) the Chief Public Health Officer; or
 - (d) an authorised officer; or
 - (e) the chief executive officer of a council; or
 - (f) a police officer; or
 - (g) a person acting on the written authority of the Minister.
- (2) An apparently genuine document purporting to be under the hand of the Minister and to authorise the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of an authorisation under subsection (1)(g).

106—Offences by bodies corporate

- (1) If a body corporate is guilty of a prescribed offence, 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 the director proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.
- (2) If a body corporate is guilty of an offence against section 57(3), each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person if the prosecution proves that—
- (a) the member knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and
 - (b) the member was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and
 - (c) the member failed to exercise due diligence to prevent the commission of the offence.
- (3) In this section—
- prescribed offence* means an offence against section 57(1), 57(2), 58 or 92(10).

107—Continuing offences

- (1) If an offence against a provision of this Act is committed by a person by reason of a continuing act or omission—
- (a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount equal to one fifth of the maximum penalty prescribed for that offence; and
 - (b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction of not more than an amount equal to one fifth of the maximum penalty prescribed for that offence.
- (2) For the purposes of this section, an obligation to do something is to be regarded as continuing until the act is done notwithstanding that any period within which, or time before which, the act is required to be done has expired or passed.

108—Evidentiary provision

- (1) In any proceedings, if the court, Review Panel or Tribunal is satisfied that a designated entity has assessed a risk to public health in connection with the administration or operation of this Act, the court, Review Panel or Tribunal (as the case requires) must, in the absence of proof to the contrary, accept that assessment as evidence of the fact that a risk to public health existed or has occurred and, insofar as may be reasonably demonstrated by that assessment, the extent or significance of the risk.
- (2) In this section—

designated entity means—

 - (a) the Chief Public Health Officer; or
 - (b) an authorised officer; or
 - (c) a council.

109—Regulations

- (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) require the furnishing of reports (including technical or expert reports), returns, documents or other forms of information relevant to public health (including the management of any system or infrastructure associated with public health) to the Chief Public Health Officer or other prescribed person or body;
 - (b) require the keeping of records, statistics and other forms of information by any person or body that performs a function under or pursuant to this Act (and the provision of reports based on that information);
 - (c) prohibit, restrict or regulate the manufacture, possession, transport, storage, use or disposal of any substance, material or equipment that may create a risk to public health;
 - (d) provide for the removal or destruction of any material, substance or equipment that creates a risk to public health;
 - (e) set standards or procedures that must be observed to protect public health (including with respect to the management or inspection of any infrastructure or other facility) and provide for public health planning (including in connection with the operation of any other Act);
 - (f) prohibit, restrict or regulate any activity, or the use or sale of any substance, equipment or material, or the use or installation of any infrastructure, that is relevant to the management of public health;
 - (g) prescribe information that must be provided to any person or body in relation to any activity, or the use of any substance, equipment or material, that is relevant to the management of public health;
 - (h) authorise or require the taking of specified measures to prevent the occurrence or spread of any notifiable condition;

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- (i) authorise or require the taking of specified measures to manage any non-communicable condition (including in relation to preventing or reducing the incidence of any such condition);
 - (j) provide for such matters as are necessary in consequence of conditions directly or indirectly caused by an emergency declared to be a public health incident or public health emergency under this Act;
 - (k) provide for the analysis or testing of samples taken under or for the purposes of this Act, including—
 - (i) the persons who may analyse or test those samples; and
 - (ii) the places where those samples may be analysed or tested; and
 - (iii) the reporting of the results of the analysis or testing of those samples;
 - (l) without limiting a preceding paragraph, regulate the construction, installation, alteration, maintenance and operation, and provide for the inspection, of any facility, infrastructure or structure designed for human use;
 - (m) without limiting a preceding paragraph, regulate wastewater systems (or schemes associated with wastewater systems), including by—
 - (i) requiring approvals for specified classes of wastewater systems or providing for the referral of applications for approvals in relation to wastewater systems to specified persons or bodies; and
 - (ii) in connection with the implementation or operation of a scheme for a wastewater system for a town, regional area or other community—
 - (A) requiring public notification of the scheme; and
 - (B) requiring, or empowering a prescribed authority to require, installation, alteration or connection of wastewater systems for the purposes of the scheme; and
 - (iii) regulating the connection or disconnection of wastewater systems from the undertaking under the *Sewerage Act 1929*;
 - (n) empowering a prescribed authority to carry out necessary work if an owner or occupier of land fails to comply with the regulations and providing for the recovery of costs or expenses reasonably incurred in doing so from the owner or occupier;
 - (o) on the recommendation of the Chief Public Health Officer, prescribe guidelines to assist in the administration or operation of this Act;
 - (p) prescribe fees and expenses in connection with any matter arising under this Act, which may be of varying amounts according to factors prescribed in the regulations or determined by the Minister from time to time and published in the *Gazette*;
 - (q) provide for the payment and recovery of prescribed fees and expenses;
 - (r) empower or require the Minister or a council to refund, reduce or remit any fee payable under this Act;
 - (s) prescribe forms for the purposes of this Act;
 - (t) 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;
 - (u) prescribe penalties, not exceeding \$10 000, for breach of any regulation;
 - (v) fix expiation fees, not exceeding \$500, for alleged offences against the regulations.
- (3) The regulations may adopt, wholly or partially and with or without modification—
- (a) a code or standard relating to matters in respect of which regulations may be made under this Act; or
 - (b) an amendment to such a code or standard.
- (4) Any regulations adopting a code or standard, or an amendment to a code or standard, may contain such incidental, supplementary and transitional provisions as appear to the Governor to be necessary.
- (5) The regulations or a code or standard adopted by the regulations may—
- (a) refer to or incorporate, wholly or partially and with or without modification, a standard or other document prepared or published by a prescribed body or person, either as in force at the time the regulations are made or as in force from time to time; and
 - (b) be of general or limited application (including so as to apply only to a specified part of the State); and
 - (c) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
 - (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Chief Public Health Officer, the Chief Executive or a council.
- (6) If—
- (a) a code or standard is adopted by the regulations; or
 - (b) the regulations, or a code or standard adopted by the regulations, refers to a standard or other document prepared or published by a prescribed body,
- then—
- (c) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and
 - (d) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code, standard or other document; and
 - (e) the code, standard or other document has effect as if it were a regulation made under this Act.

110—Review of Act

- (1) The Social Development Committee of Parliament must review the operation of this Act as soon as practicable after the expiry of 5 years from its commencement.
- (2) The Social Development Committee must ensure that, as part of the review, reasonable steps are taken to seek submissions from—
 - (a) State agencies that have an interest in public health; and
 - (b) the local government sector; and
 - (c) relevant industry, health and community organisations,(but may otherwise conduct the review in such manner as it thinks fit under the *Parliamentary Committees Act 1991*).

Schedule 1—Transitional provisions

Part 10—Transitional provisions

12—Interpretation

In this Part—

repealed Act means the *Public and Environmental Health Act 1987*.

13—Appeals

- (1) An appeal under section 25 of the repealed Act will, after the commencement of this clause—
 - (a) lie to the South Australian Public Health Council constituted under this Act rather than the Public and Environmental Health Council constituted under the repealed Act; and
 - (b) be heard and determined by the Public Health Review Panel constituted under this Act (with 3 members constituting the Review Panel and 2 members constituting a quorum) rather than a review committee constituted by the Council under the repealed Act.
- (2) A reference in Part 3 Division 5 of the repealed Act to the Council will be taken to include a reference to SAPHC acting under subclause (1)(a) and a reference in that Division to a review committee will be taken to include a reference to the Review Panel acting under subclause (1)(b).
- (3) Subclauses (1) and (2) apply despite the fact—
 - (a) that section 25 of the repealed Act may still be in operation on the commencement of this clause; and
 - (b) that the appeal relates to a requirement imposed under Part 3 of the repealed Act before the commencement of this clause.

14—Detention

To avoid doubt, nothing in this Act affects the operation of a warrant issued under section 32 of the repealed Act before the commencement of this clause (and that section will continue to apply to and in relation to a person who is subject to an application for a warrant or detention under that section until the matter or detention is brought to an end under that section).

15—Directions

To avoid doubt, nothing in this Act affects the operation of a direction under section 33 of the repealed Act in force immediately before the commencement of this clause (and that section will continue to apply to and in relation to a person who is subject to a direction under that section until the direction no longer has effect under that section).

16—Other transitional provisions

- (1) The Governor may, by regulation, make other provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of the relevant Act or from a later day.
- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation repealed by principal Act

The *South Australian Public Health Act 2011* repealed the following:

Public and Environmental Health Act 1987

Legislation amended by principal Act

The *South Australian Public Health Act 2011* amended the following:

Electricity Act 1996

Emergency Management Act 2004

Essential Services Act 1981

Fire and Emergency Services Act 2005

Gas Act 1997

Health Care Act 2008

Summary Offences Act 1953

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2011	21	<i>South Australian Public Health Act 2011</i>	16.6.2011	23.2.2012 (<i>Gazette</i> 23.2.2012 p840) except s 14, Pt 3 Div 6, Pts 9—11 and Sch 1 cll 1—10, 14 & 15—16.9.2012 (<i>Gazette</i> 30.8.2012 p3945) and except—ss 43, 45—47—20.12.2012 and Pt 4 Div 2—1.1.2013 (<i>Gazette</i> 20.12.2012 p5743) and except s 44, Pts 6 & 7, Pt 12 Divs 1 & 2 and s 95(1)—(11), (17), (18) & 96—16.6.2013 (s 7(5) <i>Acts Interpretation Act 1915</i>)
2013	16	<i>Statutes Amendment (Directors' Liability) Act 2013</i>	23.5.2013	Pt 46 (ss 96 & 97)—17.6.2013 (<i>Gazette</i> 6.6.2013 p2498)

South Australian Public Health Act 2011—5.3.2020 to 8.4.2020

Legislative history

2019	8	<i>South Australian Public Health (Early Childhood Services and Immunisation) Amendment Act 2019</i>	9.5.2019	1.7.2019 except ss 96B & 96C(1)(b) (as inserted by s 4)—1.1.2020 (<i>Gazette</i> 27.6.2019 p2321)
2019	14	<i>Statutes Amendment (SACAT) Act 2019</i>	11.7.2019	Pt 27 (ss 165 to 171)—2.12.2019 (<i>Gazette</i> 21.11.2019 p3928)
2020	1	<i>South Australian Public Health (Controlled Notifiable Conditions) Amendment Act 2020</i>	5.3.2020	5.3.2020

Provisions amended

New entries appear in bold.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	1.7.2019
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.7.2019
s 3		
s 3(1)		
Tribunal	inserted by 14/2019 s 165	2.12.2019
Pt 7		
s 59		
s 59(3)	inserted by 16/2013 s 96	17.6.2013
Pt 10		
s 73		
s 73(8)	substituted by 1/2020 s 3	5.3.2020
s 73(8a)	inserted by 1/2020 s 3	5.3.2020
s 74		
s 74(3)	substituted by 1/2020 s 4	5.3.2020
s 74(3a)	inserted by 1/2020 s 4	5.3.2020
s 75		
s 75(1)	amended by 1/2020 s 5(1)	5.3.2020
s 75(3)	substituted by 1/2020 s 5(2)	5.3.2020
s 75(3a)	inserted by 1/2020 s 5(2)	5.3.2020
s 75(4)	amended by 1/2020 s 5(3)	5.3.2020
s 76		
s 76(1)	amended by 14/2019 s 166(1)	2.12.2019
s 76(3)	amended by 14/2019 s 166(2)	2.12.2019
s 76(4)	<i>deleted by 14/2019 s 166(3)</i>	2.12.2019
s 76(5)	amended by 14/2019 s 166(4)	2.12.2019
s 76(6)	<i>deleted by 14/2019 s 166(5)</i>	2.12.2019
s 77		
s 77(1)	substituted by 1/2020 s 6(1)	5.3.2020
s 77(3)	substituted by 1/2020 s 6(2)	5.3.2020

s 77(3a)	inserted by 1/2020 s 6(2)	5.3.2020
s 77(4)	amended by 1/2020 s 6(3)	5.3.2020
s 77(6)	substituted by 1/2020 s 6(4)	5.3.2020
s 77(7)	amended by 1/2020 s 6(5)	5.3.2020
s 77(8a) and (8b)	inserted by 1/2020 s 6(6)	5.3.2020
s 77(13)	amended by 1/2020 s 6(7)	5.3.2020
s 79		
s 79(1)	amended by 1/2020 s 7(1)	5.3.2020
s 79(2)	amended by 1/2020 s 7(2)	5.3.2020
s 92		
s 92(5)	amended by 14/2019 s 167(1)	2.12.2019
s 92(7)	amended by 14/2019 s 167(2)	2.12.2019
s 95		
s 95(15)	amended by 14/2019 s 168	2.12.2019
s 96		
s 96(1)	amended by 14/2019 s 169(1)—(3)	2.12.2019
s 96(2)	amended by 14/2019 s 169(4)	2.12.2019
s 96(3)	substituted by 14/2019 s 169(5)	2.12.2019
s 96(4)	amended by 14/2019 s 169(6)—(8)	2.12.2019
Pt 12A	inserted by 8/2019 s 4	1.7.2019 except ss 96B & 96C(1)(b)—1.1.2020
Pt 13		
s 101		
s 101(4)	amended by 1/2020 s 8(1)	5.3.2020
s 101(5) and (6)	inserted by 1/2020 s 8(2)	5.3.2020
s 106	substituted by 16/2013 s 97	17.6.2013
s 108		
s 108(1)	amended by 14/2019 s 170(1), (2)	2.12.2019
Sch 1		
Pts 1—9	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.7.2019

Transitional etc provisions associated with Act or amendments

Statutes Amendment (SACAT) Act 2019, Pt 27

171—Transitional provisions

- (1) A right of review under section 76 or 96 of the principal Act in existence before the relevant day (but not exercised before that day) will be exercised as if this Part had been in operation before that right arose, so that the relevant proceedings may be commenced before the Tribunal rather than the District Court.
- (2) Nothing in this section affects any proceedings before the District Court commenced before the relevant day.

(3) In this section—

principal Act means the *South Australian Public Health Act 2011*;

relevant day means the day on which this Part comes into operation;

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

Historical versions

17.6.2013

1.7.2019

2.12.2019

1.1.2020