

Public Health Bill

Government Bill
177—1

Explanatory note

General policy statement

The policy of this Bill is to update existing public health legislation in order to improve, promote, and protect public health and help attain optimal and equitable health outcomes for all population groups in New Zealand. The Bill will also enable New Zealand to comply with its obligations under the International Health Regulations 2005 (**IHR 2005**). The IHR 2005 came into force on 15 June 2007.

Background

The Bill will substantially replace the Health Act 1956, the Tuberculosis Act 1948, and associated regulations. The Health Act 1956 is New Zealand's principal statute for public health, focusing primarily on environmental health and the control of communicable diseases. The Health Act 1956, the Tuberculosis Act 1948, and associated regulations have served New Zealand well, but their provisions are now outdated.

The process of reviewing the present legislative framework has been extensive, with several rounds of consultation based on 2 discussion documents. In 1998, *Public health legislation review: A new public health legislative framework* (Ministry of Health, 1998) was published. To further develop the detailed policy, a second round of consultation centred on the discussion document *Public health legislation: promoting public health, preventing ill health and managing communicable diseases* (Ministry of Health, 2002). This discussion document covered more detailed proposals for topics, including health information, screening, management of communicable diseases and non-communicable diseases, and border health protection.

Some changes have already been made to existing legislation through the Epidemic Preparedness Act 2006 and associated amendments to the Health Act 1956. These changes, primarily affecting emergency and quarantine provisions in the Health Act 1956, ensure an effective New Zealand response to the possibility of communicable disease-related emergencies such as that which could arise from pandemic influenza. The 2006 amendments are carried forward in this Bill.

How Bill will achieve its objectives

The Bill will achieve its objective of improving, promoting, and protecting public health by providing for—

- an all-risks approach to the detection, assessment, and management of threats to public health, that is, an approach to allow the effective management of significant and emergent risks to public health that are not otherwise effectively managed:
- controls on specified activities that pose risks to public health, for example, options for activity consents and public health risk management plans:
- the continued responsibilities of territorial authorities for the management of public health issues in their districts:
- obligations on specified persons to provide accurate, comprehensive, and timely information on conditions posing risks to public health, in particular notifiable conditions and notifiable contaminants:
- measures concerning non-communicable conditions:
- measures relating to persons posing serious risks to other people, including possibilities for directions and court orders that will set out an incremental range of restrictive powers, such as requiring a person to accept supervision, and more restrictive powers, such as detention:
- measures relating to emergency management, in the main carried forward from the Health Amendment Act 2006 (enacted with the Epidemic Preparedness Act 2006):
- responsibilities for border health protection.

The Bill will achieve its objective of ensuring that New Zealand complies with the International Health Regulations 2005 by—

- updating provisions on border health protection (for example, by replacing the list of

quarantinable diseases of yellow fever, cholera, and plague in the Health Act 1956 with a more extended list of conditions):

- facilitating New Zealand's response to international public health emergencies in accordance with the new IHR 2005 provisions, for example, by recognition of a national focal point.

The principles of risk management and proportionality underlie the Bill as a whole. Public health powers are to be exercised within a human rights framework.

Overview

The Bill will provide for a risk management approach to the detection, assessment, and management of significant or emerging risks to public health. This approach will operate locally, primarily through District Health Board public health providers and territorial authorities (TAs); and nationally, primarily through the roles of the Minister of Health (the **Minister**), the Director-General of Health (the **Director-General**), and the Director of Public Health.

Purposes and general duties

The Bill aims to improve, promote, and protect public health by contributing to achieving optimal and equitable health outcomes for Māori and other population groups.

Management of risks to public health

The Bill has provisions that enable the making of regulations to set various controls on a specified activity in order to prevent, reduce, or eliminate the risks to public health associated with the activity. These provisions have a wide potential application and cover activities relating to goods and services with the potential to pose risks to public health. The provisions require the making of regulations in order to apply to any particular activity. The making of regulations will involve the usual processes for public consultation and assessment of regulatory impacts prior to Cabinet decisions. Examples of potential regulated activities include the management of camping grounds and hairdressing (both presently subject to regulatory licensing requirements).

Controls that may be imposed by regulations could involve, depending on the nature and level of risk, some or all of the following:

- a requirement to seek an activity consent (equivalent to a licensing regime):
- compliance verification by an assessor:
- a requirement for a public health risk management plan:
- regulations to specify mandatory objectives, functional requirements, and performance measures.

Assessors will help monitor and verify compliance with relevant controls, including regulations and conditions specified for particular risk activities.

Territorial authorities

The Bill continues the Health Act 1956's mandate for a significant role for TAs, principally in relation to environmental health (that is, public health matters related primarily to the physical environment).

Territorial authorities will have duties and discretionary powers to improve, promote, and protect public health within their districts. As with the current Health Act 1956, the TA role will span nuisances, bylaws, sanitary works, and, subject to regulations, activity consents and assessor/verification functions. As under the Health Act 1956 at present, TAs will have a duty to employ or otherwise provide for the employment of 1 or more environmental health officers. Territorial authorities will also be required to inspect their districts for nuisances and to take steps to manage them. In addition, as now, TAs will be required to comply with any direction by the Minister of Health relating to provision for sanitary works.

Health and disability information

Reliable flows of accurate information are fundamental to health and disability policy and action. The Health Act 1956 currently has provisions to allow information about identified people to be exchanged between specified authorities. The Bill continues the provisions relating to routine information flows within the health and disability services sector, including information disclosure to support patient care and the funding of services throughout the health and disability sector.

The Bill includes some modifications and clarifications to current provisions, for example, the requirement to provide information will apply to all funders and providers of health and disability services, including private providers, instead of to public providers only (as at present). This will have the effect of ensuring the provision of health and disability information to the Ministry of Health for compiling statistics and advancing knowledge, education, and health research. For many service providers this proposal will formalise existing arrangements.

Notification

Notification involves a duty on specified people (such as medical practitioners) to provide information to specified authorities about people with health issues of public health concern. Notification allows investigation and possible control measures (in relation to particular individuals and their contacts), and also provides data for surveillance purposes. It generally relates to cases of important communicable diseases. The duty in current legislation to notify specified conditions will be retained, but in a more detailed and flexible form.

The Bill also includes a new duty to report an outbreak or cluster of cases of conditions, whether the condition is notifiable or not, or any other unexpected or unusual event of public health significance. The Bill specifies persons or service providers responsible for making notifications, in particular, medical practitioners and laboratories. Contaminants, for example, from environmental testing, will also be notifiable to medical officers of health by laboratories and in some cases also by the person who orders the test.

The Bill includes a definition of condition to include diseases (whether communicable or not) and physical harm caused by chemical, radiation, or other exposure.

Specified persons and agencies will be required to notify conditions and contaminants, including pathogenic organisms. The Bill sets out criteria to guide decisions about which conditions and contaminants are to be specified as notifiable.

As in the Health Act 1956, there will be provision for schedules setting out the list of notifiable conditions, and supporting details will be able to be amended by Order in Council.

Non-communicable diseases

Public health legislation traditionally focuses on communicable diseases and environmental health. Although communicable disease and environmental health issues remain very significant, they are no longer the major causes of death and illness in New Zealand. The major causes of population ill-health today, and the major drivers of health care expenditure, are those broadly categorised as non-communicable diseases, such as cardiovascular disease, diabetes, cancers, mental illness, and addictions.

Reducing the impact of non-communicable diseases in the population requires intervention at a number of levels, as well as co-ordinated efforts across key sectors and settings that can support outcomes such as improved nutrition and physical activity. Legislation alone is not the answer, but, as experience with tobacco control has shown, appropriate legislative provisions can support effective public health action in a way that also reduces inequalities.

The Bill includes principles and provisions for the making of codes or guidelines to address non-communicable disease risk factors. The Director-General will be able to make non-binding codes and guidelines to promote public health, for example, in relation to—

- exposure to, or access or use by, the public generally or specific groups in respect of products and services relevant to non-communicable disease risk factors:
- matters relevant to the advertising, sponsorship, or marketing (direct or indirect) of products and services with an impact on non-communicable disease risk factors:
- the performance, composition, contents, additives, design and construction of goods, things, or services or processes that impact on non-communicable disease risk factors.

The Bill requires the Minister of Health to report to the House of Representatives on options and proposals for addressing non-communicable disease issues within 3 years from enactment (with an option to extend this period).

Management of communicable conditions and restrictive powers

The Health Act 1956 and the Tuberculosis Act 1948 (along with associated regulations) have significant powers in relation to the control of people with communicable conditions such as legionnaires' disease, AIDS, hepatitis, cholera, and tuberculosis. The Health Act 1956 provides for the detention of people with infectious diseases, by decision of the medical officer of health or health protection officer, with no time periods or appeal provisions specified other than that the person may be held until no longer infectious. Provisions in the Bill cover rights, duties, offences, penalties, a range of restrictive powers, and procedures for decisions and urgent orders for people with significant communicable conditions. The provisions reflect the need to exercise management options that place as few restrictions as possible on the person concerned while, at the same time, meeting public health objectives.

The Bill sets out an incremental range of restrictive powers. Powers at the lesser end of the range (such as requiring a person to attend a particular health care programme or refrain from certain activities) will be able to be exercised by a medical officer of health. The lack of such intermediate powers has been identified as a weakness in the current legislation.

The more restrictive powers (for example, detention) could only be exercised following a court order.

Where urgent action is required to take measures to protect public health, an interim order for detention

for up to 72 hours could be issued by a medical officer of health with immediate effect.

The relevant provisions in the Bill support the exercise of the least restrictive alternative in relation to people with communicable conditions to the maximum extent compatible with achieving public health outcomes.

The Bill includes provision for review and appeal safeguards (including a 6-month time limit on public health orders, although renewable) and provision for variations to orders.

A medical officer of health may give a limited range of directions in respect of someone who is a contact of a person with a notifiable condition or a carrier (for example, a requirement to be tested, or to remain at home, or to be excluded from school).

Persons with a communicable condition will have a duty to minimise the risk of transmission.

Restrictive powers in situations other than communicable conditions

Section 126 of the Health Act 1956 allows for the committal of infirm or neglected persons who are living in insanitary conditions or without proper care or attention. While section 126 is rarely formally invoked, its existence as a last resort is useful in resolving difficult situations. In this Bill, a new version of section 126 provides for residence orders.

Contact tracing

Contact tracing is one way to investigate and manage communicable conditions. It involves identifying and seeking people who have been in contact with a person with a communicable disease in order to prevent further spread of the disease and to offer testing and treatment to people at risk. The present legislation has very few provisions to support contact tracing (which is mostly in secondary legislation), and these tend to be limited to contacts who have already been identified, rather than tracing further contacts.

The Bill authorises contact tracing and specifies criteria, relevant conditions, and procedures in the primary legislation rather than in regulations. In practice, most contact tracing will take place, as now, with the consent of the person with the original condition. The Bill, however, authorises contact tracing where the person concerned does not voluntarily inform others and any infringement of the person's privacy is justified on public health grounds. Procedures for contact tracing will vary, depending on the availability of personally identifying details and urgency.

Where identifying information is not available to a medical officer of health, a health practitioner will be primarily responsible for undertaking contact tracing by requesting the person with the condition to communicate appropriately with contacts. If this is not successful, the medical officer of health will be able to initiate contact tracing.

People with relevant conditions will have a duty to provide, as far as practicable, information, including names, identifying details, and addresses of contacts, as well as other information relating to the circumstances and source of the relevant condition.

Disclosure of information to close contacts

Health practitioners, in limited circumstances, will be authorised but not required to disclose to partners and family or household members information on risks posed to them by a partner or family or household member with a communicable condition. Relevant criteria for the exercise of such discretion include the serious nature of the condition, a significant risk of infection through close contact, and the failure of the person with the condition to take steps to inform and protect a partner or family or household members.

Border health protection

The Health Act 1956 provisions relating to border health protection and quarantine are out of date given trends in international travel since 1956, new and emerging threats such as SARS and pandemic influenza, and changes in international law. The present Health Act 1956 enables implementation of New Zealand's obligations under the International Health Regulations 1969 (**IHR 1969**). The IHR 1969 were revised by the World Health Organization (WHO), adopted by the World Health Assembly in May 2005 (**IHR 2005**), and came into force in June 2007.

The IHR 2005 have a wider scope than earlier international law in relation to risks to public health. The IHR 2005 also have more explicit obligations in relation to public health surveillance and response capacities, both at the border and within countries. They allow for potential controls on people departing as well as arriving (to prevent export of sources of risks to public health).

The Bill provides that the primary role of health agencies at the border relates to human health protection. It relates in particular to people and craft coming into, or leaving, New Zealand as possible sources of infection, as well as human environments and sanitary conditions associated with craft and around ports and airports.

The Bill has an expanded scope for border health protection consistent with the IHR 2005. The Health Act

1956 lists yellow fever, plague, cholera, and human-transmitted avian influenza as quarantinable diseases. The expanded scope of the IHR 2005 focuses on controlling the spread between countries of all conditions and events that may adversely affect the health of human populations. These include any diseases or other risks, such as emerging conditions like SARS and new forms of human influenza, but also harm caused by chemical and radionuclear sources.

The Bill follows the approach adopted in the IHR 2005 and allows the Ministry of Health to have a high-level, national-overview responsibility for border health protection, while recognising that other agencies may be responsible for delivering some services.

The Bill provides that all persons entering New Zealand may be required to provide information (for example, travel history) and submit to non-invasive screening measures. There are also provisions for screening and surveillance (for example, by reporting to a medical practitioner in their home town) or, as a last resort, isolation or quarantine in a suitable facility.

The Bill also specifies, in accordance with the IHR 2005, and as currently provided in the Health Act 1956, that craft crossing the border (ships and aircraft) must meet certain requirements to obtain health clearance (that is, pratique) and sanitation certification. Ports, airports, and conveyance operators must also ensure that they are free of such vectors as rats and mosquitoes and that the import and the export of organisms that pose risks to public health are minimised. There are also provisions relating to goods and organisms as possible sources of risk to human health.

Public health emergencies

The Bill largely reflects the legislation enacted in 2006 (the Epidemic Preparedness Act 2006 and Health Amendment Act 2006). The provisions of this Bill, however, apply to a broader range of public health emergencies, irrespective of cause (that is, communicable conditions as well as emergencies arising from biological, chemical, or radiological factors).

The Bill specifies powers for medical officers of health on the declaration of a public health emergency. These powers are similar to those in the present Health Act 1956 (special powers) but are more comprehensive. As now, the powers will be able to be enforced, for example, with the assistance of the police. These powers include an ability to limit movement, to close premises such as workplaces and schools (or to allow them to remain open only under specified conditions), and to require quarantine and isolation.

The emergency powers include an ability to detain people if preventive treatment, including vaccination, is declined. The justification for needing this power is the potential devastation for the whole community that could result from a full-scale new disease epidemic, or terrorist reintroduced smallpox, for example. The Bill does not authorise physical administration of treatment in the case of non-compliance.

Non-compliance could result in detention for quarantine purposes.

Other provisions

The Bill includes provisions that encourage, but that do not require, health impact assessments for new proposals, for example, in relation to policy development and decision making by central and local government.

The existing Health Act 1956 provisions relating to the National Cervical Screening Programme are carried forward in this Bill.

The Bill includes specific powers (primarily relevant to children) in relation to screening and exclusion from schools in the case of disease outbreaks, and other regulation-making powers for immunisation, such as the authorisation of school-based immunisation recording. The Bill provides for a limited version of the Health Act 1956 provision on the examination of children to allow an authorised person to enter a pre-school or school in order to examine, test, or screen children, and to allow an authorised person to examine, test, or screen children where the parent consents; and, where there is no consent, for the authorised person to refer the child to an appropriately qualified health practitioner for further investigation and follow-up.

Clause by clause analysis

Clause 1 relates to the title of the Bill.

Clause 2 provides that the Bill (once enacted) comes into force on a date to be appointed by Order in Council. However, if the Act is not brought into force earlier, it comes into force a year after the date on which it receives the Royal assent.

Part 1

Preliminary provisions, roles and responsibilities

Subpart 1—Preliminary provisions

Clause 3 sets out the purpose of the Bill and the features of the Bill designed to achieve its purpose. The purpose of the Bill is to improve, promote, and protect public health in order to help attain optimal and equitable health outcomes for Māori and all other population groups.

Clause 4 relates to interpretation. Key terms used in the Bill include case of a condition, cluster or outbreak, condition, contaminant, contamination, health impact assessment, health risk, health risk management plan, National Immunisation Schedule, notifiable condition, notifiable contaminant, and regulated activity.

Clause 5 provides that the Bill binds the Crown.

Subpart 2—Functions of Minister

Subpart 2 (clause 6) lists the functions of the Minister of Health (the **Minister**). Those functions include ensuring the efficient and effective administration of the Act, declaring a health emergency, extending, amending, or revoking such an emergency and reviewing the continued need for such an emergency at regular intervals, designating places of inspection for ships, and declaring places in New Zealand to be affected places.

Subpart 3—Functions of Director-General

Subpart 3 (clause 7) lists the functions of the Director-General of Health (the **Director-General**). Those functions include overseeing and monitoring the implementation and enforcement of the Public Health Act 2007 throughout New Zealand, ensuring that the role of the national focus point is carried out within the Ministry of Health and publishing statements about risks to public health (*see clause 7*). The Director-General also has the function of issuing directions to persons carrying out powers and functions under the Public Health Act 2007 or regulations made under that Act, producing an annual report on the state of public health, appointing health protection officers and medical officers of health, and dividing New Zealand into health districts (*see clauses 8, 9, 11, and 12*).

Subpart 3 also confers on the Director-General a power of delegation (*clause 10*). It also carries over provisions of the Health Act 1956 that confer responsibilities on the Director-General for public health in outlying islands (*clause 15*) and requires the Director-General (if a medical practitioner) to act as a medical officer of health or (if not a medical officer of health) to appoint a medical practitioner or practitioners who can act anywhere in New Zealand (*clause 16*).

Subpart 4—Functions of Director of Public Health

Subpart 4 (clauses 17 and 18) lists the functions of the Director of Public Health. Those functions include advising the Director-General on matters relating to public health (including personal health matters relating to public health and regulatory matters relating to public health) and at any time advising, or reporting to, the Minister on a matter relating to public health.

Subpart 5—Public health functions of DHBs

Subpart 5 (clause 19) lists the public health functions of District Health Boards (**DHBs**). Those functions include employing health protection officers and medical officers of health, monitoring and identifying risks to public health in the geographical area in respect of which a DHB is constituted, assessing and, where appropriate, reporting to the Director-General on those risks, and where appropriate and reasonable in the circumstances, taking steps to contain and manage those risks.

Part 2

Health information, notification, reporting, and cervical screening

Subpart 1—Health information

Subpart 1 contains provisions about access to health information. The provisions replace existing sections 22B to 22F and 22H of the Health Act 1956.

These provisions—

- allow health information (as defined in *clause 20*) about an individual to be disclosed on request to certain government and other agencies for certain purposes of that agency (*see clause 21*);
- allow the Minister to require a provider or funder of services to provide health information about individuals for statistical, research, and other, purposes (*see clause 22*);
- allow the Minister to require a DHB to give information relating to testing or donation of body

parts or bodily substances to certain entities appointed to collect and distribute blood and controlled human substances (see *clause 23*):

- require a person holding health information about an individual to provide it to the individual, a representative, or a person providing services (as defined in *clause 4*) to that individual (see *clause 24*):
- allow the supply to any other person of health information that does not enable the identification of the individual to whom the information relates (see *clause 25*).

The main differences between the provisions in the Bill and the existing sections in the Health Act 1956 that they replace are—

- the definition of health information for the purpose of all clauses in the subpart includes information derived from the testing or examination of any body part or any bodily substance of an individual. At present, under section 22B of the Health Act 1956, that information is health information only for the purpose of the provision of information to entities appointed to collect and distribute blood and controlled human substances:
- the definition of health information includes information about an individual collected before or in the course of the provision of any health service or disability service to that individual:
- in addition to those government and other agencies already able to ask a health service provider for health information, some further agencies are now authorised. These are the Accident Compensation Corporation for the purpose of section 279 of the Injury Prevention, Rehabilitation, and Compensation Act 2001, the Department of Labour for the purpose of the Health and Safety in Employment Act 1992, and a DHB for the purpose of *clause 19* of the Bill:
- the duty to provide health information for statistical purposes is placed on any provider or funder—not just DHBs:
- the grounds for refusing to give health information on request to the person to whom it relates, or to a representative of that person or anyone providing health services to the person, are altered in some respects.

This subpart also contains a regulation-making provision concerning the retention of health information. It replaces existing section 121A of the Health Act 1956 (see *clause 26*).

Subpart 2—Inspection of records to verify compliance with subsidy authorisations, etc
Subpart 2 authorises a public funder of services to require a provider of services to make records available for inspection to verify subsidy authorisations and subsidy claims. It also enables the Director-General of Health or the chief executive of a DHB or Pharmac to require a provider to make records available for inspection to verify compliance with the pharmaceutical schedule. These provisions replace section 22G of the Health Act 1956.

The new provisions—

- authorise the inspection of records of a provider in relation to a subsidy claim even if the provider did not claim directly from the public funder:
- authorise the inspection of records of a provider even where the provider gives a subsidy authorisation, but the subsidy claim is made by another provider.

Subpart 3—Notification and reporting

Subpart 3 deals with notification and reporting of conditions.

A medical practitioner is required to report (to a medical officer of health) a case of a condition or a cluster or an outbreak of a condition that may pose a risk to public health (see *clause 31*).

A medical practitioner is required to notify (to an appropriate authority (as defined)) any case of a notifiable condition (see *clause 32*).

There is the potential for persons other than medical practitioners (referred to as specified persons) to be required to report and notify if regulations specify this (see *clause 43*).

A person in charge of a laboratory is required to notify any case of a notifiable condition found in a specimen and any notifiable contaminant found in a sample (see *clauses 33 and 34*).

A person who has obtained the results of a test done overseas on a sample is required to notify the appropriate authority if the test discloses the presence of a notifiable contaminant in the sample (see *clause 35*).

If regulations are made to require this, a veterinary surgeon or person in charge of a laboratory is required to notify the appropriate authority of a case of a notifiable condition found in an animal (see *clause 36*).

The notification provisions replace existing sections 74 and 74AA of the Health Act 1956. The notifiable conditions are set out in *Part 1 of Schedule 1*. The notifiable contaminants are set out in *Schedule 2*.

Part 2 of Schedule 1 lists epidemic diseases. These are diseases that the Epidemic Preparedness Act 2006 applies to. The term “epidemic diseases” replaces the term “quarantinable disease” in that Act. The list of

epidemic diseases in *Part 2 of Schedule 1* is substantially similar to the list of quarantinable diseases to which that Act applies at present. The only change is that the description of avian influenza is different. Power is given to amend the lists of notifiable conditions, epidemic diseases, and notifiable contaminants in *Schedules 1 and 2* by Order in Council (see *clause 37*).

Clause 38 gives the Director-General the power to temporarily add a notifiable condition or epidemic disease to *Schedule 1*. The new designation lasts for a maximum of 6 months.

Clause 39 provides for the circumstances in which a person who reports or notifies information under this subpart, and any person to whom the information is reported or notified, may disclose that information.

Subpart 4—National Cervical Screening Programme

Subpart 4 contains provisions providing for the National Cervical Screening Programme. These are the same as the provisions that are currently in Part 4A of the Health Act 1956.

Part 3

Non-communicable diseases

Subpart 1—Interpretation

Clause 79 defines terms used in this Part. The definition of risk factor is significant. It is defined as a thing or substance that, on its own or together with other things or substances or conditions, may, whether immediately or over time, give rise to, or increase the incidence of, non-communicable diseases (such as cancer, cardio-vascular disease, or diabetes) in the general population or in communities or in sections of the general population or communities.

Subpart 2—Principles

Clause 80 sets out the principles by which the Director-General must be guided in performing his or her functions under this Part. These include—

- improving and enhancing the health of communities by addressing broad determinants of health, including, in particular, risk factors:
- managing or eliminating risk factors by involving communities, sectors, and government agencies:
- considering the well-being and mutual interdependence of families and their communities, including whānau, hapū, and iwi:
- promoting, maintaining, and enhancing the health status of the general population and communities:
- implementing public health objectives through co-ordinated action in the health sector, and, in particular, ensuring appropriate links between public health and primary health.

Subpart 3—Codes of practice and guidelines

Clause 81 authorises the Director-General to issue codes of practice or guidelines to a sector on a particular activity, if the Director-General has reason to believe that the sector can reduce a risk factor associated with the activity.

Clause 82 requires the Director-General, before issuing a code of practice or guidelines, to consult with representatives of affected groups.

Clause 83 sets out what a code of practice or guidelines may contain. This includes—

- the development, completion, and review of health impact assessments:
- the development and maintenance of practices that are conducive to promoting health and safety:
- the performance, composition, contents, additives, design, and construction of specified goods or substances:
- the accessibility of specified goods, substances, or services to members of the public or to sections of the public, in particular, to minors:
- the ways in which specified goods, substances, or services are advertised, sponsored, or marketed (whether directly or indirectly):
- the information to be given to consumers of specified goods, substances, or services, whether as part of any advertising, sponsorship, or marketing or as part of any packaging or labelling of goods or substances.

Clause 84 requires the Director-General to endeavour to avoid having codes or guidelines overlap with existing legislation.

Clause 85 authorises the Director-General to permit statements that goods or services comply with codes or guidelines to be included in any material by which goods, substances, or services are advertised,

promoted, sponsored, or marketed, or in any communication to employees concerning health or safety. Publishing such a statement without the permission of the Director-General is an offence punishable by a maximum fine of \$10,000. The Court may, in addition to the penalty, require the offender to disgorge any commercial gain resulting from the contravention.

Clause 86 authorises the institution of incentives for compliance, such as awards.

Clause 87 makes it clear that codes of practice and guidelines issued under this Part are not legally binding.

Subpart 4—Review of this Part

Clause 88 requires the Ministry of Health to review this Part and to report to the Minister not later than 3 years after the commencement of the Bill as enacted.

Part 4

Management of conditions posing health risks

Subpart 1—Application, overarching principles, and role of District Courts

Clause 89 sets out the application of *Part 4*, which applies to conditions that are part of a cluster or an outbreak that has been reported under *Part 2*, to notifiable conditions, and to particular conditions that have been reported under *Part 2* as constituting a risk to public health.

Clauses 90 to 93 set out the overarching principles that must guide action taken under this Part. These are that preference must be given to the least restrictive measure, that individuals should be treated with respect, and that an individual affected by the exercise of powers should be properly informed about that exercise.

Clause 94 provides that the District Court has jurisdiction to hear applications and appeals under this Part and that, wherever practicable, these should be heard in the Family Court.

Subpart 2—Directions that may be given to individuals believed to have specified conditions

Subpart 2 provides for the management of individuals who pose a health risk because of a specified condition.

Clause 95 authorises a medical officer of health to give an individual with a specified condition directions designed to prevent or minimise the health risk posed by the individual.

The directions that may be given include participation in counselling, refraining from carrying out specified activities, refraining from going to specified places, refraining from associating with specified persons or specified classes of persons, staying at a specified place of residence, and accepting the supervision of a named person. An individual may not be directed to submit to compulsory treatment.

Clause 96 provides for the duration of directions. Directions last for up to 6 months but may be extended. They come to an end if the medical officer of health notifies the individual that he or she no longer poses a health risk.

Clause 97 allows directions to undergo medical examinations to be given if a medical officer of health believes on reasonable grounds that an individual may have a relevant condition and if the individual has previously refused a request to be examined. Pending the medical examinations, restrictions may be imposed on the individual. Restrictions may also be imposed on the contacts of persons with a relevant condition.

Clause 98 authorises the imposition of restrictions on the contacts of persons with a relevant condition. The restrictions are lifted when the contact is notified that he or she no longer poses a health risk.

Clause 99 provides that students and teachers at an educational institution may be directed to stay away from the institution while they pose a health risk.

Clauses 100 to 102 allow directions to be given repeatedly, permit directions to be varied or rescinded, and require directions to be in writing.

Clause 103 provides for appeals against directions to the District Court.

Clause 104 makes it an offence to disobey a direction.

Clause 105 provides that force may not be used to secure compliance with a direction.

Subpart 3—Orders to protect against health risks

Clause 106 provides for the issue by a medical officer of health of an urgent health risk order, if it is necessary to take urgent action to address the risk posed by an individual.

Clause 107 limits the duration of an urgent health risk order to 72 hours.

Clauses 108 to 116 enable a District Court to impose a health risk order on an individual. *Clause 108* provides that, in deciding whether to do so, the Court must take into account, among other matters, whether the individual has minimised the risk of communicating the condition, and, in particular, the individual's compliance with any directions given to the individual under *subpart 2*.

Health risk orders are made on the application of a medical officer of health (*clause 112*) after consultation with the individual and, if appropriate, his or her family (*clause 110*).

Clause 113 provides that if the Court is satisfied that an individual has a specified condition and poses a health risk, the Court may make a health risk order in respect of the individual.

Clause 114 gives the Court jurisdiction to impose, under such an order, various requirements on an individual, including detention, restrictions in respect of specified activities, submission to supervision or surveillance, and treatment for the condition. However, compulsory treatment may be ordered only if the Court is satisfied that, short of detaining the individual indefinitely, treating him or her is the only effective means of managing the health risk posed by the individual.

Clause 115 provides that a health risk order lasts for up to 6 months, but may end on any earlier date on which the medical officer of health notifies the individual that the individual no longer poses a health risk.

Clause 116 authorises the Court to extend a health risk order for periods of not more than 6 months.

Clause 117 authorises the Court to require individuals to undergo medical examinations. Pending the outcome of an examination, restrictions may be imposed on the individual.

Clause 118 authorises the Court to make a health risk order in respect of an individual ordered to undergo a medical examination. The order is contingent on a positive diagnosis and takes effect if the examination shows that the individual has a specified condition.

Clause 119 authorises the Court to impose restrictions on the contacts of individuals with a specified condition. The restrictions are lifted when a medical officer of health notifies a contact that he or she no longer poses a health risk.

Clause 120 provides for the variation or cancellation of orders.

Clause 121 permits a court order to be varied by agreement between the medical officer of health and the individual bound by the order.

Clauses 122 and 123 provide for appeals to the High Court and the Court of Appeal respectively.

Clause 124 authorises a medical officer of health to require an individual who is subject to a health risk order to comply with the order and use any force that is reasonable in the circumstances. However, in no case may force be used to require an individual to accept medical treatment.

Clause 125 makes it an offence not to comply with an order made under this subpart.

Subpart 4—Offence to recklessly spread notifiable disease or other condition

Clause 126 makes it an offence to recklessly put another person at risk of contracting a notifiable condition or recklessly transmitting such a condition. The maximum penalty is imprisonment for 1 year or a fine of \$50,000 and \$100,000 respectively. Instead of sentencing a person to imprisonment, the Court may impose requirements on the individual that have the same effect as those imposed under a health risk order.

Clause 127 provides for defences to the offences created by *clause 126*.

Subpart 5—Residence orders in respect of persons in need of care

Clause 128 authorises the District Court to make residence orders in respect of persons who are unable to care for themselves and who thereby adversely impact on their health or on that of others. The Court, if satisfied that without an order the person will not receive adequate care, may, on the application of a medical officer of health, order the person to reside in a specified place or places and to be supervised or cared for by a specified person or organisation.

Clause 131 requires the medical officer of health, before applying for the order, to consult, wherever practicable, with the person in need of care. He or she may also consult with the person's family or whānau.

Clause 133 provides that a residence order lasts for a maximum of 6 months, but may be extended (*clause 134*).

Clauses 135 provide for the variation and rescission of residence orders by the District Court.

Clause 136 provides for appeals to the High Court against a residence order or against the refusal to make such an order.

Subpart 6—Contact tracing

Clause 138 sets out the purpose of this subpart, namely, to prevent or limit the spread of a relevant condition by obtaining information about that condition and identifying, testing, and treating those at risk.

Clause 139 sets out what contact tracing involves, in broad terms, ascertaining the identity of each of an individual's contacts, ascertaining the circumstances in which the condition has been communicated, and providing information and advice to each contact about the risks of contracting the condition and medical treatment.

Clause 140 delineates the respective roles of a medical officer of health and an individual's medical practitioner. Contact tracing may be required by a medical officer of health if the identity of an individual with a specified condition has been reported to that officer. If the identity of an individual with a relevant condition is not required to be reported to that officer, it is for the individual's medical practitioner to consider the appropriateness of contact tracing.

Clause 141 provides for the criterion for assessing the appropriateness of contact tracing. This is whether the purpose of the subpart is likely to be achieved.

Clause 142 provides that, if contact tracing is considered appropriate, the individual may be directed to give information about the circumstances in which the condition may have been communicated.

Clause 143 requires consideration to be given as to whether it is appropriate for the individual to undertake his or her own contact tracing.

Clause 144 provides that, if it is inappropriate for the individual to undertake the contact tracing, or if the individual has failed to do it adequately, it will be done by the appropriate medical person or by his or her delegate. A medical practitioner who has responsibility for contact tracing may request the medical officer of health to undertake it.

Clause 145 authorises a medical officer of health, for the purpose of identifying the contacts of an individual with a relevant condition, to direct the employer of the individual, any educational institution attended by the individual, or any business or other organisation that the individual has dealt with to provide the medical officer of health with the names and addresses of any contacts of the individual.

Clause 146 requires a medical practitioner or a medical officer of health, when approaching contacts, to refrain from disclosing the identity of the individual who may have infected the contact, so far as this is practicable.

Clauses 147 and 148 relate to delegations by medical practitioners.

Clause 149 makes it an offence to fail to comply with directions given under this subpart.

Subpart 7—Disclosure of communicable condition to partners and household members

This subpart (*see clause 151*) allows medical practitioners to warn close associates of persons with a serious condition about their exposure to the risk of contracting the condition if the person with the condition has failed to do so. A close associate is defined in *clause 150* as someone with whom the person with the condition lives or with whom the person is having, or has had, contact of a sexual nature.

Part 5

Public health role of territorial authorities

Subpart 1—Duties of local authorities and environmental health officers

Clause 153 sets out the general powers and duties of territorial authorities in respect of public health. A territorial authority must have as many environmental health officers and other officers and employees as, in its opinion, are necessary for the proper discharge of its duties under this Act. A territorial authority must inspect its district regularly for nuisances and stop nuisances. If premises present a risk to public health, it must take any remedial action required to prevent that risk. It is also required to make bylaws to protect public health.

Clause 154 authorises the Director-General or a DHB to obtain reports from regional councils concerning functions of the regional councils that affect or may affect public health. This includes matters such as drinking water and air quality.

Under *clause 155* a territorial authority may be required to give the relevant DHB a report on any matter within an area of that district that affects or may affect public health.

Clause 157 provides that every territorial authority must be able to access the services of a sufficient number of environmental health officers. The Director-General may direct a territorial authority to appoint, or make arrangements for the appointment of, a minimum number of environmental health officers.

Clause 158 provides for the appointment of environmental health officers.

Clause 159 sets out the functions of environmental health officers, which include taking action under this Part, any bylaws, and under *clause 329* (which provides for the service of compliance orders) to detect, prevent, stop, and prosecute nuisances, and to assist any medical officer of health or health protection officer responsible within an area in the district, on request, to take such action.

Subpart 2—Provision of sanitary services

Clause 160 defines sanitary services to include facilities for raw water and for drinking water, the collection and disposal of human waste, public toilets, mortuaries, cemeteries, crematoria, and disinfecting stations.

Clause 162 authorises the Minister (after considering the matters specified in *clause 161*) to direct a territorial authority to provide for a particular type of sanitary service in its various planning documents, or to undertake a particular sanitary service in a manner that meets any standards or level of performance that the Minister may specify.

Under *clause 163*, the Minister may make grants to a territorial authority to assist with the cost of public water supplies, refuse disposal works, sewerage works, or works for the disposal of sewage.

Provisions are carried forward from the Health Act 1956 for the establishment of mortuaries and disinfecting stations, and for the burial of dead bodies (*see clauses 164 and 165*).

Subpart 3—Control of nuisances

Clause 166 defines what a nuisance is. It is an activity or state of affairs that is, or is likely to be, injurious to public health.

It includes, among other matters, human or animal waste, defective toilets, sewers, or drains, locations that are breeding grounds for rats, mosquitoes, or other vectors and vermin, and dwellings that are overcrowded or otherwise insanitary.

A territorial authority must regularly inspect its district for nuisances, and where it finds a nuisance, the territorial authority must take all proper steps to stop the nuisance (*see clause 167*).

An environmental health officer is given power to enter any land or premises to inspect for nuisances (*see clause 168*).

It is an offence to do anything in the knowledge that it causes or continues a nuisance (*see clause 169*).

A District Court may require an owner or occupier to stop a nuisance and prohibit its recurrence. Such an order is called a rectification order (*see clause 171*).

In making a rectification order, the Court may find that a dwelling or other building is unfit for human occupation. In that case, the Court may prohibit the use of the dwelling or building for human habitation until the nuisance has been effectively stopped (*see clauses 172 and 173*).

The subpart requires a territorial authority to undertake the remedial work required to stop a nuisance if the owner or occupier fails to do so (*see clause 176*).

Clause 177 authorises an environmental health officer to enter any land without notice to stop a nuisance if he or she believes on reasonable grounds that the nuisance poses a significant risk to public health in the area.

If the insanitary condition of a dwellinghouse constitutes a nuisance that poses a significant risk to the health of the occupants, the environmental health officer may serve notice of a prohibition on the occupier of the dwellinghouse, prohibiting the use of the dwellinghouse for human occupation while occupants are subject to that risk (*see clause 178*).

Clause 180 provides that all expenses incurred by or on behalf of a territorial authority in stopping a nuisance or in preventing its recurrence, together with reasonable costs in respect of the services of the territorial authority, are recoverable from the owner or the occupier of the land or premises concerned.

The subpart authorises a medical officer of health to exercise the territorial authority's powers of stopping a nuisance if the territorial authority fails to do so (*see clauses 181 and 182*).

Clause 183 provides that the subpart does not affect any determination under an enactment (including a resource consent granted under the Resource Management Act 1991) by which an activity (a **permitted activity**) is permitted. No action or determination under this subpart may stop a permitted activity, but any such action or determination may mitigate any health risks posed by the activity. However, the activity may be stopped if the health risks posed by the activity were not foreseen at the time that the activity was permitted under an enactment.

Subpart 4—Power to make bylaws

This subpart authorises territorial authorities to make public health bylaws. A public health bylaw is defined in *clause 184* as a bylaw made under this Bill or under the Local Government Act 2002 or under any other enactment for any of the purposes specified in this subpart.

Clause 185 requires a territorial authority to consult with the relevant DHB before making a public health bylaw.

The purposes for which public health bylaws may be made are substantially carried forward from the Health Act 1956 (*see clause 186*).

Subpart 5—Reviews of territorial authorities and intervention by Minister

Clause 189 authorises the Director-General to review whether a territorial authority is properly exercising its powers or performing its functions or duties under this Part.

Clause 190 provides that if the Minister of Health considers that a territorial authority is not properly performing its functions or duties under this Part, the Minister of Health may, in consultation with the Minister of Local Government, appoint 1 or more persons to act in place of the territorial authority to exercise all or any of the territorial authority's powers, or perform any functions or duties under this Part.

Clause 191 gives the Minister standing to apply for an order of mandamus to require a territorial authority to perform its duty under this Part.

Subpart 6—Relationship of this Part with certain other enactments

Clause 192 clarifies the relationship of this Part with other Acts. If a territorial authority is in the position where action could be taken under this Part but also under the Building Act 2004, the Hazardous Substances and New Organisms Act 1996, the Local Government Act 2002, or the Resource Management Act 1991 the territorial authority may take action under this Part only if the territorial authority forms the view that any action under any of the other Acts would be less appropriate.

Clause 193 provides that in the case of an inconsistency between a bylaw under this Part and a bylaw made by a territorial authority under another enactment, the bylaw under this Part prevails to the extent of the inconsistency.

Part 6 Regulated activities

Subpart 1—Objective

Clause 194 sets out the objective of this Part, which is to prevent, reduce, or eliminate the risks to public health associated with regulated activities. These are activities specified in *Schedule 3*. *Schedule 3* currently specifies services connected with camping grounds, mortuaries, hairdressing, microwave ovens, plastic wrapping, and needles and syringes as regulated activities. Restrictions imposed under this Part should, wherever practicable, be proportionate to those risks.

Subpart 2—Duties of operators of activities

Persons undertaking a regulated activity must comply with the Act and regulations made under it. Some activities will be subject to a consent requirement. In that case, operators must comply with the conditions attaching to the consent. An additional or alternative requirement for an activity may be a public health risk management plan approved for the activity (*see clause 195* in conjunction with *clause 243*).

Every person responsible for carrying on a regulated activity must identify all reasonably identifiable risks to public health that may arise from the activity and must take all practicable steps to prevent those risks (*see clause 196*).

Regulations may require an operator of a regulated activity to obtain a periodic assessment by an assessor of the operator's compliance with relevant requirements (*see clause 199* in conjunction with *clause 243(e)*).

If the assessor is satisfied that the operation complies, the assessor must issue to the consent holder a certificate to that effect and send a copy to the relevant consent authority (either the territorial authority or the DHB of the locality).

If the assessor considers that a regulated activity fails to comply, the assessor must report that assessment to the consent holder and to the relevant consent authority.

Subpart 3—Applications for, and granting of, consents

This subpart applies to those regulated activities that require a consent.

Applications for a consent are made to the relevant consent authority (*see clause 201*). Regulations may also require the completion of a public health risk management plan for the activity. In that case, a duly completed plan must accompany the application (*see clause 202*). The relevant consent authority must obtain a report on the application from an environmental health officer (if the consent authority is a territorial authority) or a medical officer of health or health protection officer (if the consent authority is a DHB). The report assesses the compliance of the application with applicable requirements (*see clause 203*).

A consent authority may issue the consent subject to any conditions that, in the opinion of the consent authority, are necessary to minimise any risks from the activity to public health (*see clause 204*).

If a non-complying application is not brought into compliance, or any further information requested by the relevant consent authority is not supplied, within 6 months or within such further time as the consent authority allows, the application lapses (*see clause 206*).

Consents are granted for stated periods and may be renewed. On a renewal, amendments to the public health risk management plan may be required (*see clauses 207 and 208*).

Subpart 4—Cancellation of consents by consent authority and surrender of consents

This subpart provides for mandatory cancellation of a consent on the detection of certain occurrences, such as fraud on the part of the applicant (*see clause 211*). It also provides for discretionary cancellation of consents by the relevant consent authority if, after giving notice to the consent holder and considering any submissions made by the consent holder, the authority is satisfied that the consent holder has breached 1 or more applicable requirements and that cancellation is in the interests of protecting public health (*see clause 212*).

A consent holder whose consent has been cancelled may apply to the consent authority for a review of the cancellation or of a condition imposed on a consent (*see clause 215*). The review must be undertaken by a person who may be an employee of the consent authority but who must not have had any previous involvement in the case. The reviewer must act independently. The reviewer may confirm the decision. If the reviewer does not consider the decision well-founded, the reviewer must direct the consent authority to reconsider the decision, and to have regard to any matters specified by the reviewer (*see clauses 216 and 217*).

The subpart also confers a right of appeal to the District Court against the refusal of a consent or for a renewal of a consent or against the cancellation of a consent (*see clauses 218 to 224*).

Subpart 5—Public health risk management plan

This subpart deals with those regulated activities for which a public health risk management plan is required. The Director-General may publish guidelines on the completion of such plans (*see clause 226*). Every public health risk management plan prepared for a regulated activity of a particular kind must identify the risks to public health that may arise from that activity, identify mechanisms for preventing risks to public health arising from that activity and for reducing and eliminating those risks if they do arise, and set out a timetable for managing the risks (*see clause 228*).

Every public health risk management plan must be submitted by the person proposing to carry on the regulated activity to an assessor for approval. An assessor may approve the plan and issue to the operator a certificate to that effect (*see clause 229*).

The subpart makes provision for the duration of plans and for their review and renewal (*see clauses 230 and 231*).

Subpart 6—Records of consents

This subpart requires consent authorities to keep records of the consents they issue (*see clause 232*). The Director-General may keep a nationwide record of consents (*see clause 233*).

A consent authority must keep a published form of the record open for public inspection. If the Director-General keeps a nationwide record, the Director-General must keep a published form of the record open for public inspection (*see clause 238*).

Subpart 7—Amendments to Schedule 3 and regulations

Schedule 3, which lists the regulated activities, may be amended by Order in Council on the recommendation of the Minister of Health. Consultation is required before the Minister makes a recommendation (*see clause 239*).

In deciding whether to recommend that an activity be added to *Schedule 3*, the Minister must consider, among other matters, whether the activity poses a risk to public health and, if so, the nature and magnitude of the risk, and whether the risk of that harm is likely to be prevented, mitigated, or adequately managed by regulations (*see clause 240*).

Clause 243 authorises, among other matters, regulations that—

- prescribe requirements, standards, criteria, mandatory objectives, functional requirements, performance measures, or objectives that must be observed or attained:
- prescribe the premises in which a regulated activity is carried on:
- require a current consent from the relevant consent authority:
- require a current public health risk management plan approved by the relevant consent authority for the activity:
- require periodic assessments by an assessor of the activity:

- determine whether the relevant consent authority for any district is the territorial authority for the district or the DHB for the district.

Subpart 9—Assessors

Subpart 9 provides for the appointment of assessors to assess compliance with the requirements for regulated activities (see *clause 253*). The Director-General of Health or a consent authority may appoint an assessor. This subpart provides assessors with powers, including powers to inspect and seize the records of those conducting regulated activities (see *clause 253*). Assessors have powers of entry in order to exercise their powers.

Part 7 Emergencies and border health

Subpart 1—Emergencies

Subpart 1 (clauses 259 to 279) deals with emergencies. It is based on and closely reflects many of the provisions of Part 3 of the Health Act 1956.

The Minister may declare an emergency if he or she has reasonable grounds to believe that a serious risk to public health exists in any place or area within New Zealand and that the exercise of powers under this subpart will help to prevent, reduce, or eliminate that risk. A declaration of emergency by the Minister lasts for 90 days unless it is revoked or extended (only one period of extension is permissible). If a longer period of emergency is required, a declaration of emergency can be made by Order in Council (see *clauses 259 to 263*).

Emergency powers may be exercised by a medical officer of health when an emergency is declared by the Minister or by Order in Council, or when a state of emergency has been declared under the Civil Defence Emergency Management Act 2002 or an epidemic notice is in force (*clause 264*). *Clause 265* deals with the interrelationship between the exercise of emergency powers under this subpart and the exercise of powers arising from a declaration of a state of emergency under the Civil Defence Emergency Management Act 2002.

The general emergency powers (see *clause 266*) include the power to declare things to be insanitary, to prohibit or limit their use, or to require them to be disinfected, isolated, quarantined, destroyed, or otherwise disposed of. People may be required to report for examination or testing. They may be required to remain in isolation or quarantine until they have been medically examined and found to be free from a condition or until they have undergone preventive treatment (for example, vaccination). Freedom of movement of people, animals, and other things may be restricted. *Clause 267* sets out certain safeguards in relation to persons who are isolated or made subject to quarantine under *clause 266*.

Subpart 1 also contains specific provisions allowing the redirection of aircraft (*clause 268*), the closure of premises and restriction of association (*clauses 269 and 270*), the requisition of land, premises, vehicles, and other things by a medical officer of health (*clause 271*), the undertaking of sanitary works (*clause 277*), and the determination by the Director-General of priorities for medicines (*clause 278*).

Subpart 1 also confers powers of entry and inspection (*clause 272*) for the purpose of enabling the exercise of powers conferred by *clauses 266, 269, and 271*, the power to require information to manage the emergency or epidemic (*clause 273*), and provisions enabling members of the police to assist medical officers of health to exercise their powers and functions under this subpart (*clause 275*).

Various offences are created by this subpart, including *clause 274* (which makes non-compliance with a requisition an offence), *clause 276* (which makes it an offence to obstruct a medical officer of health or a person assisting a medical officer of health), and *clause 279* (which deals with offences generally under this subpart).

Subpart 2—Border health

This subpart (*clauses 280 to 322*) deals with border control. It is based on and closely reflects many of the provisions in Part 4 of the Health Act 1956.

The Director-General may designate points of entry for the purpose of complying with *subpart 2*. The Minister may designate parts of a harbour as places of inspection for ships. The Minister is also empowered to declare any place in New Zealand to be an affected place if it is affected by a quarantinable condition (see *clauses 281 to 283*).

All ships and aircraft arriving from outside New Zealand or from an affected place inside New Zealand are liable to quarantine (*clause 284*). A person is liable to quarantine who is on board or disembarks from a craft that is liable to quarantine (*clause 285*).

A ship or aircraft liable to quarantine must, in general, be inspected by a medical officer of health or a

health protection officer. A medical officer of health or health protection officer may examine a person believed on reasonable grounds to have, or to have been exposed to, a quarantinable condition. Those officers may also exercise a variety of powers in relation to ships or aircraft liable to quarantine, including, in certain circumstances, the disinfection and fumigation of craft and the removal of those craft to other ports or airports for that purpose (*see clauses 285(2), 287, 288, 290, 299, and 305 to 307*).

A person who is liable to quarantine must supply relevant information about identity and travel plans on request and must, on request, submit to an examination involving non-invasive procedures (*clause 286*). If a person is believed or suspected on reasonable grounds to have, or to have been exposed to, a quarantinable condition, more intrusive powers may be exercised by a medical officer of health or health protection officer (including detention under surveillance and detention at large). The maximum period of detention under surveillance is 28 days (*clause 290*). A person who is detained, or kept under surveillance at large, has a right of appeal to the District Court against the decision (*clauses 291 to 293*).

Clauses 297 to 299 carry over existing provisions in the Health Act 1956 stating when the liability of craft and persons to quarantine ceases, and restrictions applying to a craft when it is liable to quarantine. *Clause 300* carries over existing section 102 of the Health Act 1956 (which requires ships to complete a declaration of health). *Clause 301* adds a new requirement for a declaration of health to be provided in respect of an aircraft. *Clauses 302 to 305* also carry over in a modified form existing provisions in sections 105 to 107 of the Health Act 1956. *Clause 308* provides for the issue of ship sanitation certificates (which is a requirement of the International Health Regulations 2005).

Subpart 2 also contains new provisions (*clauses 310 and 311*) enabling medical officers of health and health protection officers to issue warnings and advice in respect of persons who are about to leave New Zealand who are suspected of having a quarantinable condition, and to require such persons to supply information about identity and travel plans. There are also new powers enabling medical officers of health and health protection officers to inspect ships and aircraft departing from New Zealand and ports or airports designated as points of entry (*clauses 312 and 313*). There is also a new power to require owners of craft or their agents to provide information about the craft, and the freight and people on board the craft (*clause 314*). These new powers are needed in order to fully comply with New Zealand's obligations under the International Health Regulations 2005.

Clauses 315 to 320 relate to offences against *subpart 2*. *Clause 321* provides that *subpart 1 and 2 of Part 7* operate independently, and *clause 322* empowers the making of regulations about risks to public health at New Zealand's border.

Part 8

Miscellaneous provisions

Part 8 (clauses 323 to 398) contains a number of miscellaneous provisions.

Clauses 323 to 325 provide for the conduct of health impact assessments on a voluntary basis. The purpose of a health impact assessment is, in general terms, to enable departments of State, Crown entities, and local authorities to identify and assess whether proposed actions have a positive or negative effect on public health, before those actions are taken. If a health impact assessment is undertaken, it must be undertaken in accordance with criteria specified by the Director-General and a copy must be supplied to the Director-General.

Part 8 contains a general power of entry and inspection and sets out a requirement that a warrant must be issued by a judicial officer in order to exercise a general power of entry in respect of a dwellinghouse or marae (*clauses 326 and 327*). *Part 8* also allows the examination of children at early childhood centres and schools (*clause 328*), and contains provisions enabling the issue of compliance orders restraining persons from contravening, or requiring them to comply with, provisions of the Act (*clauses 329 to 336*).

Part 8 also contains standard provisions dealing with incorporation by reference of material in the Act and regulations made under the Act (*clauses 337 to 344*), the issue and execution of search warrants (*clauses 345 to 351*), and the exercise of powers of entry and search (*clauses 352 to 358*). It also includes provisions for the protection of persons exercising powers under the Act or regulations made under the Act (*clause 361*), compensation for persons adversely affected by those actions (*clause 363*), various duties and powers of local authorities (*clauses 365 and 366*), rules about the service of documents (*clause 367*), offences generally (*clauses 368 to 373*), regulation-making powers (*clauses 374 to 381*), and transitional provisions (*clauses 382 to 395*). *Clause 396* amends the New Zealand Public Health and Disability Act 2000 to refer to the new public health functions of DHB's and to enable inquiries to be made in relation to any complaint or other matter arising under the Bill (once enacted).

Schedule 1 lists notifiable conditions and epidemic diseases.

Schedule 2 lists notifiable contaminants.

Schedule 3 lists regulated activities.

Schedule 4 relates to repeals and revocations.

Schedule 5 consequentially amends other enactments.

Regulatory impact and compliance cost statement

Statement of nature and magnitude of problem and need for government action

Background

In 2001, Cabinet agreed that a new Public Health Bill (the **Bill**) would provide for an outcome-focused, enabling, risk management framework to provide effective management of all significant and emergent risks to public health.

The 2001 decisions provided the broad framework, but further detail is required to inform the drafting of the Bill. A number of these details require consideration of how to balance the interests of public health with individual freedoms. Some issues related to non-communicable disease (**NCD**) risk factors (such as poor diet, or lack of exercise) were not considered explicitly in the 2001 decisions. Furthermore, a number of events since 2001 have informed the detailed proposals—

- lessons from Severe Acute Respiratory Syndrome (**SARS**) and the emergence of other conditions:
- a better understanding of the implications of developments in genetic screening:
- decisions on the Biosecurity Strategy and responsibilities in border control:
- finalisation of the International Health Regulations (IHRs) by the World Health Assembly (**WHA**) on 23 May 2005:
- the introduction and consideration by select committee of the Law Reform (Epidemic Preparedness) Amendment Bill (which provided for Prime Ministerial notices to manage wide social and economic disruptions caused by major pandemics such as could be caused by avian influenza. The Epidemic Preparedness Act 2006 also amended the Health Act 1956, among other statutes, to extend and clarify the Act's special powers and quarantine provisions).

Proposals, the details of which have been developed significantly since 2001, are summarised in the following sections:

- health information and notifiable diseases:
- prevention of ill health—registers, immunisation and screening:
- management of people with communicable conditions and use of restrictive powers:
- contact tracing:
- border health protection:
- non-communicable diseases.

Health information and notifiable diseases

In 2001, it was agreed to continue the present framework, which provides for disclosure of health information to a range of health providers and government agencies (in specified circumstances). The present definition of health information as set out in section 22B of the Health Act 1956 reads—

health information, in relation to an identifiable individual, means—

- (a) information about the health of that individual, including that individual's medical history:
- (b) information about any disabilities that individual has, or has had:
- (c) information about services that are being provided, or have been provided, to that individual:
- (d) information provided by that individual in connection with the donation, by that individual, of any body part, or any bodily substance, of that individual:
- (e) for the purposes of section 22E of this Act and for that purpose only, information—
 - (i) derived from the testing or examination of any body part, or any bodily substance, donated by an individual; or
 - (ii) otherwise relating to any part or substance so donated, or relating to the donor and relevant (whether directly or indirectly) to the donation:

However, that definition is not the same as that in the *Health Information Privacy Code*, which includes 'information about the individual which is collected before, or in the course of, and incidental to, providing health services to that individual'. The Health Act 1956 definition of health information is therefore somewhat more limited than that in the *Health Information Privacy Code*, and this could compromise the comprehensiveness and effectiveness of public health surveillance.

The 2001 Cabinet decisions included general provisions for the notification and surveillance of diseases. The decisions also envisaged that notification duties be extended beyond District Health Boards to encompass 'medical practitioners, medical/diagnostic laboratories, and others' (including community-based services). However, the decision did not specify criteria for when a disease should be notifiable, who should notify and their responsibilities, and how notification should occur. As a result, it is

not transparent how the interests of the public, individuals, and potential notifiers would be balanced. There is no provision for the notification of pathological organisms or contaminants that are not communicable diseases but may present public health risks. Lack of such provisions compromise the scope for prevention and early intervention.

It is anticipated that the list of notifiable diseases would be changed through an amendment to the Schedule or regulations by Order in Council. However, the policy and consultation processes that are generally required to make such an amendment might be too slow when highly infective viruses or new or unknown conditions emerge suddenly and need prompt management to avoid serious harm to public health.

Registers, register-based programmes, and screening

The 2001 Cabinet decisions provided for the establishment and maintenance of registers and register-based programmes for diseases, syndromes, conditions and other issues. The relationship of the provisions to the Official Information Act 1982 was also addressed. Generic provisions include national or sub-national registers, opt-on and opt-off registers, and privacy safeguards. The registers are to be created by regulations. However, the decisions do not specify the purpose and objectives to guide whether registers should be established and in what form. Clarity is important given the range of conditions for which registers could later be established, and the ensuing implications about privacy issues.

The 2001 Cabinet decisions did not address genetic screening. Specific attention should be paid to whether the scope of the Bill is to include genetic screening because it can be controversial, and because a current comprehensive screening programme (that is, the Guthrie test) may be considered to constitute a form of genetic screening. The Guthrie test consists of metabolic testing of newborn babies. There would be advantages in the Bill not excluding genetic screening in order to allow its potential application to the Guthrie test programme, if it is decided in the future that this is appropriate, and because other possible uses for genetic screening are evolving rapidly. Although confidentiality of individual information is addressed in the Privacy Act 1993 and the *Health Information Privacy Code*, the Guthrie test raises issues about the holding and use of medical samples that may warrant more specific regulatory detail than the Act and its Code are able to provide (as recommended by the Privacy Commissioner's report on the Guthrie Test.) The growing range of possible uses of medical samples means that, increasingly, individual privacy rights may require additional protection and specific rules.

The Bill would continue the present powers of statutory officers in relation to vaccine-preventable illness (such as the ability to exclude children from school in outbreaks of such vaccine-preventable illness as measles). Regulations would be able to be made for immunisation-related functions.

Management of people with communicable conditions and use of restrictive powers

The 2001 Cabinet decisions included general approval that the Bill would include powers to manage significant and emergent risks to public health that were not otherwise managed effectively. The control of people with communicable diseases is an example. The Health Act 1956 provides for powers to detain people with infectious diseases without time limits or appeal provisions. The issue is the range of powers that would be appropriate (and under what circumstances) to ensure a person undergoes a test, is examined, or remains isolated from others, and what checks and balances should be available. This involves a balancing of the interests of public health with the rights of individuals.

In extreme emergency circumstances (such as the threat of a pandemic with serious health impacts), mandatory vaccination might be in the best interest of public health. But there is no framework to determine what such circumstances might be, what individual obligations or rights would be, and what enforcement powers would be available.

There is a related issue about what range of powers should be available when a person is found to be living in unsanitary conditions or without adequate care. The Health Act 1956 provides a power to remove persons from their homes but does not provide for less restrictive alternatives (such as a requirement to accept help with cleaning and meals), which may both be more appropriate in the circumstances and more consistent with human rights.

Contact tracing

The ability to trace and alert people who have been (or may be) in contact with a person with a communicable disease is an important tool for managing the public health risks of communicable disease. The 2001 decisions envisaged provisions for contact tracing. However, these decisions did not specify how to balance the interests of public health (including those of partners and family members) with the rights to privacy of the individuals involved.

Border health protection

The 2001 decisions consisted of a general approval that the Bill would enable the effective management of

all significant and emergent risks to public health that were not otherwise effectively managed, including in relation to border control. The 2001 decisions did not include the detail needed to guide the development of provisions for quarantine powers. Nor did it include the detail on the legislative relationships between the health sector and other agencies with overlapping interests in border control (such as Customs and the Ministry of Agriculture and Forestry (MAF)). For example, control of cross-border movements of poultry with avian influenza is of interest both from a biosecurity and human health perspective. Nor were the 2001 decisions able to predict with detail the direction taken by the revised WHO IHRs (now finalised by the World Health Assembly in May 2005). Issues are—

- how best to assign responsibilities for border health control in the Bill, given biosecurity, food, and customs legislations:
- how best to provide for border health protection given modern patterns in international travel, when most people travel by air and symptoms are unlikely to be identified at the border:
- how to implement the relevant international health obligations, in particular the revised International Health Regulations 2005. These include an expansion of conditions and of required information. They also require a greater capacity for emergency response and co-ordination at both international and national levels.

Non-communicable diseases

The 2001 decisions authorised some specific provisions of relevance to NCDs (such as registers and programmes for screening) but the decisions did not authorise any other specific provisions to address NCDs. However, NCDs (such as cancers and diabetes) are now the major causes of avoidable ill-health, disability, and premature deaths in New Zealand.

The District Health Boards, under the New Zealand Public Health and Disability Act 2000, have the objective to improve, promote, and protect the health of people and communities. To date, some risk factors for NCDs have been dealt with under specific legislation, such as the Food Act 1981, the Smoke-free Environments Act 1990, and the Sale of Liquor Act 1989. There are no provisions relevant to controls on products and services that impact on NCD risk factors for major causes of ill-health and disability.

Statement of public policy objectives

The public policy objective is to promote, protect, and improve the public health of New Zealanders and reduce inequalities in health, consistent with the New Zealand Health Strategy, the New Zealand Disability Strategy, and He Korowai Oranga (Māori Health Strategy). Specific policy objectives are—

- that public health risks are detected and managed in a timely and effective manner:
- that the costs of avoidable illness, disability, and premature deaths are minimized:
- that the interests of public health are balanced with individual rights to freedom and privacy:
- that there is a clarity of roles of health agencies and other government agencies:
- that international health obligations are met.

Statement of feasible options (regulatory and/or non-regulatory) that may constitute viable means for achieving desired objectives

Status quo

The status quo is the set of decisions made in 2001 by Cabinet on matters to be included in the Public Health Bill. To avoid duplication, the key features of the status quo are set out in the problem section of this statement. Given the high-level nature of the 2001 decisions, events since 2001, and the 2002 consultation relevant to decisions on the balance between individual freedoms and the public good, it is considered that the status quo option would not meet the public policy objectives.

Preferred option—Public Health Bill 2007

Health information and notifiable diseases

It is proposed that—

- the definition of health information include "information about the individual that is collected before or in the course of, and incidental to, the provision of any health service or disability service to that individual:
- notification provisions would also apply to conditions, contaminants, or human pathogenic organisms that present or are precursors to significant health risks:
- funeral directors be no longer required to notify conditions:
- the Bill specify, among other things,—
 - the purpose of notification (that is, the availability of accurate, comprehensive, and timely

- information on communicable diseases and other conditions of public health significance):
- criteria for specified conditions (that is, based on the level and nature of risk to the person or the public, the scope for prevention or management of the condition or risk factor, its value as an indicator of other risks (such as chemical or radiation exposure), or international obligations):
- lists, in the form of schedules that could be amended by Order in Council, that set out notifiable conditions, and potentially additional persons or agencies (from those specified in the Bill) who may be required to notify:
- possible categories of notifiable conditions, for example, by reference to type of disease or whether the condition is liable to contact tracing:
- which persons, officials, and agencies are obliged to notify, including, in particular, medical practitioners and laboratories, to be further detailed if necessary in regulations from a list of potential notifiers in the Bill:
- the agencies to which notifications must be made, in particular, a senior health officer or the Director-General of Health, with the potential for regulation-making powers to provide for additional agencies to which notification must be made, such as the World Health Organization:
- provisions enabling medical practitioners to report to senior health officers outbreaks or clusters of cases (whether notifiable or non-notifiable) where the number of cases is unexpected and/or the public health impact could be serious:
- fast track provisions to allow the Director-General to amend the scheduled list of notifiable conditions (by gazetting) for a period of up to six months if there are significant public health risks:
- a duty of confidentiality on the notifier and any person or agency to which notifications are made, or to which information based on notifications is communicated:
- that senior health officers may communicate information based on notifications to other agencies (including territorial authorities and government agencies, depending on the nature of the information), on a non-identifying basis unless the circumstances of the case require identifying information for public health action:
- a requirement that health practitioners advise any person with a notifiable condition that information is to be sent to an appropriate agency, other than in exceptional circumstances.

Prevention of ill health: registers, immunisation, and screening

It is proposed that the Bill outline the requirements for registers and register-based programmes, such as their purpose, and the rules about the use of information and confidentiality, to be further detailed in regulations. Provisions relevant to registers and register-based programmes would not be operative without regulations to bring them into effect. The provisions would not exclude genetic screening.

Key features for registers and register-based programmes include—

- the purpose or objectives for which registers and register-based programmes may be established, such as—
 - monitoring the health status and relevant risk factors of the relevant group of people, such as babies and young people, to allow the early identification of risk factors, health issues, or disability for preventive or early intervention strategies:
 - monitoring the effects of health service provision:
- the protection of information, and access to information, for example, as relevant to the specific register or programme—
 - people enrolled on the register/programme to be informed about other persons who may have access to information on the register and the uses to which that information may be put:
 - provisions that information is not to be retained on the register if a person cancels enrolment, except to the extent that details are required to be kept to identify a person as not enrolled on the register or programme:
 - no identifying information on the register or programme to be disclosed, except with the consent of the person concerned or to specified persons such as those with functions relevant to evaluation, auditing, or quality control of the register or programme:
 - regulation-making powers to allow registers and register-based programmes to be established or recognised, following their own consultation and regulatory impact assessment processes.

In addition, this part of the Bill would limit the current law on examination of children to allow a health practitioner—

- to enter a pre-school or school to examine, test, and screen children, where the parent consents or,

in very limited circumstances, without consent where screening for a specified condition is likely to have benefits for the child or other children:

- to allow a health practitioner to advise the school and parent that a child has a significant health condition and make arrangements for follow-up.

Further regulation-making powers would relate to immunisation (eg, to continue the present school-based recording of immunisation for as long as that is necessary) and screening. Such regulations would require specific consultation and regulatory impact assessment.

The present powers of statutory officers in relation to vaccine-preventable illness (such as the ability to exclude children from school in outbreaks of vaccine-preventable illnesses such as measles) would continue. Regulation-making powers relevant to immunisation and screening would be included.

Management of people with communicable conditions and use of restrictive powers

It is proposed that the provisions for the use of restrictive powers relevant to people with communicable conditions include a greater range of options. Key features of the proposal are—

- restrictive powers to be proportionate to risk, including power to direct a person to—
 - accept supervision or participate in a programme;
 - refrain from specified activities under specified circumstances;
 - require a person to undergo medical examination or to accept treatment or undergo detention or isolation.
- rights, duties, and offences both for people with communicable conditions and health practitioners responsible for their management;
- a 2-tier approach to decision-making and procedures as follows:
 - a court to exercise the more restrictive powers (such as detention, compulsory testing examination, and required treatment), in accordance with stringent criteria (as well as the less restrictive powers for other conditions);
 - a senior public health officer to exercise the less restrictive powers (such as an order to refrain from certain activities in specified circumstances) for notifiable conditions, in accordance with criteria, as well as the power to direct, but not to physically require, a person to be examined or tested for a high-risk condition;
- review and appeal safeguards (eg, public health orders would be time-limited, subject to appeal, etc);
- criteria for the exercise of the restrictive powers, such as the seriousness of the condition and the extent to which other people are able to protect themselves from it, and criteria for decisions on public health orders;
- provision for an urgent public health order to be issued by senior public health officers, subject to criteria, if it is not practicable in the circumstances to obtain a court order (to expire after 72 hours);
- court orders for legally required treatment in very serious situations and with strict criteria, for example, that treatment is critically important to protect public health (this would not involve treatment being compulsorily administered but could involve the alternative of isolation or detention).

It is also proposed that the Bill would include provisions for compulsory (but not physically forced) vaccination in extreme emergencies, including—

- the type of circumstances and the likely efficacy procedures for invoking powers;
- the likely efficacy;
- procedures for invoking powers;
- consequences of not complying with emergency vaccination provisions.

It is also proposed that the Bill would include—

- criteria for the use of restrictive powers in relation to persons who cannot care for themselves and where others cannot provide that care for them, and there is reason to believe that, as a result the person's health will deteriorate or there is a health risk for others etc);
- a range of powers, similar to those for people with communicable conditions, ranging from an obligation to accept supervision or community support to removal from home.

Contact tracing

It is proposed that the Bill would specify details on contact tracing, including—

- the conditions which may be liable to contact tracing, that is, the list of notifiable conditions;
- the principle that contact tracing should as far as possible respect the privacy and autonomy of the people concerned while achieving public health objectives;
- criteria for conditions to which contact tracing may be applicable, including a significant risk to public health;

- procedures for contact tracing for health practitioners and senior health officers.
- The Bill would also allow for, but not require, health practitioners to disclose to partners and family or household members information that is relevant to the risks posed to them by another family or household member or partner (where infected persons do not themselves inform those contacts), taking into account—
- the serious nature of the condition:
 - any significant risk of infection through close contact:
 - the failure of the person concerned to take steps to inform and protect others.

Border health protection

It is proposed that the Bill—

- clarify that the primary role of health agencies in relation to border control relates to the protection of human health and, in particular, to the monitoring and management of people as actual or possible sources of infection:
- provide the Ministry of Health with an overview responsibility for border health protection while other agencies may have responsibility for delivery of services:
- expand the scope for border health protection provisions from cholera, yellow fever, and plague to conditions that present significant risk or are communicable or both, consistent with the International Health Regulations 2005:
- update provisions on quarantine and sanitary certification for people and craft:
- ensure that airports and ports can be required to make provision for sanitary environments and appropriate facilities for assessing the health of travellers, if appropriate:
- provide powers to require information and share information, the ability to trace and inspect goods where there is good reason to believe they present a public health risk, and provide some public health emergency provisions, reflecting the revised IHR.

Public health promotion and non-communicable diseases

It is proposed that the scope of the Bill be widened to include a focus on the management of NCD risk factors, and provide for relevant purposes, codes of practice or guidelines, provision to encourage but not require health impact assessment, and provide for a legislative report-back in accordance with which the Ministry would report to Parliament or a Select Committee on issues relevant to NCDs, including the possible use of regulation-making powers to address NCD risk factors.

The non-binding codes of practice or guidelines would include powers for the Director-General to make non-binding codes of practice or guidelines in promoting public health, and in particular in relation to—

- exposure to, or access or use by, the public or specific groups to products and services that are relevant to NCD risk factors (such as soft-drink vending machines in schools):
- matters relevant to advertising, sponsorship, or marketing of products and services with an impact on NCD risk factors, where such matters are not addressed by any other means:
- the performance, composition, contents, additives, design, and construction of goods, things, services, or processes that impact on NCD risk factors:
- the form and content of markings or warnings or information to accompany a good, thing, or service with an impact on NCD risk factors.

Where the preferred option (Public Health Bill 2007) overlaps with a specific provision of another statute, the other specific provision would be invoked in the first instance. In some cases of overlap, the other statute may be amended.

Statement of net benefit of proposal, including total regulatory costs (administrative, compliance, and economic costs) and benefits (including non-quantifiable benefits) of proposal, and other feasible options

The more detailed proposals fall within the scope of the 2001 Cabinet decisions and do not alter the overall assessment of costs and benefits as indicated in the RIS and cost benefit analysis carried out to inform Cabinet in 2001. Costs and benefits identified below provide further clarification of analyses undertaken in 2001 in addition to specific reference to new issues, in particular those relating to non-communicable diseases.

Government

Central government

An assessment of the financial implications for central government in relation to developing and administering the proposed Bill was included in the papers approved by Cabinet in 2001. At that stage, the estimated costs to the Ministry for developing the Bill and for 12 months prior to its enactment (including

costs of policy development, drafting instructions and a methodology for developing subordinate legislation, and the proposed monitoring regime) was between \$100,000 and \$250,000 for the years 2002/03 to 2004/05 (personnel and operating costs).

However, taking into account the implications of the more developed proposals outlined in this paper, the total cost of policy development for the first year post-enactment may be \$275,000 rather than \$250,000. The cost of \$275,000 will be met by reprioritising Vote Health resources.

It was also noted in 2001 that resource implications post-enactment would depend on factors such as decisions on the need for specific new or revised regulations. The estimate over a 5-year period for cost to the Ministry was in the order of \$0.5–\$1 million. This was intended to be met within baselines. In addition, costs associated with transitional arrangements were estimated as approximately \$0.5 million. The Ministry considers these estimates remain valid. Transitional and implementation costs will include information for the health sector, the general public and particular stakeholders. Training needs should also be considered and manuals rewritten.

Public health arrangements will be more effective due to—

- more complete and timely public health surveillance;
- the ability to quickly invoke temporary notification requirements for new and emerging public health risks;
- the increased recognition of NCD risk factors;
- the clarification of the roles of the various border control agencies.

The net benefits of regulation-making powers (such as to establish registers) depend on the detail of specific proposals. A separate regulatory impact and business compliance cost statement would be prepared when detailed regulations are recommended.

Public health arrangements will be more transparent due to—

- clear objectives and criteria for establishing registers and register-based programmes, and for how the information can be used for public health;
- the use of courts for authorisation before certain restrictive powers can be used, and the criteria that should guide such decisions (while maintaining the flexibility of a senior public health officer in relation to the use of less restrictive powers or in emergencies).

Health information requirements will be consistent with other health information standards (Health Information Privacy Code).

The Bill would enable New Zealand to continue to meet the present WHO IHRs, as well as able to meet the revised IHRs in accordance with any government decision.

Costs for the Ministry of Health will relate to training and the development of guidelines and manuals etc, as well as consultation and other costs associated with regulation development.

There may be some workforce implications for enforcement agencies, in particular Customs and the Police, but any such potential will be identified and addressed in the drafting process together with those agencies.

Local government and district health boards

The Bill will provide for a more effective allocation of powers and duties at the central and local levels. This will ensure greater clarity and efficiency of responses to, and action on, public health issues (in particular through clarifying the roles of public health officers in relation to their employing agencies, usually district health boards and territorial authorities). Provision for operationalisation of district protocols at the local levels, in particular between district health boards and territorial authorities, will allow local agencies to work out arrangements in advance of how overlapping functions should be fulfilled in particular circumstances, and will facilitate planning for prevention and mitigation of public health emergencies. Implementation of the Bill will involve some time spent in staff training and development costs.

Industry

The codes and guidelines for non-communicable disease factors will be consulted on when developed. They will not be mandatory and any costs associated with their implementation will be one factor among others that the manufacturer or supplier would take into account in deciding whether, and the extent to which, compliance would be appropriate.

The cost of ship sanitary certification may be increased to a small extent as a result of the more extensive scope of inspection and hygiene checks that will be included in revised certification. At present ships in New Zealand ports pay \$150 for "deratting certification". This does not cover the real costs of the present inspection. The new regime will go beyond inspection for rats, and should be adjusted upwards to recover to a greater extent some of the costs of certification. This regime will be global in its coverage and New Zealand requirements will be identical to those of other countries.

Some costs may be imposed in public health emergencies. Such facilities are, however, only expected to

be required for use in times of emergency, (which by definition will occur extremely rarely). It is not possible to quantify the cost implications of the provisions in the Bill for this purpose, but it is noted that separate cost assessments have been made for the purpose of pandemic planning.

Providers of health and disability services

The proposal for notification of pathological organisms or contaminants may result in some additional compliance costs on medical laboratories in particular. Further detail is provided in the business compliance cost statement. However, any incremental costs will be minimal given that it will involve sending information that is already collated to 2 recipients rather than 1, and given that medical laboratories already have processes in place to share such health information. The impacts would be assessed when schedules to the Bill are prepared.

Providers of private health and disability services (that is, those not funded by DHBs) would also be required to provide health and disability data on request to the Ministry of Health under the proposed amendment to section 22D. This may have a compliance cost (as noted below in the business compliance cost statement).

Society

Wider society will benefit from a transparent balancing of the public's expectations to be protected from avoidable communicable diseases, and individual rights to freedom and privacy, including—

- the extent to which the movement of people with high-risk communicable conditions may be restricted when voluntary measures have not proved effective;
- review and appeal safeguards on public health orders and other restrictive powers;
- health practitioners' discretion to disclose individual information in limited circumstances where the infectious individual is failing to take steps to inform and protect others;
- a transparent and more reasonable application of powers to restrict an individual's freedom (through clear criteria and principles, the use of court orders, and interventions that are commensurate with the risk to the public health);
- the potential for a reduction in the costs of avoidable NCDs, such as cancers and diabetes, through greater awareness of NCD issues and their prevention promoted by provisions for codes and guidelines with respect to goods and services that impact on NCD risk factors.

It may be argued that more stringent expectations and procedures in relation to the management of people with communicable conditions may be perceived as costly in that decision-making will need to be more careful, with a comprehensive range of factors to be taken into account. This may have the result of a more lengthy decision-making process, when compared with the procedures envisaged in the Health Act 1956. These procedures, however, reflect current good clinical practice.

There are also confidentiality and privacy issues arising from provisions for notification, contact tracing, and disclosure of information by medical practitioners to close contacts and family members. These issues will be taken into account in drafting of the relevant provisions, and balanced with the benefits to other people and society in general which accrue from information to the health sector and enhancement of people's ability to protect themselves from the risk of infection.

Statement of consultation undertaken

Stakeholder consultation

The proposals outlined in this paper have been the subject of a detailed public consultation process. In November 2002, the discussion paper *Public Health Legislation: Promoting public health, preventing ill health and managing communicable diseases* was released. As part of the consultation process, the Ministry held a series of meetings and workshops in Auckland, Wellington, and Christchurch in early 2003. Over 180 people attended these meetings, of which there were 9. A total of 606 submissions were received from 1 190 signatories. More than 300 "form" letters from individuals and groups with concerns about immunisation were received. Other issues on which there was a broad range of opinion included the extent to which the legislation should include "last-resort" powers (such as detention) to assist in managing serious communicable diseases, and the issue of whether and how the Bill could address NCD risk factors. Views on registers, screening, and contact tracing varied. The proposals developed following analysis of the submissions, and in order to address concerns to the greatest extent possible, are a middle course between extremes of positions.

In particular, the provisions that provide for managing serious communicable diseases require a greater range of procedural safeguards than in the Health Act 1956. Powers of detention would no longer be able to be exercised by a statutory officer but by a court (except in urgent cases and then only for a maximum of 72 hours). This, together with other safeguards, should help allay concerns about the appropriate use of 'last-resort powers. Concerns about registers, screening, and immunisation are addressed by the fact that

general provisions in the Bill will only be operative if and when regulations are made to invoke them. Such regulations will require their own consultative procedures, privacy impact assessments, and regulatory impact assessments. Issues relevant to contact tracing most relate to concerns about privacy and control of information. The proposals have been recast to emphasise to a significant extent the role of patients in communicating with their own contacts, except where this is not effective and the risks to public health are significant. The proposals relating to non-communicable diseases are relatively minor, but provide to some extent for future changes (and hence another opportunity to address concerns expressed by a range of sector groups in consultation on the 2002 discussion document) by the concept of a legislative report-back.) These concerns were diverse, ranging from the view that there was no need for legislation to address NCD risk factors, to the view that a very comprehensive framework to address NCD risk factors is required. The provision for codes is therefore a compromise between those who supported the need for binding regulation-making powers and those who did not consider the Bill as an appropriate way to progress such issues. The legislative report-back will allow for further opportunities to review these issues and the options then available.

In September 2004, the Ministry of Health undertook limited consultation with some port and airport representatives in relation to the revision of the World Health Organization International Health Regulations. A general overview of the implications of the revised International Health Regulations was provided, and stakeholders were encouraged to familiarise themselves with the Regulations upon their completion (which occurred in May 2005).

Government departments and agencies consultation

- 1 Comments have been sought on the proposals as they have been developed over the last five years from the following government agencies: Civil Defence and Emergency Management, Conservation, Consumer Affairs, Corrections, Crown Law, Customs, Department of Building and Housing, Education, Environment, Health and Disability Commissioner, Human Rights Commission, Department of Internal Affairs, Justice, Labour, Ministry of Agriculture and Forestry, Ministry for Foreign Affairs and Trade, New Zealand Food Safety Authority, Office for Disability Issues, Pacific Island Affairs, Police, Social Development, State Services Commission, Te Puni Kokiri, Treasury, Youth Development, Women's Affairs, the Civil Aviation Authority, Maritime New Zealand, Transport, Economic Development, Defence, and Ministry of Fisheries. Comments were also sought from Local Government New Zealand, as well as the Office of the Commissioner for Children, Human Rights Commission, Privacy Commissioner, the Health and Disability Commissioner, Parliamentary Counsel Office and the Department of the Prime Minister and Cabinet.
- 2 The following agencies commented on this paper: Corrections, Civil Defence and Emergency Management, Conservation, Customs, Department of Building and Housing, Environment, Internal Affairs, Justice, Labour, MAF, New Zealand Food Safety Authority, Pacific Island Affairs, Police, Treasury, Civil Aviation Authority, Maritime New Zealand, Transport, Economic Development, Local Government New Zealand, Human Rights Commission, and the Privacy Commissioner. Comments from the Health and Disability Commissioner received on a preliminary paper in August were incorporated in this paper.
- 3 The Ministry of Education commented on earlier versions of the proposals relating to non-communicable diseases. These proposals have now been modified and are considerably more limited in their impact.
- 4 Border agencies such as MAF, NZFSA, and Customs are interested in the interface between the proposals in this paper and their legislation. The proposals address interface and overlap issues and it is intended that officials from the various agencies will continue to work together to avoid or minimise overlaps as much as possible. NZFSA also note the need for clarity in the provisions relating to powers to act for public health in cases where other legislation is not being implemented and that consultation should occur with the relevant department responsible for that legislation prior to its exercise. NZFSA also note the desirability for designation procedures for statutory officers with public health law functions to refer to comparable competencies.
- 5 Other agencies, in particular, the Ministry for the Environment, the Department of Building and Housing, and Transport, are also interested in overlap issues and have expressed strong interest in working on drafting with the Ministry of Health.
- 6 Other agencies identified issues that have resulted in amendments to the proposals or that will require ongoing discussions, for example Bill of Rights and privacy issues with the Ministry of Justice as well as agency responsibilities with SSC and others. The need to balance human rights of freedom and privacy in relation to the community good was stressed by such organisations as the Health and Disability Commissioner and the Privacy Commissioner. The Office of the Privacy Commissioner expressed support in general terms for the recognition of privacy concerns in the

- Bill, although it had a significant number of points on the draft outline.
- 7 The Human Rights Commission agreed with the emphasis on a human rights framework but queried the implementation of proportionality and privacy principles. The Commission also had some comments on specific proposals, for instance health impact assessments, disclosure of health information, and screening. The Commission agreed, however, that these proposals should go forward for Cabinet decision and then as appropriate consideration by Select Committee.
- 8 Customs confirmed their previous support for proposals for a modernised border health protection framework, but also note the need for agencies to work together to ensure the proposals are implemented in workable legislation. The Police did not raise issues except for concerns about whether the enforcement provisions in the Draft outline gave the Police sufficient authority to carry out their tasks effectively. These and other points (eg, on penalties) will be able to be worked through in drafting. Labour raised a point concerning the sharing of immigration status information which would require policy development.
- 9 Local Government New Zealand stressed the need in their comments for flexibility, further details, and effective and ongoing consultation with local government on further development of the proposals (particularly regulations) and their implications and implementation. These comments were supported by the Department of Internal Affairs.
- 10 A number of agencies, including NZFSA, Human Rights Commission, Customs, Labour, Justice, Transport, MAF, Police, the Department of Internal Affairs and, as noted above, the Office of the Privacy Commissioner, had specific comments on the draft outline that will be taken into account in development of further drafting instructions and in circulation of drafts of the Bill to those agencies and all agencies with an interest in the relevant areas. For example, the Office of Disability Issues noted antiquated language in the draft outline, and the Department of Internal Affairs expressed a particular interest in the roles of environmental health officers.

Business Compliance Cost Statement

The proposal for notification of pathological organisms or contaminants may result in some additional compliance costs on medical laboratories in particular. For example, they may need to put in place a check in their current processes to ensure the relevant authority (eg, a medical officer of health) is also alerted. However, any incremental costs will be minimal given that it will involve sending information that is already collated to 2 recipients rather than 1, and given that medical laboratories already have processes in place to share such health information. The assessment of the impacts would be the subject of its own regulatory impact and business compliance cost statement that must be prepared when detailed regulations are recommended. (The pathological organisms or contaminants that must be notified would be set out in a schedule of the Bill or similar flexible instrument).

Although private hospitals are not funded for reporting to the New Zealand Health Information Service, the required information will already be in existence and any additional costs would only be for the arrangements to convey the information to the Ministry.

Providers of private health and disability services (that is, those that are not funded by district health boards) would also be required to provide health information on request to the Ministry of Health. This may have a compliance cost, although the required information will already be in existence and any additional costs would only be for the arrangements to convey the information to the Ministry.

The associated costs will also be minimised by ensuring that affected parties are kept informed of their potential new obligations as the Bill passes through its parliamentary stages. This will enable such providers as laboratories to ensure that decisions they make on new information systems over the next few years will be consistent with new notification requirements.

Hon David Cunliffe

Public Health Bill

Government Bill
177—1

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Public Health Act **2007**.

2 Commencement

- (1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.
- (2) However, if this Act has not earlier been brought into force, it comes into force on the day that is 1 year after the date that it receives the Royal assent.

Part 1

Preliminary provisions, roles and responsibilities

Subpart 1—preliminary provisions

3 Purpose

- (1) The purpose of this Act is to improve, promote, and protect public health in order to help attain optimal and equitable health outcomes for Māori and all other population groups.
- (2) The features of this Act that are designed to achieve its purpose include provisions—
 - (a) setting out clear and specific responsibilities for the identification and effective management of risks to public health (for example, by the prevention, investigation, and control of those risks), and in particular, risks to public health arising from—
 - (i) communicable conditions; and
 - (ii) non-communicable conditions; and
 - (iii) the environment; and
 - (b) setting out a structure that provides for appropriate risk identification, risk assessment, and reporting (locally, regionally, and nationally), in order to prevent, reduce, or eliminate risks to public health; and
 - (c) aiming to reduce health inequalities by improving health outcomes for Māori and other population groups; and
 - (d) enabling regulations to be made controlling specified activities that pose a risk to public health; and
 - (e) placing responsibilities on territorial authorities to improve, promote, and protect public health within their districts (including the control of nuisances and the provision of sanitary services); and
 - (f) imposing obligations on certain persons and agencies to provide accurate, comprehensive, and timely information on notifiable conditions and notifiable contaminants and other conditions posing a health risk; and
 - (g) allowing the communication of information referred to in **paragraph (f)** in an appropriate form to assist in the management of health risks; and
 - (h) allowing temporary health emergencies to be declared by the Minister of Health, or by regulations under this Act, to contain and manage a serious risk to public health; and
 - (i) enabling measures to be undertaken in relation to craft, passengers, and goods entering or departing from New Zealand in order to—
 - (i) minimise, prevent, or contain risks to public health; and

- (ii) comply with New Zealand's obligations under the International Health Regulations (2005) promulgated by the World Health Organization.
- (3) In seeking to achieve its purpose, the provisions of this Act reflect the need to—
- (a) take into account concerns by Māori in relation to public health and consult with Māori in developing and implementing public health policies and measures;
 - (b) protect public health when managing health risks where there is uncertainty or incomplete information about health effects;
 - (c) ensure the exercise of powers under the provisions of this Act involves a response that is in proportion to the nature and seriousness of the risk to public health;
 - (d) complement other legislation that seeks to improve, promote, and protect public health.

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—

aircraft has the same meaning as in section 2 of the Civil Aviation Act 1990

airport means an aerodrome (as defined in section 2 of the Civil Aviation Act 1990)

appropriate authority means—

- (a) a medical officer of health; and
- (b) any other person or organisation specified as an appropriate authority in regulations made under **section 43**

assessor means an assessor approved by the Director-General or a consent authority under **section 245**

case of a condition means an instance of a condition (not being a notifiable condition) in 1 person

cluster or outbreak means 2 or more cases of a condition (whether or not a notifiable condition) in a person or persons that occur within a short period of time or within a geographical area, whether or not those cases are causally connected

communicable condition means a condition that may be communicated to a person from a person, animal, insect, bird, reservoir, or vector, either directly or indirectly

condition includes—

- (a) diseases (whether communicable or not);
- (b) physical harm caused by chemical, radiation, or other toxic exposure

consent authority, in relation to a regulated activity of a particular kind, means a DHB or a territorial authority that may issue consents under **section 204**

contaminant means—

- (a) an organism pathogenic to humans;
- (b) any substance or other agent that is harmful to humans

contamination means the presence of an infectious or toxic agent or matter that may present a risk to public health

craft means an aircraft, ship, or other device or machine that can be used to carry or transport people or goods—

- (a) by air; or
- (b) on or under water

DHB means a District Health Board constituted under section 19 of the New Zealand Public Health and Disability Act 2000

Director-General means the chief executive or acting chief executive under the State Sector Act 1988 of the Ministry of Health

dwellinghouse means—

- (a) any building, tent, caravan, or other structure or erection, whether permanent or temporary, that is used or intended to be used in whole or in part for human habitation; and
- (b) includes the land or any outbuildings and appurtenances belonging to, or usually enjoyed with, that structure or erection

environmental health officer means a person appointed as an environmental health officer under **section 153(1)(a)**

epidemic disease means a disease specified in **Part 2 of Schedule 1**

epidemic notice means a notice under section 5(1) of the Epidemic Preparedness Act 2006

health impact assessment means a combination of procedures, methods, and tools—

- (a) by which a proposal, policy, plan, strategy, project, rule, consent, standard, guideline, or programme is assessed as to the effect it is likely to have on the health of a population or part of a population and the distribution of the effects within the population; and
- (b) that indicates whether the thing assessed is likely to have a positive or negative effect on the health of the population or part of the population

health practitioner has the same meaning as in section 5(1) of the Health Practitioners Competence

Assurance Act 2003

health protection officer means a person appointed as a health protection officer under **section 12(1)(b)**

health risk means a substantial risk that 1 or more individuals who have a condition pose to the health of 1 or more other persons because of the condition, having regard to—

- (a) the nature of the condition, including, without limitation, the transmissibility and mode of transmission of the condition; and
- (b) the relevant circumstances of the particular case

local authority has the same meaning as in section 5 of the Local Government Act 2002

medical examination means the examination or testing of a person for the purpose of determining whether the person has a condition, and includes—

- (a) the taking of a sample of tissue, blood, urine, or other bodily material for medical testing; and
- (b) any diagnostic tests required to detect the presence of a condition in a person

medical officer of health means the medical officer of health for a health district appointed under **section 12(1)(a)**

medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand (continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003) as a practitioner of the profession of medicine

Minister means the Minister of Health

Ministry means the Ministry of Health

National Immunisation Schedule means the schedule known as the National Immunisation Schedule of the Ministry of Health and for the time being approved by the Minister, being a schedule specifying a programme of vaccinations to promote immunity against the diseases specified in the schedule

notifiable condition means a condition specified in **Part 1 of Schedule 1** as a notifiable condition

notifiable contaminant means a contaminant specified in **Schedule 2** as a notifiable contaminant **owner**, in relation to any land or premises,—

- (a) means the person for the time being entitled to receive the rent of the land or premises, whether on his or her own account or as the agent of or trustee for any other person, or who would be so entitled if the land or premises were let at a rent; and
- (b) includes any person for the time being registered under the Land Transfer Act 1952 as the proprietor of the land or premises

passenger, in relation to a craft, means any person in or on it, whether lawfully or unlawfully, who is not a member of its crew

point of entry—

- (a) means a place in New Zealand into which persons, baggage, cargo, conveyances, and other goods enter New Zealand from overseas or leave New Zealand to go overseas; and
- (b) includes those services provided at that place to facilitate the entry of those persons or things into New Zealand or their departure from New Zealand

premises includes a ship or an aircraft

provider has the same meaning as in section 6(1) of the New Zealand Public Health and Disability Act 2000

public health means the health of all of—

- (a) the people of New Zealand; or
- (b) a community or section of those people

public health risk management plan means a plan prepared under **section 228**

regulated activity means an activity that is described in **Schedule 3**

relevant consent authority, in relation to the carrying on, or proposed carrying on, of a regulated activity, means the consent authority responsible for the area where—

- (a) the premises are located in which the activity is, or is to be, carried on; or
- (b) if the activity is of a type that is not carried on from fixed premises, the person carrying on, or proposing to carry on, the activity resides or, in the case of a body corporate or partnership, where the office or the principal office of the body corporate or partnership is located

reservoir means an animal, plant, or substance in which an infectious agent may live and whose presence may constitute a risk to public health

services has the same meaning as in section 6(1) of the New Zealand Public Health and Disability Act 2000

ship has the same meaning as in section 2(1) of the Maritime Transport Act 1994

specified person means any person prescribed as a specified person in regulations made under

section 43

territorial authority has the same meaning as in section 5 of the Local Government Act 2002
vector means an agent or animal that may transport an infectious agent that constitutes a risk to public health.

- (2) In this Act, a reference to an individual who has a condition includes an individual who harbours the condition, even if the individual does not exhibit any of the symptoms of the condition.

5 Act to bind the Crown

This Act binds the Crown.

Subpart 2—Functions of Minister

6 Functions of Minister

- (1) The Minister has the function of ensuring the effective and efficient administration of this Act.
(2) The Minister also has the functions set out in—
- (a) **section 11(2)** (presenting the annual report to the House of Representatives):
 - (b) **section 259** (which enables the Minister to declare a health emergency):
 - (c) **sections 260 and 261** (which enable the Minister to extend a health emergency, and amend or revoke the declaration of emergency):
 - (d) **section 262** (which requires the Minister to review the need for a health emergency declaration at regular intervals):
 - (e) **section 282** (which enables the Minister to designate places of inspection for ships):
 - (f) **section 283** (which enables the Minister to declare any place in New Zealand to be an affected place for the purposes of **subpart 2 of Part 7**):
 - (g) any other provisions of this Act or regulations made under this Act that confer a function on the Minister.

Subpart 3—Functions of Director-General

Functions of Director-General

7 Functions of Director-General

- (1) The Director-General has the function of—
- (a) overseeing and monitoring the implementation and enforcement of this Act throughout New Zealand (whether at local, regional, or national level), and in particular, monitoring and overseeing—
 - (i) the role of DHBs, medical officers of health, and health protection officers in enforcing this Act and exercising the powers conferred by it, at a regional level; and
 - (ii) the manner in which measures for human health protection are undertaken at the border; and
 - (iii) prosecutions undertaken by bodies employing medical officers of health or health protection officers for offences against this Act or regulations made under this Act; and
 - (b) ensuring that the role of the national focal point is carried out within the Ministry of Health; and
 - (c) publishing statements relating to risks to public health, or to the performance or non-performance of any duty imposed on any person by or under this Act or any regulations made under this Act in order to protect the public; and
 - (d) carrying out the other functions given to the Director-General by this subpart, any other provision of this Act, and any regulations made under this Act.
- (2) Every statement published under **subsection (1)(c)** is protected by qualified privilege.
(3) Nothing in this section—
- (a) limits any other enactment or rule of law; or
 - (b) limits the functions of the Director-General or of any other person or body.

8 Powers of direction

- (1) The Director-General may issue a direction in writing to any person carrying out functions or exercising powers under this Act or any regulations made under this Act (other than the Minister).
(2) Before issuing a direction under this section, the Director-General must—
- (a) consult with the person or persons to whom the direction would be issued; and
 - (b) take account of any submission made by that person to the Director-General within a period

- specified by the Director-General (being a period that is reasonable in the circumstances).
- (3) No direction may be issued under this section that would require the disclosure of any information about an individual that would identify that individual.
 - (4) As soon as practicable after issuing a direction under this section, the Director-General must publish it in the *Gazette*.
 - (5) A person to whom any direction is issued under this section must ensure that it is complied with.
 - (6) However, an action taken by a person to whom a direction is issued under this section is not invalid by reason only of a failure of that person to comply with the direction.

9 Form of direction to organisation

If the person required to carry out a function or exercise a power under this Act or any regulations made under this Act is not an individual but instead a department of State, local authority, DHB, or other body corporate, any direction under **section 8** must be issued to the chief executive (however described) of the organisation.

10 Delegation of functions or powers

- (1) The Director-General may, either generally or particularly, delegate any functions or powers under this Act or any regulations made under this Act to any other person (being an employee of the Ministry or a DHB (an **authorised person**)).
- (2) In any case where the Director-General has, under **subsection (1)**, delegated any functions or powers to any authorised person, that person may, with the prior approval in writing of the Director-General, delegate any of those functions or powers that the Director-General approves to any other person.
- (3) Subject to any general or special directions given or conditions imposed by the Director-General, the person to whom any functions or powers are delegated under this section may exercise those functions or powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.
- (4) The power of the Director-General does not limit any power of delegation conferred on the Director-General by any other Act (for example, section 41 of the State Sector Act 1988).
- (5) Every person purporting to act under any delegation under this section is, in the absence of proof to the contrary, to be presumed to be acting in accordance with the terms of the delegation.
- (6) Any delegation under this section may be made to an authorised person or to authorised persons of a specified class, or to the holder or holders for the time being of a specified office or specified class of offices held by authorised persons.
- (7) A delegation under this section does not affect or prevent the exercise of any function or power by the Director-General, or the responsibility of the Director-General for the actions of any person acting under the delegation.

Annual report on state of public health

11 Director-General must produce annual report on current state of public health

- (1) The Director-General must in each year give to the Minister a report on the current state of public health.
- (2) The Minister must present a copy of the annual report to the House of Representatives not later than the 12th sitting day of the House of Representatives after the Minister receives the report.
Compare: 1956 No 65 s 3C

Health protection officers and medical officers of health

12 Health protection officers and medical officers of health

- (1) The Director-General must appoint—
 - (a) a number of medical practitioners who are suitably qualified and experienced in public health medicine as medical officers of health; and
 - (b) a number of other persons as health protection officers.
- (2) The number of persons appointed under **subsection (1)**, must, in the opinion of the Director-General, be the number required to undertake those roles.
- (3) When the Director-General appoints a medical officer of health, the Director-General must, at the same time, determine the health district or districts within which the powers and duties of the officer may be performed or exercised.
- (4) Despite any other enactment, the Director-General may appoint, as officers who have powers or duties under any other enactment, as many persons as, in the opinion of the Director-General, are

required to undertake those roles.

- (5) An appointment by the Director-General under this section may be made on any terms and conditions that the Director-General considers appropriate.
- (6) A person who is appointed as a health protection officer, medical officer of health, or other officer must exercise or carry out his or her powers and functions in accordance with any directions given by the Director-General under **section 8**.
- (7) The fact that any appointed person exercises a power or carries out a function in any health district is evidence of his or her authority to do so.

Compare: 1956 No 65 ss 7A(1)–(6), 21

13 Exercise of certain powers

- (1) This section applies if, under any enactment, a reasonable belief is a prerequisite for the exercise of a power by a person appointed under **section 12**.
- (2) If this section applies, it is sufficient if the appointed person exercises that power—
 - (a) at the direction of the Director-General or any other person appointed by the Director-General for the purposes of this section; and
 - (b) at a time when the Director-General or other person authorised to give a direction held the belief that was a prerequisite in relation to the exercise of the power.

Compare: 1956 No 65 s 7A(7)

Health districts

14 Health districts

- (1) The Director-General may at any time, by notice in the *Gazette*, divide New Zealand or any part of New Zealand into health districts with any names and boundaries that the Director-General considers appropriate.
- (2) However, the boundaries of a health district—
 - (a) must be fixed by reference to the boundaries of the territorial authorities within the district; and
 - (b) alter whenever those boundaries are altered; and
 - (c) must not include only a part of a territorial authority district.

Compare: 1956 No 65 s 19

Responsibility for public health in certain areas

15 Responsibility for public health in areas outside jurisdiction of local authorities

- (1) The improvement, promotion, and protection of public health in any outlying islands or other areas that are not, for the time being, within the jurisdiction of any local authority or port company is a function of the Ministry.
- (2) For the purposes of this section,—
 - (a) the Ministry is deemed to be a local authority; and
 - (b) the powers of the Ministry may be exercised by the Director-General or any employee or employees of the Ministry authorised by the Director-General; and
 - (c) regulations may be made under **section 374**—
 - (i) to give effect to this section; and
 - (ii) to prescribe reasonable fees payable by owners or occupiers of land within which the Ministry has jurisdiction under this section to enable expenditure by the Ministry in relation to that land to be recouped; and
 - (d) all fees payable under those regulations may be recovered as a debt due to the Crown; and
 - (e) all expenditure incurred by the Ministry in the exercise of its powers and functions under this section that is not recouped from fees must be paid out of money appropriated by Parliament.

Compare: 1956 No 65 s 8

Appointing or acting as medical officer of health

16 Director-General may act as or must appoint medical officer of health

- (1) If the Director-General is a medical practitioner suitably qualified and experienced in public health medicine, the Director-General—
 - (a) has all the functions of a medical officer of health; and
 - (b) may exercise those functions anywhere in New Zealand.

- (2) If the Director-General does not have the qualifications and experience referred to in **subsection (1)**, the Director-General must designate a medical practitioner or practitioners employed in the Ministry who is or are suitably experienced and qualified in public health medicine to exercise the functions of a medical officer of health anywhere in New Zealand.
- Compare: 1956 No 65 s 22

Subpart 4—Functions of Director of Public Health

Functions of Director of Public Health

17 Functions of Director of Public Health

- (1) There continues to be a Director of Public Health who is appointed by the Director-General under the State Sector Act 1988.
- (2) The Director of Public Health has the function of advising the Director-General on matters relating to public health, including—
- (a) personal health matters relating to public health: and
 - (b) regulatory matters relating to public health.
- (3) Nothing in this section limits—
- (a) any other enactment or rule of law; or
 - (b) the functions of the Ministry or of any other person or body.
- Compare: 1956 No 65 s 3B

18 Director of Public Health may provide advice or reports to Minister

- (1) The Director of Public Health may at any time,—
- (a) advise the Minister on any matter relating to public health:
 - (b) report to the Minister on any matter relating to public health.
- (2) In exercising his or her functions under this section, the Director of Public Health—
- (a) is not responsible to the Director-General; and
 - (b) acts independently.
- (3) Nothing in this section limits—
- (a) the responsibility of the Director of Public Health to the Director-General for the efficient, effective, and economical management of his or her activities; or
 - (b) **section 11**.
- Compare: 1956 No 65 s 3D

Subpart 5—Public health functions of DHBs

19 Public health functions of DHBs

- (1) The public health functions of a DHB are to—
- (a) employ a sufficient number of those persons appointed by the Director-General as a medical officer of health or a health protection officer to implement and enforce this Act in the geographical area in respect of which the DHB is constituted; and
 - (b) monitor and identify (whether through routine surveillance, investigations by health protection officers, data collection, or other means) risks to public health in the geographical area in respect of which the DHB is constituted; and
 - (c) assess and, where appropriate, report to the Director-General on those risks; and
 - (d) where appropriate, and reasonable in the circumstances, take steps to contain and manage those risks.
- (2) A DHB may, with the agreement of the Director-General, arrange for another DHB to carry out some or all of its functions under this Act or any regulations made under this Act.
- (3) **Subsection (2)** does not limit ways in which a DHB can carry out its functions under this section or the persons it may employ or engage in that task.

Part 2

Health information, notification, reporting, and cervical screening

Subpart 1—Health information

20 Interpretation

In this subpart, unless the context otherwise requires,—

agency has the same meaning as in section 2 of the Privacy Act 1993

health information, in relation to an identifiable individual, means—

- (a) information about the health of that individual, including that individual's medical history:
- (b) information about any disabilities that the individual has, or has had:
- (c) information about any health services or disability services that are being provided, or have been provided, to that individual:
- (d) information provided by that individual in connection with the donation, by that individual, of any body part, or any bodily substance of the individual, or derived from the testing or examination of any body part or any bodily substance of that individual:
- (e) information about the individual that is collected before or in the course of, and incidental to, the provision of any health service or disability service to that individual:
- (f) for the purpose of **section 23** and for that purpose only, information relating to any body part or bodily substance donated by an individual and relevant (whether directly or indirectly) to the donation

representative, in relation to any individual, means,—

- (a) where the individual is dead, that individual's personal representative:
- (b) where the individual is under the age of 16 years, that individual's parent or guardian:
- (c) subject to **paragraphs (a) and (b)**, where the individual is unable to give his or her consent or authority or to otherwise exercise his or her rights under this Part, a person appearing to be lawfully acting on the individual's behalf or in that individual's interests.

Compare: 1956 No 65 s 22B

21 Disclosure of health information

- (1) Any person (being an agency that provides services or arranges the provision of services) may disclose health information—
 - (a) if that information—
 - (i) is required by any person specified in **subsection (2)**; and
 - (ii) is required (or, in the case of the purpose set out in **paragraph (j)** of that subsection, is essential) for the purpose set out in that subsection in relation to the person so specified; or
 - (b) if that disclosure is permitted—
 - (i) by or under a code of practice issued under section 46 of the Privacy Act 1993; or
 - (ii) if no such code of practice applies in relation to the information, by any of the information privacy principles set out in section 6 of that Act.
- (2) The persons and purposes referred to in **subsection (1)(a)** are as follows:
 - (a) a medical officer of a prison within the meaning of the Corrections Act 2004, for the purposes of exercising or performing any of that person's powers, duties, or functions under that Act:
 - (b) a probation officer within the meaning of the Corrections Act 2004, for the purposes of exercising or performing any of that person's powers, duties, or functions under any enactment:
 - (c) a social worker or a care and protection co-ordinator within the meaning of section 2(1) of the Children, Young Persons, and Their Families Act 1989, for the purposes of exercising or performing any of that person's powers, duties, or functions under that Act:
 - (d) an employee of the department for the time being responsible for the administration of the Social Security Act 1964, for the purposes of administering section 75 of that Act:
 - (e) a member of the New Zealand Defence Force, for the purposes of administering the Armed Forces Discipline Act 1971 or the Defence Act 1990:
 - (f) a member of the Police, for the purposes of exercising or performing any of that person's powers, duties, or functions:
 - (g) an employee of the Ministry of Health, for the purposes of—
 - (i) exercising any power or performing any function or duty under this Act; or
 - (ii) compiling statistics for health purposes:
 - (h) an employee of the New Zealand Food Safety Authority authorised by the chief executive of that Authority to receive the information, for the purposes of performing any function under the Animal Products Act 1999:
 - (i) an employee of Land Transport New Zealand, for statistical or research purposes in relation to road safety or the environment:
 - (j) an employee of a DHB, for the purposes of exercising or performing any of that DHB's powers, duties, or functions under the New Zealand Public Health and Disability Act 2000

or **section 19** of this Act:

- (k) an employee of the Accident Compensation Corporation, for the purposes of exercising or performing any functions under section 279 of the Injury Prevention, Rehabilitation, and Compensation Act 2001;
 - (l) an employee of the Department of Labour authorised by the Chief Executive of that Department to receive information for the purposes of performing any function under the Health and Safety in Employment Act 1992.
- (3) For the purposes of information privacy principle 11(d) of the Privacy Act 1993, the disclosure of health information about an individual may be authorised—
- (a) by the individual personally, if he or she has attained the age of 16 years; or
 - (b) by a representative of that individual.

Compare: 1956 No 65 s 22C

22 Duty to provide health information

- (1) The Minister may at any time, by notice in writing, require any provider or funder of services to provide, in such manner as may from time to time be required, such returns or other information as is specified in the notice concerning the condition or treatment of, or the services provided to, any individuals in order to obtain statistics for health information purposes or for the purposes of advancing health knowledge, health education, or health research.
- (2) Subject to **subsection (3)**, it is the duty of a provider or funder of services to provide the returns or other information specified in a notice given to it under **subsection (1)** within the time, and in the form, specified in the notice.
- (3) No information that would enable the identification of an individual may be provided under this section unless—
- (a) the individual consents to the provision of such information; or
 - (b) the identifying information is essential for the purposes for which the information is sought.
- (4) For the purposes of **subsection (3)(a)**, consent to the provision of information may be given—
- (a) by the individual personally, if he or she has attained the age of 16 years; or
 - (b) by a representative of that individual.
- (5) For the purpose of this section, **funder** means any person (other than a natural person) or organisation that funds the provision of services, whether that person or organisation is a public funder or not.

Compare: 1956 No 65 s 22D

23 Duty to provide information for purposes of blood collection

The Minister may, at any time, by notice in writing, require a DHB to provide to an entity appointed under section 92H of Health Act 1956, in the manner that the Minister specifies in the notice, the health information that the Minister specifies.

Compare: 1956 No 65 s 22E

24 Communication of information for diagnostic and other purposes

- (1) Every person who holds health information of any kind must, at the request of the individual about whom the information is held, or a representative of that individual, or any other person that is providing, or is to provide, services to that individual, disclose that information to that individual or, as the case requires, to that representative or to that other person.
- (2) A person that holds health information may refuse to disclose that information under this section if—
- (a) that person has a lawful excuse for not disclosing that information; or
 - (b) where the information is requested by someone other than the individual about whom it is held, the holder of the information has reasonable grounds for believing that that individual does not or would not wish the information to be disclosed; or
 - (c) where the information is requested by a representative of the individual about whom it is held—
 - (i) disclosure would be contrary to the individual's interests; or
 - (ii) there would be good grounds for withholding the information under Part 4 of the Privacy Act 1993 if the request had been made by the individual.
- (3) For the purposes of **subsection (2)(a)**, none of the following constitute a lawful excuse for not disclosing information under this section:
- (a) the fact that any payment due to the holder of any information or to any other person has not been made;
 - (b) the need to avoid prejudice to the commercial position of the holder of any information or

of any other person:

- (c) the fact that disclosure is not permitted under any of the information privacy principles set out in section 6 of the Privacy Act 1993.
- (4) Where any person refuses to disclose health information in response to a request made under this section, the person whose request is refused may make a complaint to the Privacy Commissioner under Part 8 of the Privacy Act 1993, and that Part of that Act, so far as applicable and with all necessary modifications, applies in relation to that complaint as if the refusal to which the complaint relates were a refusal to make information available in response to an information privacy request within the meaning of that Act.
- (5) Nothing in **subsection (4)** limits any other remedy that is available to any person who is aggrieved by any refusal to disclose information under this section.
- Compare: 1956 No 65 s 22F

25 **Anonymous health information**

Despite any enactment, rule of law, or other obligation, any person may supply to any other person health information that does not enable the identification of the individual to whom the information relates.

Compare: 1956 No 65 s 22H

26 **Regulations as to retention of health information**

- (1) The Governor-General may, by Order in Council, make regulations providing for all or any of the following matters:

- (a) the minimum periods for which health information or specimens, or any class or classes of health information or specimens, must be retained by any person or class or classes of person specified in the regulations:
- (b) the safeguards to be taken by any holder, or any class or classes of holder, of health information or specimens, to ensure that health information or specimens, or any class or classes of health information or specimens, is protected against all or any of the following:
 - (i) loss, damage, or destruction:
 - (ii) access, use, modification, or disclosure, except where properly authorised:
 - (iii) other misuse:
- (c) the procedures (including procedures requiring notification to the public, or any section of the public, or to any particular persons) to be followed by any holder, or any class or classes of holder, of health information or specimens, or any class or classes of health information or specimens, before that information or those specimens may be destroyed.

- (2) In this section, **specimen** means a bodily sample or tissue sample taken from a person

Compare: 1956 No 65 s 121A

Subpart 2—Inspection of records to verify compliance with subsidy authorisations, etc

27 **Interpretation**

In this subpart, unless the context otherwise requires,—

historical public funder means—

- (a) the Health Funding Authority or a person authorised by the Health Funding Authority to make payments:
- (b) a regional health authority or a person authorised by a regional health authority to make payments:
- (c) Health Benefits Limited:
- (d) a hospital and health service:
- (e) a Crown health enterprise:
- (f) an area health board:
- (g) a hospital board:
- (h) the Department of Health

Pharmac has the same meaning as in section 6(1) of the New Zealand Public Health and Disability Act 2000

pharmaceutical schedule has the same meaning as in section 6(1) of the New Zealand Public Health and Disability Act 2000

provider has the same meaning as in section 6(1) of the New Zealand Public Health and Disability Act 2000

public funder means—

- (a) the Ministry of Health:

- (b) a DHB;
- (c) any person (whether an individual or a body corporate), while helping an organisation referred to in **paragraph (a) or (b)** to carry out its function as a public funder

subsidy authorisation means the authorisation by a provider of the provision of services by another provider where that other provider may then make a subsidy claim for those services

subsidy claim means a claim by a provider to a public funder or historical public funder for a payment for services provided to a person

verifying compliance with the requirements of the pharmaceutical schedule includes assessing whether a provider has complied, or is complying, with any matter of eligibility or criteria for the provision of subsidies contained in the pharmaceutical schedule in making a subsidy authorisation or subsidy claim.

28 Inspection of records to verify compliance with subsidy authorisation or subsidy claim

- (1) For the purpose of verifying a subsidy claim or subsidy authorisation, the Director-General or the chief executive of a DHB may require a provider to make available for inspection any records of the provider that relate to the subsidy authorisation or subsidy claim.
- (2) Without limiting **subsection (1)**, a requirement under that subsection may include a requirement for a provider to make records available if—
 - (a) that provider has provided services to a person in respect of whom a subsidy claim has been made (whether by that provider or another person); or
 - (b) that provider has made a subsidy authorisation for a person that relates to services provided as part of an episode of care for the person resulting in a subsidy claim (for example, if a medical practitioner prescribes a medicine and there is a subsidy claim by a pharmacist in respect of the medicine, or if a medical practitioner refers the person to another medical practitioner resulting in a subsidy claim by that other medical practitioner).
- (3) If the Director-General or the chief executive of a DHB requires a provider to make records available under **subsection (1)**, the Director-General or chief executive of the DHB must authorise, in writing, 1 or more of the following individuals to undertake the inspection:
 - (a) a person who holds a relevant professional qualification;
 - (b) any other person the Director-General or chief executive of the DHB considers appropriate.
- (4) Each of the 1 or more individuals undertaking an inspection must show their authority to the provider when undertaking the inspection.
- (5) Any person authorised under **subsection (3)** may copy or take notes of those records for the purposes of the inspection.

29 Inspection of provider records to verify compliance with the pharmaceutical schedule

- (1) For the purpose of verifying compliance with the requirements of the pharmaceutical schedule, the Director-General or the chief executive of a DHB or the chief executive of Pharmac may require a provider to make available for inspection any records of the provider.
- (2) If the Director-General or the chief executive of a DHB or the chief executive of Pharmac requires a provider to make records available under **subsection (1)**, he or she must authorise, in writing, 1 or more of the following individuals to undertake the inspection:
 - (a) a person who holds a relevant professional qualification;
 - (b) any other person the Director-General or the chief executive of the DHB or the chief executive of Pharmac considers appropriate.
- (3) Each of the 1 or more individuals undertaking an inspection must show their authority to the provider when undertaking the inspection.
- (4) Any person authorised under **subsection (2)** may copy or take notes of those records for the purposes of the inspection.

30 Contravention of section 28 or 29 an offence

Any provider who fails to comply with a requirement made under **section 28 or 29** commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Subpart 3—Notification and reporting

31 Duty to report matters that constitute public health risk

- (1) A medical practitioner or specified person (the **reporting person**) must report to a medical officer of health—
 - (a) if the reporting person has reasonable grounds to suspect that a case of a condition, or a cluster or outbreak has occurred; and

- (b) the reporting person considers that it is likely that the case of the condition, or the cluster or outbreak, is a risk to public health.
- (2) The information that must be reported is—
 - (a) the nature of the condition; and
 - (b) the time, date, and location (if known) of the case or cluster or outbreak; and
 - (c) the nature and extent (whether geographical or otherwise) of the risk to public health that the reporting person considers exists; and
 - (d) any other information required by regulations made under **section 43**.
- (3) If the medical officer of health considers that the information provided under **subsection (2)** is insufficient for the purposes of this subpart, he or she may require the reporting person to provide the following information, if known by the reporting person, about the person or persons who have, or may have, the condition:
 - (a) name and address:
 - (b) national health index number.

32 Medical practitioner or specified person must notify notifiable condition

- (1) This section applies if a medical practitioner or specified person has attended to a person or otherwise provided care for a person (including attending to the body of a person who is deceased).
- (2) The medical practitioner or specified person (the **notifying person**) must notify the appropriate authority—
 - (a) if—
 - (i) the notifying person has reasonable grounds to believe that the person has a condition or in the case of a deceased person, had a notifiable condition; or
 - (ii) **Schedule 1** provides that the disease or other condition is one that must be notified on reasonable suspicion, and the notifying person has reasonable grounds to suspect that the person may have a notifiable condition or in the case of a deceased person, may have had a notifiable condition; and
 - (b) **Schedule 1** specifies that the disease or other condition is one that the notifying person is required to notify.
- (3) The information that must be notified is—
 - (a) the notifiable condition concerned, and whether it is suspected (if applicable) or confirmed; and
 - (b) if **Schedule 1** provides that the condition is one where identifying details are required to be notified, and if known by the notifying person, the name, address, and national health index number of the person who has or may have (or had or may have had) the condition; and
 - (c) any other information required by regulations made under **section 43**.
- (4) The notification must be made as soon as practicable or within any period of time that may be specified in **Schedule 1** in relation to a particular condition.
- (5) If a condition is one where identifying details are not to be notified but the appropriate authority considers in a particular case that the information provided in the notification is insufficient for the purposes of this subpart, the appropriate authority may require the notifying person to provide the information described in **subsection (3)(b)**, if known by the notifying person.

Compare: 1956 No 65 s 74

33 Laboratory must notify notifiable condition

- (1) A person in charge of a laboratory must notify the appropriate authority if—
 - (a) the person in charge has reasonable grounds to believe that the results from any test of any specimen indicate that the person from whom the specimen was taken—
 - (i) has a notifiable condition; or
 - (ii) in the case of a deceased person, had a notifiable condition; and
 - (b) **Schedule 1** specifies that the notifiable disease or other notifiable condition is one that the person in charge is required to notify.
- (2) The information that must be notified is—
 - (a) the notifiable condition concerned, and whether it is suspected (if applicable) or confirmed; and
 - (b) if **Schedule 1** provides that the condition is one where identifying details are required to be notified, and if known by the person in charge, the name, address, and national health index number of the person who has or had the condition; and
 - (c) any other information required by regulations made under **section 43**.
- (3) The notification must be made as soon as practicable or within any period of time that may be

specified in **Schedule 1** in relation to a particular condition.

- (4) If a condition is one where identifying details are not to be notified but the appropriate authority considers in a particular case that the information provided in the notification is insufficient for the purposes of this subpart, the appropriate authority may require the notifying person to provide the information described in **subsection (2)(b)**, if known by the reporting person.

34 Laboratory must notify notifiable contaminants

- (1) The person in charge of a laboratory must notify the appropriate authority if the person in charge has reasonable grounds to believe that the results from any test of a sample indicate the presence of a notifiable contaminant in that sample.
- (2) The information that must be notified is—
 - (a) the notifiable contaminant concerned; and
 - (b) the nature of the sample; and
 - (c) the location from which the sample was taken or (if that location is not known) the name of the person who, or organisation that, collected the sample; and
 - (d) the level of contaminant found in the sample.
- (3) The notification must be made as soon as practicable or within any period of time that may be specified in **Schedule 2** in relation to a particular contaminant.

35 Person who obtains result of test of sample overseas must notify contaminant

- (1) This section applies if—
 - (a) a person has obtained the results of a test of a sample performed in a laboratory outside New Zealand; and
 - (b) the person has reasonable grounds to believe that the results of the test indicate the presence of a notifiable contaminant in the sample.
- (2) The person must notify the appropriate authority.
- (3) The information that must be notified is—
 - (a) the notifiable contaminant; and
 - (b) the nature of the sample; and
 - (c) the location from which the sample was taken or (if that location is not known) the name of the person who, or organisation that, collected the sample; and
 - (d) the level of contaminant found in the sample.
- (4) The notification must be made as soon as practicable or within any period of time that may be specified in **Schedule 2** in relation to a particular contaminant.

36 Notifiable conditions in animals

- (1) Regulations made under **section 43** may specify the notifiable conditions to which this section applies.
- (2) A veterinary surgeon must notify the appropriate authority if the veterinary surgeon has reasonable grounds to believe that an animal professionally attended by that veterinary surgeon has a notifiable condition to which this section applies.
- (3) A person in charge of a laboratory must notify the appropriate authority if the person in charge has reasonable grounds to consider, as a result of investigations made in that laboratory, that an animal has, or has had, a notifiable condition to which this section applies.
- (4) The person in charge of a laboratory is not required to make the notification in **subsection (3)** if that person is satisfied that notice has been given under **subsection (2)** in respect of that animal.
- (5) The information that must be notified under **subsection (2) or (3)** is—
 - (a) the notifiable condition concerned; and
 - (b) any other information required by regulations made under **section 43**.
- (6) The notification must be made as soon as practicable or within any period of time that may be specified in regulations made under **section 43**.
- (7) Nothing in this section applies in respect of any animal found to be suffering from a notifiable condition in the course of any campaign for the eradication of that condition conducted by or at the instance of the Ministry of Agriculture and Forestry.

Compare: 1956 No 65 s 87A

37 Power of Governor-General to amend schedules

- (1) The Governor-General may by Order in Council, on the recommendation of the Minister,—
 - (a) amend **Part 1 of Schedule 1** to—
 - (i) add to, omit from, or otherwise amend any item in the list of notifiable conditions;
 - (ii) add any item to or omit any item from the list of notifiable conditions;

- (b) amend **Part 2 of Schedule 1** by adding or omitting the name of a disease or substituting a new name for a disease:
- (c) amend **Schedule 2** to—
 - (i) add to, omit from, or otherwise amend any item in the list of notifiable contaminants:
 - (ii) add any item to or omit any item from the list of notifiable contaminants.
- (2) For the purposes of **subsection (1)**,—
 - (a) an item, in relation to a particular condition in **Part 1 of Schedule 1**, means the name of the condition set out in column 1 of that schedule and any other matters set out in relation to that condition in the second, third, fourth, and fifth columns of that schedule; and
 - (b) an item, in relation to a particular contaminant in **Schedule 2**, means the name of the contaminant set out in column 1 of that schedule and any matter set out in the second column of that schedule.
- (3) Before recommending an amendment under **subsection (1)(a)**, the Minister must take the following factors into account:
 - (a) the level and nature of the risk to an affected person posed by a condition, or to others who may contract the condition from the person, taking into account the seriousness of the condition and the ease with which others may be infected:
 - (b) the extent to which making a condition notifiable would inform or enable effective action for its prevention or management:
 - (c) whether a condition is listed on the National Immunisation Schedule:
 - (d) whether a condition may develop into a more serious condition if not controlled and the potential for achieving that control:
 - (e) whether a condition indicates—
 - (i) environmental factors that may contribute to existence of the condition:
 - (ii) a concern that, of itself or taken together with similar notifications may require a response to minimise risk to public health:
 - (iii) whether the disease or other condition indicates an act of terrorism:
 - (f) whether making a condition notifiable is necessary or desirable in order to comply with any international obligation that New Zealand may have in relation to health.
- (4) Before recommending an amendment under **subsection (1)(b)**, the Minister must be satisfied that the effects of an outbreak of the disease might disrupt or continue to disrupt essential governmental and business activity in New Zealand (or parts of New Zealand) significantly.
- (5) Before recommending an amendment under **subsection (1)(c)**, the Minister must be satisfied that the presence of the contaminant is indicative of, or likely to lead to the development of,—
 - (a) a notifiable condition in a person; or
 - (b) any other significant risk to public health.
- (6) **Schedule 2** may incorporate by reference all or any of the following:
 - (a) items that are notifiable contaminants:
 - (b) descriptions of those items:
 - (c) descriptions of how the levels of a contaminant are calculated.
- (7) **Subsection (6)** is subject to **sections 337 to 344** (the standard provisions about incorporation by reference).

38 Temporary specification of notifiable condition or epidemic disease

- (1) The Director-General may, on the grounds specified in **subsection (2)**, by notification in the *Gazette*, amend **Part 1 of Schedule 1** to add any item to the list of notifiable conditions.
- (2) The Director-General may exercise the power in **subsection (1)** if he or she considers that it is reasonably necessary on any grounds, including, without limitation,—
 - (a) that there is an urgent need to specify a condition as a notifiable condition; or
 - (b) that the public health significance of the condition is still being determined.
- (3) The Director-General may, by notification in the *Gazette*, amend **Part 2 of Schedule 1** to add the name of a disease.
- (4) An amendment to **Schedule 1** made under **subsection (1) or (3)** takes effect on the day after the date that it is notified in the *Gazette* and expires 6 months after that date unless earlier revoked by an Order in Council made under **section 37**.

39 Duty of confidentiality and authorised disclosure of identifying particulars obtained from report or notification

- (1) This section applies to—
 - (a) any person who, as part of reporting or notifying information under this Part, reports or notifies any identifying particulars of any person to whom the report or notification relates

(the **identifying particulars**); and

- (b) an appropriate authority that receives any information containing the identifying particulars.
- (2) A person described in **subsection (1)** may disclose the identifying particulars to another person only if—
 - (a) authorised by this Act; or
 - (b) disclosure is reasonably required in a particular circumstance to enable—
 - (i) the treatment of the person whose identifying particulars they are; or
 - (ii) action to be taken to protect public health.
- (3) If **subsection (2)** authorises identifying particulars to be disclosed to any person other than a provider or funder, that information may only be disclosed with the prior written approval of a medical officer of health.
- (4) **Subsection (3)** does not apply if the person proposing to disclose information under **subsection (2)** is a medical officer of health.
- (5) For the purpose of this section, **funder** means any person (other than a natural person) or organisation that funds the provision of services, whether that person or organisation is a public funder or not.

40 Medical officer of health may authorise disclosure of notification information

A medical officer of health may authorise the disclosure of information obtained from reports or notifications given under this Part if the information is disclosed in a form that could not reasonably be expected to identify any individual in relation to whom a report or notification was given.

41 Duty to provide information regarding obligations to report and notify

- (1) Every medical practitioner and specified person must ensure that there is available to any person about whom information may be reported or notified under this Part written information that—
 - (a) explains the medical practitioner's or specified person's duty to report and notify under this Part; and
 - (b) states who may have access to the information and what the information is used for.
- (2) Every manager of a laboratory must ensure that there is available to any person about whom information may be notified under this Part written information that explains the manager's duty to notify under this Part.
- (3) The information in **subsection (1) or (2)** need not be provided individually to each person concerned but may be conveyed by use of a general notice in a waiting room or other means appropriate in the circumstances.
- (4) If a person about whom information may be reported or notified under this subpart is deceased, nothing in this section requires any person to provide the information in **subsection (1) or (2)** to any member of the family of the deceased person, or to any other person.

42 Offence to fail to report or notify as required

- (1) A medical practitioner, specified person, or person in charge of a laboratory who fails to comply with the requirements of this subpart commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.
- (2) A veterinary surgeon or person in charge of a laboratory who fails to comply with the requirements of **section 36** commits an offence and is punishable on summary conviction to a fine not exceeding \$1,000.

43 Regulations

- (1) The Governor-General may, by Order in Council, make regulations—
 - (a) prescribing any person or organisation (which may, without limitation, be the Director-General of Health) as an appropriate authority for the purpose of this subpart;
 - (b) prescribing all or any of the following as specified persons:
 - (i) any class of health practitioner (other than medical practitioners);
 - (ii) health protection officers or medical officers of health;
 - (iii) the managers, owners, and occupiers of facilities (whether residential or otherwise) that provide services or any class of those facilities;
 - (iv) coroners or any class of coroners;
 - (c) prescribing information required to be reported or notified under **section 31(2)(d), 32(3)(c), or 33(2)(c)**.
- (2) No regulation made under **subsection (1)(c)** may require, for the purpose of **section 31(2)(d)**, the reporting of details identifying an individual.

Subpart 4—National Cervical Screening Programme

44 Purpose

The purpose of this subpart is—

- (a) to reduce the incidence and mortality rate of cervical cancer by providing for the continuation of the NCSP; and
- (b) to facilitate the operation and evaluation of that national cervical screening programme by—
 - (i) enabling access to information and specimens by the persons operating the programme; and
 - (ii) enabling access to information and specimens by screening programme evaluators appointed to evaluate that programme.

Compare: 1956 No 65 s 112A

45 Interpretation

In this subpart, unless the context otherwise requires,—

cancer has the meaning set out in section 2 of the Cancer Registry Act 1993

cancer registry means the cancer registry maintained under the Cancer Registry Act 1993

cervical cancer means any cancer of the cervix

diagnostic test means a test taken to determine or confirm the presence of cancer, or a precursor to cancer, in a woman's cervix, and may include—

- (a) a colposcopic procedure;
- (b) an examination of a histological specimen taken from the woman

evaluate has the meaning set out in **section 63(1)**

evaluation material means any information about, and any specimen taken from, an identifiable individual that was obtained by a screening programme evaluator under this subpart

health information has the meaning set out in **paragraphs (a) and (c)** of the definition of that term in **section 20**

health practitioner has the meaning set out in section 5 of the Health Practitioners Competence Assurance Act 2003

hospital means a hospital care institution within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001

NCSP means the programme that, at the date of commencement of this section, is operated by the Ministry of Health and known as the National Cervical Screening Programme

NCSP manager means—

- (a) the person appointed under **section 46(3)** as the NCSP manager; or
- (b) if no person has been appointed as the NCSP manager, the Director-General

NCSP register means the National Cervical Screening Programme register maintained by the persons appointed under **section 46**

relevant woman, for the purposes of **sections 67, 71, 72, and 73**, has the meaning set out in **section 67(1)**

review committee means an NCSP review committee established under **section 58(1)**

screening programme evaluator means a person designated as a screening programme evaluator under **section 64(1)**

screening test means a routine test, such as a cervical smear test, designed to identify women who may have cervical cancer or a precursor to cervical cancer

specimen means a bodily sample or tissue sample taken from a woman for the purpose of a screening test or a diagnostic test, and includes cervical cytology and histology slides and blocks.

Compare: 1956 No 65 s 112B

Operation of NCSP

46 Appointment of persons to operate NCSP

- (1) All persons appointed to operate the NCSP, and to perform functions in relation to the operation of that programme, must be appointed under section 59 of the State Sector Act 1988, unless it is not reasonably practicable to do so.
- (2) If the Director-General wishes to appoint a particular person to perform particular functions in relation to the operation of the NCSP, and it is not reasonably practicable to appoint that person under section 59 of the State Sector Act 1988, the Director-General may appoint that person to perform those functions under this subsection.
- (3) The Director-General may appoint, either under section 59 of the State Sector Act 1988 or under

subsection (2), 1 person to be the manager of the NCSP.

- (4) The NCSP manager may direct a person appointed under section 59 of the State Sector Act 1988 or under **subsection (2)** in relation to the performance of that person's functions, and that person must comply with the NCSP manager's direction.
- (5) The Director-General may direct the NCSP manager in relation to the performance of the NCSP manager's functions, and the NCSP manager must comply with the Director-General's direction.
Compare: 1956 No 65 s 112C

47 Objectives of NCSP

The objectives of the NCSP are to—

- (a) promote high quality cervical screening, assessment, and treatment services, while recognising and managing the differences between the various types of cervical cancer, with a view to reducing the incidence and mortality rate of cervical cancer; and
- (b) inform women and the community of the risks, benefits, and expected population health gains from participation in the NCSP; and
- (c) promote the regular recall of women who are enrolled in the NCSP for screening tests; and
- (d) facilitate continuous quality improvement by allowing and performing regular evaluations of the NCSP; and
- (e) ensure that information that is collected for the purposes of the NCSP is—
 - (i) available, in a reliable, accurate, and timely manner, to persons authorised under this subpart, or any other enactment, to have access to it; and
 - (ii) safely stored, including on the NCSP register; and
- (f) provide information to women about the quality and effectiveness of the NCSP including, if it is appropriate, information based on the results of evaluations.

Compare: 1956 No 65 s 112D

48 Enrolment in NCSP

- (1) The NCSP manager must enrol in the NCSP every woman who—
 - (a) has a screening test, the result of which is reported to the NCSP; or
 - (b) undergoes a colposcopic procedure, the result of which is reported to the NCSP.
- (2) The NCSP manager may, at his or her discretion, enrol in the NCSP a woman who undergoes a surgical procedure during which a histological specimen is taken that includes a cervical component if the results of an analysis of that specimen are reported to the NCSP.
- (3) **Subsections (1) and (2)** do not apply if the woman to whom the results relate—
 - (a) is already enrolled in the NCSP; or
 - (b) has cancelled her enrolment in the NCSP; or
 - (c) has notified the NCSP manager, under **section 50(2)**, that she does not wish to be enrolled in the NCSP.

Compare: 1956 No 65 s 112E

49 Duties of NCSP manager that relate to enrolled women

- (1) As soon as practicable after enrolling a woman in the NCSP, the NCSP manager must—
 - (a) notify the woman that she has been enrolled in the NCSP; and
 - (b) provide information to the woman about—
 - (i) the importance of having regular screening tests; and
 - (ii) the risks and benefits of participation in the NCSP; and
 - (iii) who has access to information on the NCSP register, and the uses to which that information may be put; and
 - (iv) the objectives of the NCSP, including that of continuous quality improvement through evaluation; and
 - (v) the possible use by screening programme evaluators of evaluation material relevant to the woman for the purpose of evaluations of the NCSP; and
 - (c) advise the woman that she may cancel her enrolment by advising the NCSP manager under **section 50(1)**.
- (2) The NCSP manager must record on the NCSP register every result that is reported to the NCSP manager from a screening test, or from a diagnostic test, if that result relates to a woman who is enrolled in the NCSP.

Compare: 1956 No 65 s 112F

50 Procedure to prevent or cancel enrolment in NCSP

- (1) A woman who is enrolled in the NCSP may, at any time, cancel that enrolment by advising the

NCSP manager in the manner and form specified by the NCSP manager.

- (2) A woman who is not enrolled in the NCSP, and who does not wish to be enrolled, may, at any time, notify the NCSP that she does not wish to be enrolled.
- (3) A notification under **subsection (2)** must—
 - (a) be in the manner and form specified by the NCSP manager; and
 - (b) include information that will enable the NCSP manager, in the future, to identify the woman as a woman who must not be enrolled in the NCSP (which information may be kept on the NCSP register and used by the NCSP manager for that purpose).

Compare: 1956 No 65 s 112G

51 Duties of NCSP manager when women cancel enrolment in NCSP

- (1) If a woman cancels her enrolment in the NCSP under **section 50(1)**, or notifies the NCSP manager that she does not wish to be enrolled under **section 50(2)**, the NCSP manager must—
 - (a) send a notice to the woman confirming that her enrolment in the NCSP has been cancelled or, as the case requires, that she will not be enrolled; and
 - (b) delete any information that relates to that woman from the current NCSP register; and
 - (c) dispose of any information that is held by the NCSP manager in hard copy format and that relates to that woman by either—
 - (i) returning it to her; or
 - (ii) destroying it (if she requests that it be destroyed); and
 - (d) while that woman is not enrolled in the NCSP,—
 - (i) ensure that no information that is provided to the NCSP and that relates to that woman is included on the NCSP register; and
 - (ii) return or destroy any information that is provided to the NCSP and that relates to that woman.
- (2) **Subsection (1)** does not apply to information that the NCSP manager determines it is necessary to keep for the purpose of identifying the woman as a woman whose results must not be entered on the NCSP register, such as, for example, her name, address, date of birth, and national health index number, but the information that is retained must be no more than is required for that purpose.
- (3) Despite **subsection (1)(c)**, the NCSP manager may retain information that relates to a woman who cancels her enrolment in the NCSP if that information—
 - (a) is in hard copy format; and
 - (b) was received before the date of commencement of this section.
- (4) To avoid any doubt, **subsection (1)** overrides the Health (Retention of Health Information) Regulations 1996.

Compare: 1956 No 65 s 112H

52 Procedure to re-enrol in NCSP

- (1) A woman who has cancelled her enrolment in the NCSP may re-enrol at any time by advising the NCSP manager in the manner and form specified by the NCSP manager.
- (2) A woman who has notified the NCSP manager, under **section 50(2)**, that she does not wish to be enrolled in the NCSP may cancel that notification and enrol in the NCSP, at any time, by advising the NCSP manager in the manner and form specified by the NCSP manager.

Compare: 1956 No 65 s 112I

53 Certain information held by NCSP must not be disclosed

- (1) No person may disclose information from the NCSP register, or information that is held by the NCSP as a result of an evaluation, if that information identifies a woman unless that information is disclosed—
 - (a) with the consent of the woman or her personal representative; or
 - (b) to a screening programme evaluator under **section 67(2)(a)**; or
 - (c) to a review committee, in accordance with a request from that committee under **section 60(1)**; or
 - (d) to a health practitioner who has been engaged by, or on behalf of, the woman, and the information is disclosed for the purpose of assisting that health practitioner to provide health services to that woman; or
 - (e) for the purpose of enabling results from a screening test or a diagnostic test to be followed up; or
 - (f) for the purpose of enabling notices related to the NCSP to be sent to women who are enrolled in the NCSP, including reminder notices to women who are due for another screening test; or

- (g) for the purpose of giving access to the NCSP register, in accordance with regulations made under **section 75(1)(a)**, to persons researching cancer; or
 - (h) subject to any regulations made under **section 75(1)(b)**, for the purpose of enabling the compilation and publication of statistics that do not enable the identification of the women to whom those statistics relate.
- (2) Despite **subsection (1)**, a screening programme evaluator may disclose information in accordance with **section 68(2)(a) to (d)**.

Compare: 1956 No 65 s 112J

54 Delegation of functions and powers

- (1) The Director-General may, in writing, delegate to the NCSP manager any of his or her functions or powers under **sections 56(2)(b) and (c), 57(2)(b) and (c), 71(2), 72(2), and 73(2)**, on any conditions that the Director-General thinks fit.
- (2) The NCSP manager may, in writing, delegate to any person any of his or her functions or powers under this subpart, on any conditions that the NCSP manager thinks fit, except—
- (a) any power or function delegated to the NCSP manager by the Director-General; and
 - (b) this power of delegation.
- (3) Subject to any general or special directions given or conditions attached by the NCSP manager or the Director-General, the person to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him or her directly under this subpart and not by delegation.
- (4) Any delegation under **subsection (2)** may be made to a specified person or to the holder or holders for the time being of a specified office or specified class of offices.
- (5) Every person who purports to act under a delegation under this section is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.
- (6) A delegation under this section—
- (a) is revocable, in writing, at will; and
 - (b) continues in force until it is revoked, even if the NCSP manager or Director-General by whom it was made ceases to hold office, and continues to have effect as if made by his or her successor in that office.
- (7) A delegation under this section does not affect or prevent the performance or exercise of any function or power by the delegator, and does not affect the responsibility of the delegator for the actions of any person acting under that delegation.
- (8) **Subsection (1)** does not limit the Director-General's power to delegate any of his or her functions under—
- (a) this subpart in accordance with **section 12**; or
 - (b) this subpart in accordance with section 41 of the State Sector Act 1988.

Compare: 1956 No 65 s 112K

Duties to provide information to women and to NCSP

55 Duties of persons taking specimens for screening tests

- (1) Every person who takes a specimen from a woman for the purpose of a screening test, and who believes that it is that woman's first screening test in New Zealand, must—
- (a) explain the procedure and provide information about the importance of having regular screening tests, the objectives of the NCSP, the risks and benefits of participation in the NCSP, who has access to information on the NCSP register, and the uses to which that information may be put; and
 - (b) advise the woman that she will be enrolled in the NCSP, but that she may prevent or cancel that enrolment by advising the NCSP manager under **section 50**.
- (2) Every person who takes a specimen from a woman for the purpose of a screening test, and who believes that it is not that woman's first screening test in New Zealand, must provide that woman with information about the procedure and about the NCSP, to the extent that is reasonable in the circumstances.
- (3) **Subsections (1) and (2)** do not limit any other obligation to provide information that arises under any other enactment or rule of law.

Compare: 1956 No 65 s 112L

56 Duty of persons performing colposcopic procedure

- (1) Every person who performs a colposcopic procedure on a woman must—
- (a) explain the procedure to the woman; and

- (b) provide information, to the extent that is reasonable in the circumstances, about the objectives of the NCSP and the NCSP register, the importance of having regular screening tests, who has access to information on the NCSP register, and the uses to which that information may be put; and
 - (c) if he or she believes that the woman is not enrolled in the NCSP, advise her that she will be enrolled but that she may prevent or cancel that enrolment by notifying the NCSP manager under **section 50**; and
 - (d) cause a report in relation to that colposcopic procedure to be forwarded to the NCSP manager.
- (2) A report under **subsection (1)(d)** must—
- (a) be provided free of charge; and
 - (b) contain the information specified by the Director-General; and
 - (c) be provided in the manner and form specified by the Director-General.
- Compare: 1956 No 65 s 112M

57 Duty of laboratories where specimens are analysed

- (1) The person in charge of a laboratory where a specimen is analysed must cause a report in relation to that specimen to be forwarded to the NCSP manager if—
- (a) the specimen was obtained for the purpose of a screening test; or
 - (b) the specimen was obtained for the purpose of a diagnostic test; or
 - (c) the specimen—
 - (i) was obtained during a surgical procedure; and
 - (ii) includes a cervical component.
- (2) A report under **subsection (1)** must—
- (a) be provided free of charge; and
 - (b) contain the information specified by the Director-General; and
 - (c) be provided in the manner and form specified by the Director-General.
- Compare: 1956 No 65 s 112N

Review of NCSP and duty of Director-General to report

58 Establishment of NCSP review committee

- (1) The Minister may from time to time, and must at least once every 3 years, establish a review committee of up to 3 persons to review—
- (a) the operation of the NCSP; and
 - (b) evaluation activities of the kind described in **section 63** that have been carried out or are proposed to be carried out.
- (2) The focus of a review committee must be the continuous quality improvement of components of the NCSP, with a view to reducing the incidence and mortality rates of cervical cancer.
- (3) No person appointed to a review committee may be—
- (a) a member of Parliament; or
 - (b) an officer or employee of the Ministry of Health; or
 - (c) a person who is, or has been, designated under **section 64** as a screening programme evaluator; or
 - (d) a person who would have a material conflict of interest if appointed.
- (4) In order to facilitate the review being carried out in a timely and efficient manner, the Minister must appoint persons who collectively have an appropriate balance of skills and knowledge, including knowledge of cervical screening.
- (5) The Minister may appoint persons to the review committee—
- (a) on terms and conditions as to remuneration and other benefits that are in accordance with the appropriate fees framework determined by the Government for statutory and other bodies; and
 - (b) on any other terms and conditions that the Minister considers appropriate.

Compare: 1956 No 65 s 112O

59 Work of review committee

- (1) Before beginning its review, the review committee must prepare a review plan.
- (2) In preparing its review plan, the review committee must—
- (a) ensure that the plan—
 - (i) applies the focus referred to in **section 58(2)**; and
 - (ii) takes into account the need for timeliness in the completion of the review; and

- (b) consult with interested parties about any significant issues that may warrant review, in relation to the operation of the NCSP or evaluation activities that have been, or are proposed to be, carried out; and
 - (c) following that consultation, determine—
 - (i) which issues are to be reviewed; and
 - (ii) the expected date of completion of the review; and
 - (d) provide the review plan to the Minister for comment, and fully take into account any comments made by the Minister before finalising that plan.
- (3) After finalising the review plan, the review committee must conduct the review in accordance with that plan.
 - (4) When making any recommendations resulting from its review, the review committee must take into account—
 - (a) the objectives of the NCSP; and
 - (b) the need for fiscal responsibility.
 - (5) The review committee may, subject to any written direction by the Minister, regulate its own procedure.

Compare: 1956 No 65 s 112P

60 Review committee's access to information

- (1) For the purposes of carrying out its review, a review committee may request any information held by the NCSP that is directly relevant to the subject matter of its review.
- (2) The NCSP manager must provide to a review committee any information held by the NCSP that is requested by that review committee under **subsection (1)**.
- (3) To avoid doubt, the confidentiality obligations set out in **section 53** apply to members of a review committee.

Compare: 1956 No 65 s 112Q

61 Report by review committee

- (1) The review committee must—
 - (a) set out in a report—
 - (i) the details of its review; and
 - (ii) the conclusions it has reached; and
 - (iii) the recommendations (if any) it makes as a result of that review; and
 - (b) submit that report to the Minister as soon as reasonably practicable after it is completed.
- (2) The Minister must present the report to the House of Representatives not later than 10 sitting days after the date on which the Minister receives the report from the committee, and, following that presentation, must make the report publicly available.

Compare: 1956 No 65 s 112R

62 Duty of Director-General to report

The Director-General must, from time to time, provide information to the public on the quality and effectiveness of the NCSP including, if it is appropriate, information based on the results of evaluations

Compare: 1956 No 65 s 112S

Screening programme evaluators

63 Meaning of evaluate

- (1) For the purposes of this subpart, **evaluate** means to monitor and assess the service delivery and outcomes of the NCSP so as to promote the fulfilment of its objectives by determining whether there are any systemic issues to address within the programme or quality improvements that may be made to it.
- (2) An evaluation may, from time to time, include a review of, and an investigation into, the cases of—
 - (a) any woman who is enrolled in the NCSP (whether or not she has developed any cervical cancer); and
 - (b) any woman who has developed any cervical cancer (whether or not she is enrolled in the NCSP); and
 - (c) any deceased persons to whom **paragraph (a) or (b)** applied at the time of death.

Compare: 1956 No 65 s 112T

64 Director-General may designate screening programme evaluators

- (1) The Director-General may, at any time and entirely at his or her discretion, designate 1 or more persons as screening programme evaluators on whatever terms and conditions the Director-General considers appropriate.
- (2) The Director-General must specify the particular evaluation functions to be performed by each person whom he or she designates as a screening programme evaluator.
- (3) The Director-General may limit the type of information that a person who is designated as a screening programme evaluator may have access to under this subpart in accordance with the evaluation functions to be performed by that person.

Compare: 1956 No 65 s 112U

65 Criteria for designating employees of Ministry

Despite **section 64**, the Director-General must not designate a person who is an employee of the Ministry as a screening programme evaluator unless the Director-General is satisfied that—

- (a) the person has the technical competence to undertake the functions of a screening programme evaluator; and
- (b) the Ministry and the person will appropriately manage any conflicts of interest that arise.

Compare: 1956 No 65 s 112V

66 Criteria for designating non-employees of Ministry

Despite **section 64**, the Director-General must not designate a person who is not an employee of the Ministry as a screening programme evaluator unless the Director-General is satisfied that the person—

- (a) has, or employs persons who have, the technical competence to undertake the functions of a screening programme evaluator; and
- (b) has in place effective arrangements to avoid or manage any conflicts of interest that may arise; and
- (c) will administer those arrangements properly and competently and in compliance with any conditions on which the designation is given; and
- (d) will comply with the obligations on that person under this subpart.

Compare: 1956 No 65 s 112W

67 Power of screening programme evaluators to access specimens and health information

- (1) For the purposes of this section and **sections 71, 72, and 73**, a relevant woman is—
 - (a) a woman who is enrolled in the NCSP; or
 - (b) a woman who is not enrolled in the NCSP but who has developed any cervical cancer; or
 - (c) a deceased woman to whom **paragraph (a) or (b)** applied at the time of her death.
- (2) Except to the extent that regulations have been made under **section 75(1)(c) or (d)** limiting access to certain information, or that the Director-General has limited a screening programme evaluator's access to certain information under **section 64(3)**, a screening programme evaluator has full access to—
 - (a) all information held by the persons operating the NCSP; and
 - (b) all information on the cancer registry that relates to a relevant woman; and
 - (c) all health information and all specimens that relate to a relevant woman and that are held by, or are otherwise under the power and control of, any—
 - (i) health practitioner; or
 - (ii) laboratory; or
 - (iii) hospital.
- (3) A screening programme evaluator may—
 - (a) take copies of all information and records to which he or she has access; and
 - (b) take any specimen to which he or she has access, or take a part of that specimen.
- (4) A screening programme evaluator may only access or copy information and specimens under **subsection (2) or (3)** for the purpose of performing, and to the extent necessary to perform, that person's functions as a screening programme evaluator.
- (5) **Subsection (4)** is subject to **section 74**.
- (6) When a screening programme evaluator accesses health information under **subsection (2)(c)(i)** that is held by, or otherwise in the power or control of, a health practitioner, that health practitioner may oversee that access.
- (7) To avoid doubt, **subsection (2)** does not affect the Health (Cervical Screening (Kaitiaki)) Regulations 1995.

Compare: 1956 No 65 s 112X

68 Duties of screening programme evaluators

- (1) No screening programme evaluator may use or disclose any evaluation material for a purpose other than performing that person's functions as a screening programme evaluator.
- (2) Despite **subsection (1)**, a screening programme evaluator may—
 - (a) disclose evaluation material to a person who is assisting the screening programme evaluator to perform the screening programme evaluator's functions, and who requires the material for that purpose; and
 - (b) use and disclose evaluation material for the purpose of referring a concern about the competence of a health practitioner to the authority responsible for the registration of practitioners of the profession that the person concerned practises, if the screening programme evaluator has first obtained the consent of the Director-General to use and disclose the material for that purpose; and
 - (c) disclose evaluation material to the Accident Compensation Corporation or the Health and Disability Commissioner for the purpose of assisting an investigation into concerns about the competence of a health practitioner; and
 - (d) use and disclose evaluation material for the purpose of advising the NCSP manager that, in the screening programme evaluator's opinion, a particular person who is enrolled in the NCSP may benefit from follow-up action; and
 - (e) use evaluation material to prepare academic papers or articles for publication in accordance with **section 70**.
- (3) Every screening programme evaluator must—
 - (a) take appropriate measures to safeguard all evaluation material from use or disclosure for a purpose other than a purpose that is specified in **subsection (1) or (2)**; and
 - (b) report to the Director-General any cases where evaluation material has been used or disclosed for an unauthorised purpose; and
 - (c) return all evaluation material that was provided in hard copy or electronic form to the supplier of that material as soon as it is no longer required for the purpose for which it was obtained, and destroy all copies of that material; and
 - (d) take appropriate measures to keep all specimens in a secure environment that will preserve their physical integrity, and return them to the person who supplied them as soon as they are no longer required for the purpose for which they were obtained; and
 - (e) advise each person to whom the screening programme evaluator discloses evaluation material under **subsection (2)(a)** of the duties of the screening programme evaluator in relation to that information, and of the duties of that person under **section 69**.
- (4) Every screening programme evaluator who is not an employee of the Ministry must—
 - (a) provide to the Director-General, as soon as practicable after completing an evaluation of a screening programme, a written report containing the results of that evaluation; and
 - (b) provide to the Director-General, as soon as practicable after being requested by the Director-General to do so, a statutory declaration as to whether or not the requirements of **subsection (3)(a) to (c)** have been complied with, and, if not, to what extent they have not been complied with.
- (5) **Subsections (1) and (3)(a) and (c)** are subject to **section 74**.
Compare: 1956 No 65 s 112Y

69 Duties of persons to whom evaluation material is supplied by screening programme evaluator

- (1) Every person to whom evaluation material is supplied by a screening programme evaluator, under **section 68(2)(a)**, must—
 - (a) use that material only for the purpose for which it was supplied; and
 - (b) take appropriate measures to safeguard that material from disclosure to any other person; and
 - (c) return all evaluation material that was provided in hard copy or electronic form to the screening programme evaluator as soon as it is no longer required for the purpose for which it was supplied, and destroy all copies of it; and
 - (d) take appropriate measures to keep all specimens in a secure environment that will preserve their physical integrity, and return them to the screening programme evaluator as soon as they are no longer required for the purpose for which they were supplied.
- (2) **Subsection (1)** is subject to **section 74**.
Compare: 1956 No 65 s 112Z

70 Screening programme evaluator may publish non-identifiable information obtained during evaluation

- (1) Despite **section 68(1)**, a screening programme evaluator may publish academic papers or articles that are wholly or partly based on evaluation material obtained by the screening programme evaluator during an evaluation if—
 - (a) the paper or article does not contain information that could identify any individual person, without that person’s consent; and
 - (b) the NCSP manager consents to the publication of the paper or article and to the timing of that publication; and
 - (c) the publication of the paper or article is in accordance with any regulations made under **section 75(1)(f)**.
- (2) The NCSP manager may not withhold consent under **subsection (1)(b)** unless he or she believes, on reasonable grounds, that the publication of the paper or article, or the proposed timing of that publication, poses a serious risk to the effective operation of the NCSP.
Compare: 1956 No 65 s 112ZA

Duties to provide information to screening programme evaluators

71 Duty of health practitioners

- (1) Every health practitioner must make available, free of charge, to a screening programme evaluator, for the purpose of enabling that screening programme evaluator to perform the screening programme evaluator’s functions, any health information and specimens that relate to a relevant woman.
- (2) The Director-General may specify, by notice in writing to the health practitioner, the manner and form in which health information or specimens that are required to be made available under **subsection (1)** must be made available, and that information or those specimens must be made available in that manner and form.
Compare: 1956 No 65 s 112ZB

72 Duty of persons who hold specimens

- (1) The person in charge of a laboratory or other premises where specimens are held must make available, free of charge, to a screening programme evaluator, for the purpose of enabling that screening programme evaluator to perform the screening programme evaluator’s functions, any health information and specimens that relate to a relevant woman.
- (2) The Director-General may specify, by notice in writing to the person in charge of the laboratory or other premises, the manner and form in which health information or a specimen that is required to be provided under **subsection (1)** must be provided, and that information or that specimen must be provided in that manner and form.
Compare: 1956 No 65 s 112ZC

73 Duty of hospitals

- (1) The person in charge of a hospital must make available, free of charge, to a screening programme evaluator, for the purpose of enabling that screening programme evaluator to perform the screening programme evaluator’s functions, any health information and specimens that relate to a relevant woman.
- (2) The Director-General may specify, by notice in writing to the person in charge of the hospital, the manner and form in which health information or a specimen that is required to be provided under **subsection (1)** must be provided, and that information or that specimen must be provided in that manner and form.
Compare: 1956 No 65 s 112ZD

Miscellaneous

74 Screening programme employees may retain, access, use, and disclose information to perform functions

- (1) Nothing in this subpart prevents any employee of the NCSP from retaining, accessing, using, and disclosing any information to the extent necessary to perform his or her functions as an employee of that programme, including—
 - (a) information that is held by or accessible to the persons operating the NCSP; and
 - (b) information and evaluation material obtained by that employee for the purposes of performing an evaluation (including information obtained in his or her capacity as a screening programme evaluator or as a person assisting a screening programme evaluator); and

- (c) information and evaluation material provided to the NCSP by a screening programme evaluator during or following an evaluation.
- (2) For the purposes of **subsection (1)**, a person is an employee of the NCSP if the person—
 - (a) is appointed to operate that programme, or to perform particular functions in relation to the operation of that programme, by the Director-General or the Ministry; or
 - (b) is employed to work in that programme by the Ministry or by the persons appointed to operate the programme.

Compare: 1956 No 65 s 112ZE

75 Regulations

- (1) The Governor-General may, by Order in Council, make regulations under this subpart for any 1 or more of the following purposes:
 - (a) regulating access to information held by the NCSP by persons researching cancer:
 - (b) prohibiting the disclosure, under **section 53(1)(h)**, of information that relates to any class or classes of person specified in the regulations, including prohibiting the disclosure of that information without the approval of any person or group of persons or body or organisation specified in the regulations:
 - (c) imposing restrictions, in addition to those imposed by this subpart, on the use, disclosure, and publication of information held by the NCSP:
 - (d) prohibiting the use, disclosure, and publication of information from the NCSP register, or derived from the operation of the NCSP, if the information relates to any class or classes of person specified in the regulations, including prohibiting the use, disclosure, and publication of that information without the approval of any person or group of persons or body or organisation specified in the regulations:
 - (e) providing for the establishment, appointment, procedures, and powers of any person or group of persons or body or organisation established to perform specific functions or to make specific decisions that relate to the NCSP or to the matters referred to in **paragraphs (b) and (d)**:
 - (f) imposing restrictions on the publication by screening programme evaluators, under **section 70**, of academic papers or articles that are wholly or partly based on evaluation material obtained for the purposes of an evaluation:
 - (g) prescribing standards that must be met by providers of screening, diagnostic, and treatment services relevant to the NCSP, and the means of implementing those standards:
 - (h) prescribing offences for a breach of—
 - (i) a regulation made under any of **paragraphs (a) to (f)**:
 - (ii) a standard prescribed under **paragraph (g)**, or any part of that standard:
 - (i) setting out defences to offences prescribed under **paragraph (h)**:
 - (j) setting the maximum penalty for each offence prescribed under **paragraph (h)**, which must not exceed the maximum penalty specified in **section 368**.
- (2) Before making regulations under **subsection (1)**, the Governor-General must be satisfied that appropriate consultation has been carried out, including (without limitation),—
 - (a) adequate and appropriate notice of the intention to make the regulations; and
 - (b) a reasonable opportunity for interested persons to make submissions; and
 - (c) adequate and appropriate consideration of any submissions received.
- (3) **Subsection (2)** does not apply to regulations made under **subsection (1)(g)** that—
 - (a) incorporate standards by reference; or
 - (b) state that an amendment to, or replacement of, standards incorporated by reference has legal effect as part of the regulations.

Compare: 1956 No 65 s 112ZF

76 Incorporation of standards by reference in regulations

- (1) Regulations made under **section 75(1)(g)** may incorporate by reference any standards prepared by or for the NCSP that apply to providers of screening, diagnostic, and treatment services (including, but not limited to, any New Zealand Standard).
- (2) This section is subject to **sections 337 to 344** (the standard provisions about incorporation by reference).

77 Application of Standards Act 1988 not affected

Section 76 does not affect the application of sections 22 to 25 of the Standards Act 1988.

78 Offences under this subpart

- (1) Every person commits an offence against this Act who, without reasonable excuse, fails to comply with the requirements of any of **sections 53(1), 68(1), (3)(e), or (4)(b) or 69**.
- (2) Every person commits an offence against this Act who, without reasonable excuse, fails to make available any information or specimens that the person is required to make available under any of **sections 71, 72, and 73**.
- (3) Every person who commits an offence under **subsection (1) or (2)** is liable on summary conviction to a fine not exceeding \$10,000.

Part 3 Non-communicable diseases

Subpart 1—Interpretation

79 Interpretation

In this Part, unless the context otherwise requires,—

risk factor means a thing or substance that, on its own or together with other things or substances or conditions, may, whether immediately or over time, give rise to, or increase the incidence of, non-communicable diseases (such as cancer, cardio-vascular disease, or diabetes) in the general population or in communities or in sections of the general population or communities

sector means a group of individuals, associations of persons, departments, local authorities, or bodies corporate involved in—

- (a) the manufacture, importing, distributing, or retailing of goods or substances of a particular kind; or
- (b) the provision of a service of a particular kind; or
- (c) the formulation or implementation of policies for consideration or adoption by central government or local government; or
- (d) the design, construction, or maintenance of buildings, infrastructure, or works of any kind; or
- (e) the advertising, promoting, sponsoring, or marketing of goods or substances of a particular kind or services of a particular kind.

Subpart 2—Principles

80 Principles

In performing his or her functions under this Part, the Director-General must take into account the importance of—

- (a) improving and enhancing the health of communities by addressing broad determinants of health, including, in particular, risk factors:
- (b) managing or eliminating risk factors by involving communities, sectors, and government agencies:
- (c) consultation, cross-sectoral collaboration, and joint planning and implementation by central government, DHBs, local authorities, and other relevant organisations:
- (d) the well-being and mutual interdependence of families and their communities, including whānau, hapū, and iwi:
- (e) focusing public health action on the health status of the general population and communities:
- (f) promoting, maintaining, and enhancing the health status of the general population and communities:
- (g) working towards social and cultural environments conducive to health and well-being:
- (h) implementing public health objectives through co-ordinated action in the health sector, and, in particular, ensuring appropriate links between public health and primary health.

Subpart 3—Codes of practice and guidelines

81 Director-General may issue codes of practice or guidelines

- (1) The Director-General may issue a code of practice or guidelines to a sector on a particular activity that the sector undertakes if the Director-General has reason to believe that the sector can reduce, or assist in reducing, a risk factor associated with, or related to, the activity.
- (2) The Director-General may amend or revoke a code of practice or guidelines issued under

subsection (1).

- (3) The Director-General, when issuing, amending, or revoking a code of practice or guidelines, must—
 - (a) notify the issue, amendment, or revocation of the code or guidelines in the *Gazette*; and
 - (b) show in the notice the date of the issue, amendment, or revocation of the code or guidelines; and
 - (c) specify in the notice the place or places at which copies of the code, the guidelines, or the amendment are available for inspection or purchase.
- (4) The Director-General must ensure that copies of the codes of practice or guidelines and any amendments to those codes or guidelines are available for inspection at the place or places specified in the notice given under **subsection (3)**.

82 Prior consultation required

Before the Director-General issues a code of practice or guidelines or amends or revokes a code or guidelines, the Director-General must consult with any person or organisation that the Director-General considers to be representative of the sector affected by the proposed code or guidelines, amendment, or revocation.

83 What code of practice or guidelines may provide

- (1) A code of practice or guidelines may provide for an activity, or aspects of an activity, to be undertaken in ways that, in the opinion of the Director-General, are likely to reduce, or assist in reducing, a risk factor associated with, or related to, the activity.
- (2) Without limiting the generality of **subsection (1)**, a code of practice or guidelines may, in relation to any activity, contain provisions on any of the following matters that are relevant to the activity:
 - (a) the development, completion, and review of health impact assessments;
 - (b) the development and maintenance of practices that are conducive to promoting health and safety;
 - (c) the performance, composition, contents, additives, design, and construction of specified goods or substances;
 - (d) the accessibility of specified goods, substances, or services to members of the public or to sections of the public, in particular, to minors;
 - (e) the ways in which specified goods, substances, or services are advertised, sponsored, or marketed (whether directly or indirectly);
 - (f) the information to be given to consumers of specified goods, substances, or services, whether as part of any advertising, sponsorship, or marketing or as part of any packaging or labelling of goods or substances.

84 Codes of practice and guidelines to avoid overlap with enactments

In issuing or amending a code of practice or guidelines, the Director-General must endeavour to avoid including any provisions that overlap with matters contained in an enactment.

85 Compliance with code of practice or guidelines may be advertised with permission of Director-General

- (1) If the Director-General is satisfied that particular goods, substances, or services comply with a code of practice or guidelines issued under this Part, the Director-General may permit a statement stating the fact of compliance to be included in—
 - (a) any material by which goods, substances, or services are advertised, promoted, sponsored, or marketed; or
 - (b) any communication to employees concerning health or safety.
- (2) A statement of the kind described in **subsection (1)** may not be included in any material or communication of the kind described in that subsection without the permission of the Director-General.
- (3) A person who, without the permission of the Director-General, publishes, or arranges for the publication of a statement of the kind described in **subsection (1)** in any material or communication of the kind described in that subsection, commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.
- (4) If a person is convicted of an offence under **subsection (3)**, the Court may, on the application of the Director-General, in addition to any penalty that the Court may impose under that subsection, order that person to pay an amount not exceeding the value of any commercial gain resulting from the contravention if the Court is satisfied that the contravention occurred in the course of producing a commercial gain.

- (5) The value of any gain must be assessed by the Court, and any amount ordered to be paid is recoverable in the same manner as a fine.
- (6) The standard of proof in proceedings under **subsection (4)** is the standard of proof that applies in civil proceedings.

86 Incentives for compliance with codes of practice or guidelines

The Minister may, by notice in the *Gazette*,—

- (a) institute 1 or more types of awards to recognise compliance with codes of practice or guidelines, and may differentiate those awards by specified standards of compliance;
- (b) authorise the Director-General to confer those awards;
- (c) authorise the Director-General to withdraw any awards conferred;
- (d) state the criteria that the Director-General must apply in conferring, or withdrawing, any awards;
- (e) state the manner in which the Director-General must publicly notify the conferral or withdrawal of awards (including, without limitation, publication on the Internet);
- (f) recommend that, in any decision affecting a product or service, government departments or Crown entities have regard to the question whether or not the manufacturer of the product or the provider of the service complies with any applicable code of practice or guidelines.

87 Codes of practice and guidelines not legally enforceable

- (1) No code of practice or guidelines issued or amended under this Part confers rights or obligations capable of enforcement in any civil or criminal proceeding.
- (2) However, this section does not preclude the admissibility in any proceeding of the fact that a provider of goods, substances, or services complied with, or did not comply with, the applicable code of practice or guidelines, if that fact is relevant in the proceeding.

Subpart 4—Review of this Part

88 Report to Minister

- (1) The Ministry of Health must, not later than the date that is 3 years after the commencement of this Act, report to the Minister on—
 - (a) the number and subject matters of codes of practice and guidelines issued or amended under this Part; and
 - (b) the extent to which those codes and guidelines have, or are likely to have, met their objective of reducing, or assisting in the reduction of, risk factors; and
 - (c) the extent to which sectors have supported and complied with codes of practice and guidelines; and
 - (d) whether it is desirable that the law be changed so that codes of practice are binding on the participants of sectors to which they apply; and
 - (e) whether it is desirable to amend this Act to include further specific provisions for the purpose of preventing, or reducing the impact of, non-communicable diseases or improving the management of risk factors, including, without limitation, provisions that empower regulations to be made for that purpose; and
 - (f) the number and subject matters of notices by the Minister published under **section 86** and the actions taken under those notices; and
 - (g) the extent to which those actions have, or are likely to have, reduced, or assisted in the reduction of, risk factors; and
 - (h) whether any further reductions in risk factors can be achieved by non-legislative options, such as the promotion of rewards or incentives.
- (2) As soon as practicable after receiving a report from the Ministry, the Minister must present a copy of it to the House of Representatives.
- (3) The Governor-General may, by Order in Council, extend, on 1 or more occasions, the date on which the Ministry of Health is required to report under **subsection (1)**.

Part 4

Management of conditions posing health risks

Subpart 1—Application, overarching principles, and role of District Courts

Application

89 Application

This Part (other than **subpart 4 or 5**) applies to a condition that is—

- (a) part of a cluster or outbreak that has been reported under **Part 2**; or
- (b) a notifiable disease or other notifiable condition; or
- (c) a case of a condition that has been reported under **section 31**.

Overarching principles

90 Principles to be taken into account

The principles set out in **sections 91 to 93** are to be taken into account by every person and every court performing a function under this Part.

91 Least restrictive alternative

In any case where this Part enables alternative measures to be applied to an individual, preference must be given to the least restrictive measure that, in the judgment of the person or court concerned, will achieve the objective of minimising the health risk posed by the individual.

92 Respect for individuals

An individual in respect of whom a power is exercised under this Part should be treated with respect and consideration, to the extent that the protection of public health permits this to be done.

93 Individual to be informed

A person exercising a power over an individual under this Part should, so far as is practicable in the circumstances, promptly inform the individual and in a way the individual is most likely to understand, about—

- (a) the nature of the power that is exercised and its implications for the individual;
- (b) any steps planned to be taken in respect of the individual;
- (c) any right of the individual to appeal against the exercise of the power and to apply for judicial review.

Role of District Courts

94 Proceedings under this Part in District Courts to be heard by Family Court Judges, if practicable

- (1) The District Court has jurisdiction to hear and determine—
 - (a) appeals under this Part against directions given; and
 - (b) applications made under this Part.
- (2) Every proceeding referred to in **subsection (1)** must, if practicable, having regard to the time required, and to the availability of Judges and other personnel and resources, be heard and determined by a Family Court Judge.
- (3) Any District Court Judge may hear and determine a proceeding referred to in **subsection (1)** that cannot practicably be heard and determined by a Family Court Judge.

Subpart 2—Directions that may be given to individuals believed to have specified conditions

Kinds of direction that may be given

95 Directions that may be given to manage health risk posed by condition to which this Part applies

- (1) This section applies if a medical officer of health believes on reasonable grounds that an individual poses a health risk because the individual has a condition to which this Part applies.
- (2) The medical officer of health may give the individual whichever 1 or more directions described in **subsection (4)** the medical officer of health thinks are necessary to prevent or minimise the health risk posed by the individual.
- (3) If the condition that the individual is believed to have is not a notifiable disease or other notifiable condition, every direction given to the individual must have the prior approval of the Director-General.
- (4) A direction given under **subsection (2)** may require the individual to,—
 - (a) participate in any of the following that are conducted by a health provider:

- (i) counselling:
 - (ii) education:
 - (iii) other activities related to the condition to which this Part applies:
 - (b) refrain from carrying out specified activities (for example, without limitation, employment, use of public transport, travel within and out of New Zealand) either absolutely or unless stated conditions are observed:
 - (c) refrain from going to specified places either absolutely or unless stated conditions are observed:
 - (d) refrain from associating with specified persons or specified classes of persons:
 - (e) take specified actions to prevent or minimise the health risk posed by the individual:
 - (f) stay, at all times or at specified times, at a specified place of residence, subject to specified conditions:
 - (g) accept the supervision of a named person or a person for the time being holding a named office, including, without limitation, appearing at meetings arranged by that person and providing that person with information on any action, occurrence, or plan that is relevant to the health risk posed by the individual.
- (5) In no case may a direction require an individual to submit to compulsory treatment.
- (6) **Subsection (7)** applies if a direction requires an individual to refrain from carrying out a specified activity either absolutely or unless stated conditions are observed and a medical officer of health believes on reasonable grounds that—
- (a) the individual is, or has been, engaging in the activity; and
 - (b) the persons responsible for the activity need to be informed in order to prevent or minimise the health risk posed by the individual.
- (7) The medical officer of health may contact any person who occupies a position of responsibility in relation to the activity and tell that person about 1 or more of the following matters:
- (a) the direction:
 - (b) the health risk posed by the individual's engagement in the activity:
 - (c) ways of minimising that risk.

96 Duration of directions

- (1) A direction given under **section 95** ceases to have effect with the close of the earliest of the following days:
- (a) the last day of the period stated in the direction or, if no period is stated in the direction, the period of 6 months commencing with the date on which the direction is given:
 - (b) the day (if any) on which the medical officer of health notifies the individual that the individual no longer poses a health risk:
 - (c) the day (if any) on which the medical officer of health rescinds the direction under **section 101**:
 - (d) the day (if any) on which the direction is cancelled on appeal under **section 103**.
- (2) The period stated in a direction may not exceed 6 months.
- (3) The medical officer of health must—
- (a) regularly review each direction under **section 95** that is in effect in the health district or districts for which the officer is responsible; and
 - (b) consider whether the direction is still needed; and
 - (c) if directed by the Director of Public Health to do so, advise that Director why the direction needs to continue in effect.
- (4) A medical officer of health may at any time, by notice to the individual concerned, extend a direction previously given under **section 95** for a period stated in the notice (not exceeding 6 months).
- (5) **Subsection (4)** applies to a direction that has previously been extended on 1 or more occasions.

97 Direction for medical examination

- (1) This section applies if a medical officer of health believes on reasonable grounds that—
- (a) an individual may have a condition to which this Part applies (for example, because the individual has been in contact with a person who has the condition); and
 - (b) the individual's medical practitioner or a medical officer of health has requested the individual to undergo, within a specified period, a medical examination to establish whether or not the individual has the condition and the individual has not undergone that examination within that period; and
 - (c) if the individual has the condition, the individual would pose a health risk.
- (2) The medical officer of health may direct the individual to undergo 1 or more medical examinations

and may specify the places where those examinations are to be conducted and the health providers who are to conduct them.

- (3) The medical officer of health may also direct the individual to take or refrain from taking, until those examinations are completed, whichever 1 or more of the following actions the medical officer of health thinks are necessary to prevent or minimise the health risk that the individual may pose:
 - (a) to stay, at all times or at specified times, at a specified place of residence, subject to specified conditions:
 - (b) to refrain from carrying out specified activities (for example, without limitation, employment, use of public transport, travel within and out of New Zealand) either absolutely or unless stated conditions are observed:
 - (c) for the purpose of monitoring and guiding the individual's compliance with the direction, to accept the supervision by a named person or by a person for the time being holding a named office.

98 Direction requiring contacts to stay in specified place

- (1) This section applies if a medical officer of health believes on reasonable grounds that—
 - (a) the individual has been in contact with a person who has a condition to which this Part applies; and
 - (b) if the condition has been communicated to the individual, the individual poses, or is likely to pose, a health risk.
- (2) The medical officer of health may give the individual whichever 1 or more of the following directions the medical officer of health thinks are necessary to minimise the health risk posed by the individual:
 - (a) to stay, at all times or at specified times, at a specified place of residence, subject to specified conditions:
 - (b) to refrain from carrying out specified activities (for example, without limitation, employment, use of public transport, travel within and out of New Zealand) either absolutely or unless stated conditions are observed:
 - (c) for the purpose of monitoring and guiding the individual's compliance with the direction, to accept the supervision by a named person or by a person for the time being holding a named office.
- (3) The direction ceases to have effect with the close of the day on which the medical officer of health notifies the individual that the individual no longer poses a health risk.
- (4) In determining, for the purposes of **subsection (3)**, that the individual no longer poses a health risk, the medical officer of health must have regard to any known incubation period for the condition.

99 Directions in respect of educational institutions

- (1) This section applies if a medical officer of health believes on reasonable grounds that an individual—
 - (a) either—
 - (i) has a condition to which this Part applies in respect of which a period of incubation is prescribed for the purposes of this Part; or
 - (ii) shares a residence with a person who has such a condition; and
 - (b) attends an educational institution to study or work at the institution.
- (2) The medical officer of health may direct the individual not to attend the educational institution.
- (3) The medical officer of health must notify the person in charge of the institution about the direction and, if appropriate, provide information on the management of the relevant health risk.
- (4) If the individual is a minor, the direction must be given to the individual's guardian.
- (5) The direction ceases to have effect with the close of the day on which the medical officer of health notifies the individual that the individual no longer poses a health risk.
- (6) In determining, for the purposes of **subsection (5)**, that the individual no longer poses a health risk, the medical officer of health must have regard to any known incubation period for the condition.

General provisions concerning directions

100 Repeated directions may be given

A direction under this subpart may be given to an individual on 1 or more occasions.

101 Directions may be varied or rescinded

A medical officer of health may at any time, by notice to the individual concerned, vary or rescind a direction previously given.

102 Written directions and notices to be served on individual

A direction or notice under this subpart must be in writing and must be served on the individual to whom it is given.

103 Appeal against direction

- (1) An individual who is required to comply with a direction may appeal against the direction, or any part of the direction, to the District Court.
- (2) On the appeal, the District Court may confirm, vary, or cancel the direction.
- (3) The commencement of the appeal does not affect the direction unless the District Court otherwise orders.

Compliance with directions

104 Duty to comply

- (1) An individual to whom a direction is given must comply with the direction.
- (2) Every individual commits an offence who intentionally fails to comply with a direction with which the individual is required to comply and is liable on summary conviction to a fine not exceeding \$10,000.

105 Force not permissible

In no case may force be used to secure compliance with a direction.

Subpart 3—Orders to protect against health risks

Urgent health risk orders

106 Medical officer of health may make urgent health risk order

- (1) This section applies if a medical officer of health believes on reasonable grounds that—
 - (a) an individual has a condition to which this Part applies; and
 - (b) the individual poses a health risk; and
 - (c) to address the risk a health officer needs to take urgent action; and
 - (d) it is not practicable to obtain a court order urgently.
- (2) The medical officer of health may sign, and give the individual, an urgent health risk order that requires the individual to be detained at specified premises or specified parts of premises, subject to any stated conditions.
- (3) If the condition that the individual is believed to have is not a notifiable disease or other notifiable condition, the urgent health risk order may not be given to the individual without the prior approval of the Director-General.
- (4) The medical officer of health must write on the order the date and time it is given to the individual.

107 Duration of urgent health risk order

An urgent health risk order has effect for 72 hours from the time that it is given to the individual.

General provisions concerning orders by Court

108 Matters that Court may take into account in assessing health risk

In assessing, for the purposes of any application under this subpart, whether or not an individual poses a health risk, the Court may, without limitation, take into account—

- (a) the condition that the individual has or, as the case requires, that the individual may have;
- (b) if the individual has had an opportunity to minimise the risk of communicating the condition, whether he or she has done so, or the extent to which he or she has done so, and, in particular,—
 - (i) if directions have been given to the individual under **subpart 2** of this Part, whether the individual has complied with, or the extent to which the individual has complied with, those directions;
 - (ii) if a medical practitioner or medical officer of health or health protection officer has requested the individual to take steps to prevent or minimise the risk, whether the individual has responded to those requests or the extent to which the individual has

responded to those requests.

109 Relationship between directions and court orders

- (1) The Court may make an order that corresponds to, or differs from, any direction previously given.
- (2) Any direction previously given to an individual ceases to have effect when an order is made in respect of that individual under this subpart.
- (3) However, nothing in this section or in any other provision of this Act requires a prior direction before an order under this subpart may be made.

Health risk orders

110 Prior consultation with individual and individual's family

- (1) If a medical officer of health is considering applying to the Court for a health risk order under **section 113**, the medical officer of health must, whenever practicable, consult with the individual and may, at his or her discretion, consult with the individual's family or whanau.
- (2) The purpose of consultation under **subsection (1)** is to enable the medical officer of health—
 - (a) to ascertain if the need for an order of that kind can be avoided by voluntary compliance by the individual and, if the individual agrees, by any assistance on the part of the family or whanau; and
 - (b) to ascertain, if an order of that kind is required, the extent to which the terms of the order and the manner of its administration can take into account the needs and wishes of the individual without prejudicing the protection of public health.

111 Case conferences

The consultation under **section 110** may, at the discretion of the medical officer of health take the form of a case conference, which may be conducted by telephone or video link.

112 Application for health risk order

- (1) A medical officer of health may apply, under **section 113**, for a health risk order in respect of an individual.
- (2) If the condition that the individual is believed to have is not a notifiable disease or other notifiable condition, the application may not be made without the prior approval of the Director-General.

113 Health risk order

The Court may, on an application made under **section 112**, make a health risk order in respect of an individual if satisfied—

- (a) that the individual has a condition to which this Part applies; and
- (b) that the individual poses a health risk.

114 Order may impose certain requirements on individual

- (1) The Court may, in making a health risk order under **section 113**, impose on an individual whichever 1 or more of the following requirements the Court thinks are necessary to prevent or minimise the health risk posed by the individual:
 - (a) to be detained, at all times or at specified times, in a hospital or other suitable place or in specified parts of the hospital or place;
 - (b) to stay, at all times or at specified times, at a specified place of residence;
 - (c) to refrain from carrying out specified activities (for example, without limitation, employment, use of public transport, travel within and out of New Zealand) either absolutely or unless stated conditions are observed;
 - (d) to accept the supervision of a named person or a person for the time being holding a named office, including, without limitation, appearing at meetings arranged by that person and providing that person with information on any action, occurrence, or plan that is relevant to the health risk posed by the individual;
 - (e) after taking into account the views of the individual, to be subject to surveillance, with or without the aid of electronic devices, by a named person or by a person for the time being holding a named office or by a named organisation;
 - (f) to accept treatment for the condition from a specified health provider;
 - (g) to participate in any of the following that are conducted by a health provider:
 - (i) counselling;
 - (ii) education;
 - (iii) other activities related to the condition to which this Part applies;

- (h) to refrain from going to specified places either absolutely or unless stated conditions are observed:
 - (i) to refrain from associating with specified persons or specified classes of persons:
 - (j) to take specified actions to prevent or minimise the health risk posed by the individual.
- (2) Before the Court imposes a requirement of the kind described in **subsection (1)(f)**, the Court must be satisfied that, short of detaining the individual indefinitely, treating him or her is the only effective means of managing the health risk posed by the individual.
- (3) The Court may impose any requirement specified in **subsection (1)** subject to any conditions or restrictions that the Court considers appropriate.

115 Duration of order or requirements

- (1) An order made under **section 113** ceases to have effect with the close of the earliest of the following days:
 - (a) the last day of the period stated in the order or, if no period is stated in the order, the period of 6 months commencing with the date on which the order is made:
 - (b) the day (if any) on which the medical officer of health notifies the individual that the individual no longer poses a health risk:
 - (c) the day (if any) on which the Court cancels the order under **section 120**:
 - (d) the day (if any) on which the direction is cancelled on appeal under **section 122 or 123**.
- (2) A requirement imposed under **section 114** by an order ceases to have effect with the close of the earlier of the following days:
 - (a) the day on which the order ceases to have effect:
 - (b) the day (if any) on which the medical officer of health notifies the individual that the requirement is no longer necessary to manage the health risk posed by the individual.
- (3) The period stated in an order may not exceed 6 months.
- (4) If no period is stated in an order and the individual does not receive a notice of the kind described in **subsection (1)**, the order has effect for 6 months.

116 Health risk order may be extended

- (1) The Court may at any time, on the application of a medical officer of health, extend a health risk order made under **section 113** for a period of not more than 6 months if the Court—
 - (a) is satisfied that the Court has jurisdiction to make a new order of the same kind in respect of the individual concerned; and
 - (b) considers it is desirable to do so.
- (2) The Court may extend an order on 1 or more occasions.

Medical examination orders and orders concerning contacts

117 Order for medical examination

- (1) The Court may, on the application of a medical officer of health, make an examination order in respect of an individual if the Court is satisfied that—
 - (a) the individual may have a condition to which this Part applies (for example, because the individual is, or has been, in contact with a person who has a notifiable disease or other notifiable condition); and
 - (b) the individual's medical practitioner or a medical officer of health has requested the individual to undergo, within a specified period, a medical examination to establish whether or not the individual has that condition and the individual has not undergone that examination within that period; and
 - (c) if the individual has that condition, the individual would pose a health risk.
- (2) The examination order must direct the individual to undergo specified medical examinations.
- (3) The examination order may also impose on the individual, until those examinations are completed, whichever 1 or more of the requirements stated in **section 114(1)(b), (c), (h), and (i)** that the Court thinks are necessary to prevent or minimise the health risk that the individual may pose.
- (4) The Court may impose any requirement referred to in **subsection (3)** subject to any conditions or restrictions that the Court thinks appropriate.

118 Court may make health risk order contingent on examinations proving positive

- (1) When the Court makes an examination order in respect of an individual, the Court may also make a health risk order under **section 113**.
- (2) A order made in the circumstances referred to in **subsection (1)**,—
 - (a) must meet the jurisdictional requirements set out in **section 113**, except that the Court may

- assume that the individual has the condition for which he or she is to be examined; and
- (b) takes effect, if at all, in accordance with **subsection (3)**.
- (3) The order takes effect only if a medical officer of health signs and dates a certificate that states that the individual has undergone the examinations in accordance with the examination order, and that those examinations establish that the individual has the condition for which he or she has been examined.
 - (4) The order may be sealed only if the Registrar of the Court has sighted and filed the certificate described in **subsection (3)**.

119 Order for contacts

- (1) The Court may, on the application of a medical officer of health, make an order in respect of an individual if the Court is satisfied that—
 - (a) the individual has been in contact with a person who has a condition to which this Part applies; and
 - (b) if that condition has been communicated to the individual, the individual poses, or will pose, a health risk.
- (2) The order may also impose on the individual whichever 1 or more of the requirements stated in **section 114(1)(b), (c), (d), (h), (i), and (j)** that the Court thinks are necessary to prevent or minimise the health risk that the individual may pose.
- (3) The Court may impose any requirement referred to in **subsection (2)**, subject to any conditions or restrictions that the Court considers appropriate.
- (4) The order ceases to have effect with the close of the day (if any) on which the medical officer of health notifies the individual that the individual no longer poses a health risk.
- (5) In determining, for the purposes of **subsection (4)**, that the individual no longer poses a health risk, the medical officer of health must have regard to any known incubation period for the condition.

General provisions concerning orders

120 Court may cancel or vary orders

- (1) The Court may, on the application of the medical officer of health or of the individual concerned, cancel an order made under this subpart if the Court is satisfied that the order is no longer required.
- (2) The Court may, on the application of the medical officer of health or of the individual concerned, vary the terms of an order made under this subpart by making a determination that the Court is otherwise authorised to make under this subpart and that the Court considers desirable in the circumstances.

121 Medical officer of health and individual may agree on variation

- (1) This section applies if—
 - (a) an order (other than an urgent health risk order) under this subpart is in effect; and
 - (b) a medical officer of health is satisfied that the health risk posed by the individual who is the subject of the order can be met by a less restrictive measure than that provided for by the order.
- (2) The medical officer of health and the individual may agree in writing that the individual may comply with the order by accepting, and complying with, the less restrictive measure.
- (3) An agreement under **subsection (2)** has effect according to its tenor, as long as the individual complies with the agreement.
- (4) The power conferred by **subsection (2)** is subject to any directions, conditions, or limitations concerning the power given or imposed by the Court.

122 Appeals to High Court

- (1) The medical officer of health and the individual in respect of whom an order has been made under this subpart (other than an urgent health risk order made under **section 106**) may each appeal to the High Court against the decision of the District Court.
- (2) The medical officer of health may appeal against the dismissal of an application under this subpart or against the District Court's refusal to make an order, or impose a requirement, sought in the application.
- (3) The High Court Rules and sections 74 to 78 of the District Courts Act 1947, with all necessary modifications, apply to an appeal under **subsection (1)** as if it were an appeal under section 72 of that Act.
- (4) On the ex parte application of the appellant, the Court appealed from may order that the appellant

must not be required under section 74(1) of the District Courts Act 1947 to give the Registrar of the High Court security for costs.

- (5) **Subsection (4)** overrides **subsection (3)**.
- (6) The decision of the High Court on an appeal to that Court under this section is final.
- (7) **Subsection (6)** is subject to **section 123**.

123 Appeals to Court of Appeal

- (1) A party to any appeal under **section 122** may, with the leave of the Court of Appeal, appeal to the Court of Appeal against any determination of the High Court on a question of law arising in that appeal.
- (2) On an appeal to the Court of Appeal under this section, the Court of Appeal has the same power to adjudicate on the proceedings as the High Court had.
- (3) The decision of the Court of Appeal on an appeal to that Court under this section, and on an application to it under this section for leave to appeal, is final.

124 Enforcement of order by medical officer of health

- (1) A medical officer of health may require an individual to comply with an order made under this subpart that is binding on the individual, and in doing so may be assisted by any number of assistants (who may consist of or include members of the police) and use any force that is reasonable in the circumstances.
- (2) However, in no case may force be used to require an individual to accept medical treatment.

125 Offence not to comply with order

- (1) Every individual commits an offence who intentionally fails to comply with an order made under this subpart that is binding on the individual.
- (2) Every individual who commits an offence against this section is liable on summary conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding \$50,000, or to both.
- (3) The Court, instead of sentencing a person who has been convicted of an offence against this section to imprisonment, may instead of or in addition to imposing a fine, make an order imposing whichever 1 or more of the requirements stated in **section 114(1)** that the Court thinks are necessary to prevent or minimise the health risk that the indicted poses.
- (4) An order made under **subsection (3)** has the same effect as a health risk order made under **section 113**, and this subpart applies to the order with any necessary modifications.
- (5) This section does not limit the power of the District Court to punish the failure to comply with an order made by a court as a contempt of Court.

Subpart 4—Offence to recklessly spread notifiable disease or other notifiable condition

126 Person must not recklessly spread notifiable disease or other notifiable condition

- (1) Every person who recklessly puts another person at risk of contracting a notifiable disease or other notifiable condition commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$50,000, or to both.
- (2) Every person who recklessly transmits a notifiable disease or other notifiable condition to another person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000, or to both.
- (3) A person does not commit an offence against **subsection (1) or (2)** merely by refusing, or failing, to be vaccinated against the condition.
- (4) If a person is convicted of an offence against this section, the Court may, instead of sentencing the person to imprisonment, make an order imposing on the person whichever 1 or more of the requirements stated in **section 114(1)** that the Court thinks are necessary to prevent or minimise the health risk posed by the person.
- (5) An order made under **subsection (4)** may be made instead of, or in addition to, imposing a fine.
- (6) An order made under **subsection (4)** has effect as a health risk order made under **section 113** and **subpart 3** of this Part (apart from **section 121**) applies to the order with any necessary modifications.

127 Defences

- (1) It is a defence in a prosecution for an offence against **section 126(1)** that at the time that the defendant put the other person at risk of contracting the condition, the other person knew the defendant had the condition and voluntarily accepted the risk of contracting the condition.
- (2) It is a defence in a prosecution for an offence against **section 126(2)** that at the time that the

condition was transmitted to the other person, the other person knew the defendant had the condition and voluntarily accepted the risk of contracting the condition.

Subpart 5—Residence orders in respect of persons in need of care

Jurisdiction of District Court

128 District Court may make residence order

The District Court may, on the application of a medical officer of health, order a person to reside in a specified place or places and to be supervised or cared for by a specified person or organisation if the Court is satisfied that—

- (a) the person is unable to care for himself or herself; and
- (b) as a result of that lack of care—
 - (i) the health of the person is, or is likely to be, adversely affected; or
 - (ii) the health of other persons is, or is likely to be, adversely affected; and
- (c) without the order, the person will not receive adequate care.

Application for residence order

129 Application for residence order

- (1) An application for a residence order may be made only by a medical officer of health.
- (2) The medical officer of health may not apply for a residence order unless satisfied that the conditions for making the order are met.
- (3) The application must be supported by an affidavit sworn by at least 1 medical practitioner that states the reasons for making the order sought.

130 Help under other enactment

- (1) This section applies if—
 - (a) a medical officer of health could apply for a residence order in respect of a person; but
 - (b) help could be provided to the person under another enactment.
- (2) The medical officer of health may apply for a residence order in respect of the person only if, in the opinion of the medical officer of health, the help provided under the other enactment would be less effective or less appropriate to the circumstances of the person.

131 Prior consultation by medical officer of health

- (1) If a medical officer of health is considering applying to the Court for a residence order in respect of a person, the medical officer of health must, whenever practicable, consult with the person and may, at the person's discretion, consult with his or her family or whānau.
- (2) The purpose of consultation under **subsection (1)** is to enable the medical officer of health to ascertain whether the need for a residence order can be avoided by voluntary compliance by the person and, if relevant, any assistance on the part of the family or whānau.

132 Case conferences

The consultation under **section 131** may, at the discretion of the medical officer of health, take the form of a case conference, which may be conducted by telephone or video link.

Duration, further applications, and appeals

133 Duration of residence order

- (1) A residence order lasts for the period stated in the order, which may not exceed 6 months.
- (2) If no period is stated in the order, the order lasts for 6 months.

134 Residence order may be extended

The Court may at any time, on the application of a medical officer of health, extend a residence order for a period of not more than 6 months if the Court—

- (a) is satisfied that a the Court has jurisdiction to make a new order of the same kind in respect of the person affected by the order; and
- (b) considers it is desirable to do so.

135 Court may cancel or vary residence order

- (1) The Court may, on the application of the medical officer of health or of the person affected by the order, cancel a residence order if the Court is satisfied that the order is no longer required.

- (2) The Court may, on the application of the medical officer of health or of the person affected by the order, vary the terms of a residence order if the Court considers it desirable in the circumstances.

136 Appeals

- (1) A medical officer of health and the person in respect of whom an order is made may each appeal to the High Court against a residence order or against the refusal to make such an order.
- (2) **Sections 122 and 123**, with all necessary modifications, apply to an appeal under **subsection (1)**.

Subpart 6—Contact tracing

Interpretation

137 Interpretation

- (1) In this subpart, unless the context otherwise requires,—
- relevant officer** has the same meaning as in **section 140**
- required information** means—
- (a) the name, age, sex, address, and telephone number of each contact of a person; and
- (b) information about the circumstances in which a condition to which this Part applies may have been communicated to, or by, the contact.
- (2) For the purposes of this subpart,—
- (a) a person is the contact of another person if one of them may have communicated a condition to which this Part applies to the other; and
- (b) the contacts of an individual include persons who are—
- (i) the contacts of the contacts of the individual; and
- (ii) the contacts of persons described in **subparagraph (i)**.

Purpose of subpart

138 Purpose of subpart

The purpose of this subpart is to prevent or limit the spread of a condition to which this Part applies by obtaining information about that condition and identifying, testing, and treating those at risk.

Counselling contacts of individual with condition to which this Part applies

139 What contact tracing involves

For the purposes of this subpart, contact tracing in respect of an individual with a condition to which this Part applies involves—

- (a) ascertaining the identity of each of the individual's contacts; and
- (b) talking to each contact, so far as this is practicable and appropriate; and
- (c) ascertaining the circumstances in which that condition may have been communicated to or by the contact; and
- (d) providing information and advice to the contact about the risks that the contact faces because of his or her exposure to the condition, including, where appropriate, advice about—
- (i) medical examinations for the condition; and
- (ii) the risk that the contact may have communicated the condition to others; and
- (iii) the risk that the contact may pose to others; and
- (e) obtaining information about the contacts of that contact, including the required information in relation to those other contacts.

140 Meaning of relevant officer

For the purposes of this subpart, in any case concerning the proposed or actual contact tracing in respect of an individual, the relevant officer is—

- (a) the medical officer of health if—
- (i) the identifying details of the individual have been notified under **section 32(3)(b)**; or
- (ii) the fact that the individual has been charged with an offence against section 201 of the Crimes Act 1961 is reported to the medical officer of health; or
- (iii) the medical officer of health is requested under **section 144(2)** to carry out the contact tracing in respect of the individual;
- (b) the medical practitioner of the individual, in any other case.

141 Appropriateness of contact tracing

- (1) The relevant officer may form the view that contact tracing in respect of an individual with a condition to which this Part applies should be undertaken if the relevant officer considers that the purpose of this subpart is likely to be achieved by doing so.
- (2) If the relevant officer is the medical officer of health, he or she may take into account any recommendation made by the medical practitioner of the individual.

142 Individual with condition to which this Part applies to provide certain information

- (1) If the relevant officer has, under **section 141**, formed the view that contact tracing in respect of an individual with a condition to which this Part applies should be undertaken, the relevant officer may direct the individual to give the relevant officer information about the circumstances in which the condition may have been communicated to, or by, the contact.
- (2) Before directing an individual under **subsection (1)**, the relevant officer must inform the individual of the reasons for the direction.
- (3) The individual must comply with a direction given under **subsection (1)**.

143 Consideration as to whether contact tracing can be undertaken by individual

- (1) When an individual has been given a direction under **section 142**, the relevant officer must consider whether it is appropriate for the individual to undertake the contact tracing, taking into account—
 - (a) the seriousness of the health risk posed by the individual; and
 - (b) the ability and willingness of the individual to undertake the contact tracing.
- (2) If the relevant officer considers that it would be appropriate for the individual to undertake the contact tracing, the relevant officer may ask the individual to undertake the contact tracing and to report back to the relevant officer by a time specified by the relevant officer.

144 When relevant officer may undertake contact tracing

- (1) This subsection applies whenever an individual has been given a direction under **section 142** and 1 of the following is the case:
 - (a) the relevant officer does not consider that it would be possible or appropriate for the individual to undertake the contact tracing; or
 - (b) the relevant officer has asked the individual to undertake the contact tracing, and the relevant officer is not satisfied that the contact tracing has been undertaken or that it has been undertaken adequately.
- (2) If **subsection (1)** applies,—
 - (a) the relevant officer may undertake the contact tracing himself or herself or direct a delegate to do so; or
 - (b) if the relevant officer is the medical practitioner of the individual concerned, the medical practitioner may request the medical officer of health to undertake the contact tracing.
- (3) When a medical practitioner makes a request under **subsection (2)**, the medical practitioner must inform the medical officer of health of—
 - (a) the identity of the individual in respect of whom the contact tracing is to be undertaken; and
 - (b) the medical history of the condition of the individual; and
 - (c) any attempts made to undertake the contact tracing and whether, and the extent to which, those attempts have been successful.
- (4) The medical officer of health may disclose any information obtained under **subsection (3)** only for the purposes of this subpart.
- (5) On receiving a request under **subsection (2)**, the medical officer of health may undertake the contact tracing himself or herself or direct a delegate to do so.

145 Medical officer of health may direct certain persons to provide information

- (1) For the purpose of identifying the contacts of an individual who has been given a direction under **section 142**, a medical officer of health may approach the employer of the individual, any educational institution attended by the individual, or any business or other organisation that the individual has dealt with and direct that employer, institution, business, or other organisation to provide the medical officer of health with the names and addresses of the contacts of the individual that are known to the person whom the medical officer of health directs.
- (2) A person may provide information in response to a request made under **subsection (1)** despite anything in the Privacy Act 1993.

146 Duty of confidentiality

A medical officer of health, a medical practitioner, or a delegate of those persons who approaches a

contact under this subpart must not, so far as practicable, disclose to the contact the identity of the individual who may have communicated the condition to the contact or exposed the contact to the risk of contracting the condition.

147 Medical practitioner or medical officer of health may delegate powers, duties, and functions

- (1) The medical officer of health and every medical practitioner may each delegate any of their respective powers, duties, and functions under this subpart, except this power of delegation, to a person who is suitably qualified to exercise them.
- (2) The maker of the delegation must make the delegation in writing and sign it.
- (3) The maker of the delegation is not prevented from exercising, or affected in his or her exercise of, any of the delegated powers, duties, or functions.
- (4) The delegate may exercise the powers, duties, and functions in the same manner and with the same effect as if they had been conferred on the delegate directly by this Act.
- (5) Every person purporting to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

148 Status of delegations

- (1) A delegation made under **section 147** continues in force according to its tenor until it is revoked.
- (2) A delegation made by a medical officer of health who has ceased to hold office continues to have effect as if made by the medical officer of health's successor.
- (3) The maker of the delegation, or successor of the maker, may revoke the delegation at any time by written notice to the delegate.

149 Offence to fail to comply with direction to provide required information

- (1) Every person commits an offence who, having been directed under **section 142** or **145** to give any required information, refuses to give the required information or intentionally omits any part of that information or gives any information that the person knows to be false.
- (2) A person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$10,000.

Subpart 7—Disclosure of communicable condition to partners and household members

150 Interpretation

In this subpart, **close associate**, in relation to a patient, includes—

- (a) a person with whom the patient lives in the same household; or
- (b) a person with whom the patient is having, or has had, contact of a sexual nature.

151 Medical practitioner may disclose certain matters to close associates

- (1) This section applies if a medical practitioner believes on reasonable grounds that a person—
 - (a) has a serious condition; and
 - (b) exposes a close associate of the patient to a significant risk of contracting the condition; and
 - (c) has failed to inform the close associate.
- (2) The medical practitioner may give the close associate brief details about—
 - (a) the likelihood of contracting the condition; and
 - (b) the nature and source of the condition; and
 - (c) ways of avoiding or managing the risk; and
 - (d) the identity of the person with the serious condition if the medical practitioner considers disclosure necessary for the protection of the close associate.
- (3) The medical practitioner must inform the person with the serious condition of any action taken under **subsection (2)** in relation to the person.

152 Medical practitioner may consult with medical officer of health

- (1) Before a medical practitioner takes the action permitted by **section 151(2)**, the medical practitioner may consult with a medical officer of health about the proposed action.
- (2) In consulting with the medical officer of health under **subsection (1)**, the medical practitioner may disclose to the medical officer of health the identity of the person, even though the medical practitioner is not otherwise required to do so.

Public health role of territorial authorities

Subpart 1—Duties of local authorities and environmental health officers

153 General powers and duties of territorial authorities in respect of public health

- (1) It is the duty of every territorial authority to improve, promote, and protect public health within its district so far as the powers and functions conferred on it by this Act enable it to do so, and for that purpose every territorial authority must—
 - (a) appoint, or arrange for another territorial authority to appoint, as many environmental health officers and other officers and employees as in its opinion are necessary for the proper discharge of its duties under this Act;
 - (b) cause inspections of its district to be regularly made for the purpose of ascertaining whether any nuisances exist in the district;
 - (c) if satisfied that a nuisance exists in the district, take all proper steps to stop the nuisance;
 - (d) if premises present a risk to public health, take any remedial action required to prevent that risk (such as cleansing or disinfecting the premises);
 - (e) perform, within its district, any functions conferred on it by any regulations and bylaws under this Act and to enforce those regulations and bylaws within the district;
 - (f) where appropriate, make bylaws under and for the purposes of this Act or any other Act authorising the making of bylaws for the protection of public health.
- (2) **Subsection (1)** does not limit the Local Government Act 2002.
- (3) A territorial authority may delegate its powers and functions under this Act to any other territorial authority.
- (4) To avoid doubt, no delegation relieves the territorial authority of the liability or legal responsibility to perform, or ensure the performance of, any function or duty under this Act.

154 Regional Councils may be required to provide Director-General or DHB with reports

- (1) The Director-General or any DHB responsible for an area in the region of a Regional Council may, by written notice to the Regional Council, request the Regional Council to give the Director-General or the DHB a written report on any matter concerning the functions of the Regional Council that—
 - (a) affects or may affect public health; and
 - (b) arises in an area of that region specified in the notice (being, in the case of a DHB, an area for which the DHB is responsible).
- (2) Without limiting the generality of **subsection (1)**, the public health matters on which a Regional Council may be requested to report on include the following:
 - (a) the management of water sources in the specified area to be used as drinking water in the region and the sanitary state of those sources;
 - (b) the air quality in the specified area of the region.
- (3) The Regional Council must give the report to the Director-General or to the chief executive of the DHB by the date stated in the notice under **subsection (1)**.

155 Territorial authorities may be required to provide DHBs with reports

- (1) The Director-General or any medical officer of health may, by written notice to the territorial authority, request the territorial authority to give the DHB responsible for an area in the district of the territorial authority a written report on any matter within an area of that district that affects or may affect public health.
- (2) The territorial authority must give the report to the DHB by the date stated in the notice under **subsection (1)**.

156 Provisions relating to reports

- (1) No report given under **section 154 or 155** may contain information about an identifiable individual.
- (2) The local authority that gives a report under **section 154 or 155** may recover from the Director-General or, as the case requires, the DHB any reasonable costs directly attributable to the preparation of the report.
- (3) The costs recoverable under **subsection (2)** do not include costs that are attributable to the performance of functions that the local authority is required to perform regardless of the preparation of the report.

157 Duty of territorial authority to have environmental health officers

- (1) For the purposes of this Part, every territorial authority must be able to access the services of a sufficient number of environmental health officers.
- (2) Every territorial authority is accountable to the Director-General for compliance with the duty imposed by **subsection (1)**.
- (3) A territorial authority may comply with **subsection (1)**, in whole or in part, by obtaining, under an arrangement with another territorial authority, the right to access the services of the environmental health officers of the other territorial authority.
- (4) The Director-General may, by direction in writing, require a territorial authority to appoint, or make arrangements for the appointment of, a minimum number of environmental health officers.
- (5) Before the Director-General issues a direction under **subsection (4)**, the Director-General must consult with the territorial authority about the proposed direction.
- (6) If any territorial authority fails to appoint or to continue to employ the number of environmental health officers specified in any notice given under **subsection (4)**, then—
 - (a) any health protection officer authorised by the Director-General may carry out the duties of an environmental health officer within the district of that territorial authority; and
 - (b) the salary and other expenses of the health protection officer are payable by the territorial authority.
- (7) The salary and other expenses of the health protection officer authorised by the Director-General are payable by the territorial authority.
- (8) This section does not limit the power of the Director-General to give directions under **section 8**.

158 Provisions governing appointments

- (1) A territorial authority must not appoint a person as an environmental health officer unless satisfied—
 - (a) that the person is suitably qualified and trained; and
 - (b) if any regulations governing the appointment of environmental health officers are in force, that the appointment complies with those regulations.
- (2) The territorial authority may do any or all of the following:
 - (a) appoint persons to enforce all or specified provisions of this Part that the territorial authority is responsible for enforcing;
 - (b) appoint persons to exercise all or specified powers given to environmental health officers by this Part;
 - (c) appoint persons subject to limitations or restrictions on their exercise of powers.
- (3) The territorial authority must provide every person appointed as an environmental health officer with a warrant or other instrument of appointment that specifies the powers the officer may exercise.

159 Functions of environmental health officers

An environmental health officer has the following functions within the district of the territorial authority concerned:

- (a) to take action under this Part, under any bylaws, and under **section 329** (which provides for the service of compliance orders) to—
 - (i) detect, prevent, stop, and prosecute nuisances; and
 - (ii) assist any medical officer of health or health protection officer responsible within an area in the district, on request, to take such action:
- (b) to advise the relevant local authority on environmental health matters involved in the development of district and regional plans under the Resource Management Act 1991:
- (c) to advise the territorial authority on environmental health matters involved in plans and assessments developed under the Local Government Act 2002 and, in particular, on the water and sanitary services assessments prepared under that Act:
- (d) to provide general advice to the territorial authority on those of its activities that relate to public health.

Subpart 2—Provision of sanitary services

160 Sanitary services defined

- (1) For the purposes of this subpart, **sanitary services** means 1 or more of the following:
 - (a) facilities to procure raw water and supply drinking-water:
 - (b) works for the treatment, reticulation, or safe disposal of sewage:
 - (c) the collection and disposal of human waste:
 - (d) public toilets:

- (e) activities and facilities to manage storm-water:
 - (f) activities and facilities to manage solid waste and other refuse:
 - (g) mortuaries, cemeteries, and crematoria:
 - (h) disinfecting stations.
- (2) Any facility, works, or structure referred to in **subsection (1)** includes—
- (a) the design, construction, commissioning, ongoing management, and maintenance of the facility, works, or structure; and
 - (b) all lands, buildings, machinery, reservoirs, dams, tanks, and appliances used in connection with such facility, works, or structure.

161 Matters to be considered before directions given

- (1) Before deciding whether to give a direction under **section 162**, the Minister must consider—
- (a) whether the proposed direction is likely to address a risk to public health within the district of the territorial authority:
 - (b) any evidence-based analysis of the nature and level of that risk:
 - (c) the estimated costs and benefits arising out of the proposed direction:
 - (d) whether there are any alternative courses of action that the territorial authority or the Minister could take to address the risk and, if so, the nature and likely effectiveness, costs, and benefits of those alternatives.
- (2) In considering the matters under **subsection (1)**, the Minister must—
- (a) consult with the territorial authority and with any other interested persons that the Minister thinks appropriate; and
 - (b) be guided by the interests of public health.

162 Minister may direct territorial authority about sanitary services

- (1) The Minister may, by written notice, direct a territorial authority to do any 1 or more of the following:
- (a) provide for, or amend existing provisions for, a particular type of sanitary service in the water and sanitary services assessment that the territorial authority undertakes under Part 7 of the Local Government Act 2002:
 - (b) provide for, or amend existing provisions for, a stated type of sanitary work in the long-term community council plan that the territorial authority is preparing under the Local Government Act 2002:
 - (c) provide for, or amend existing provisions for, a stated type of sanitary work in the long-term community council plan that the territorial authority has most recently approved under the Local Government Act 2002:
 - (d) undertake a particular sanitary service in a manner that meets any standards or level of performance that the Minister may specify.
- (2) Any directions given under **subsection (1)** may include requirements concerning the nature and quality of the sanitary service or sanitary work concerned and the areas in which the service or work is to be available.
- (3) Any direction given may specify a time, not being less than 3 months after the direction is given, within which proposals for the carrying out of the service or work must be submitted to the Director-General, and may contain such general directions relating to the carrying out of the service or work, including a direction as to the amount of expenditure to be incurred, as the Director-General thinks fit.
- (4) The territorial authority must comply with all directions given within a reasonable time.
- (5) In the case of a direction under **subsection (1)(d)**, the territorial authority must provide the Director-General—
- (a) with a detailed schedule of proposed and completed applications for consents required, under the Resource Management Act 1991 or any other enactment, for the sanitary service; and
 - (b) with reports on the design, construction, operation, and ongoing maintenance of the sanitary service.
- (6) Before the Minister directs a territorial authority under this section, the Minister must consult the territorial authority about the proposed direction.
- (7) All directions given under this section must be in writing and must be published in the *Gazette* as soon as practicable after they are given.

163 Grants and subsidies for refuse disposal works, sewerage works, and water supplies

- (1) For the purpose of contributing towards the cost of any of the activities specified in **subsection (2)**,

the Minister may make any payment (whether by way of grant, subsidy, or otherwise) that the Minister thinks fit in a particular case to a territorial authority.

- (2) The activities are the investigation, planning, or construction of—
 - (a) public water supplies;
 - (b) refuse disposal works;
 - (c) sewerage works;
 - (d) works for the disposal of sewerage.
- (3) Every payment under **subsection (1)** must be paid out of money appropriated by Parliament.
Compare: 1956 No 65 s 27A

164 Establishment of mortuaries and disinfecting stations

- (1) Any territorial authority may, either separately or jointly with any other territorial authority or territorial authorities,—
 - (a) provide, equip, and maintain places for the reception of dead bodies pending the carrying out of any post-mortem examination or until removal for interment; and
 - (b) provide facilities for carrying out in the mortuaries post-mortem examinations authorised under the Coroners Act 2006 or under any other enactment and for making good for burial dead bodies on which such post-mortem examinations have been carried out; and
 - (c) provide, equip, and maintain disinfecting and cleansing stations, plant, equipment, and attendance for the cleansing of persons and for the disinfection of bedding, clothing, or other articles which have been exposed to or are believed to be contaminated with a communicable condition, or which are otherwise a public health risk; and
 - (d) provide vehicles for the conveyance of infected articles and any other accommodation, equipment, or articles required for dealing with any epidemic or emergency; and
 - (e) provide disinfectants for public use.
- (2) No building may be used under this section as a mortuary or as a disinfecting or cleansing station unless the plans and specifications and the site of the building have been approved by the Director-General.
Compare: 1956 No 65 s 84

165 Duties of local authorities as to burials

- (1) Where the body of any person who has died is a risk to public health, the medical officer of health may—
 - (a) order the body to be buried immediately, or within a time limited in the order; and
 - (b) if he or she thinks fit, order that the body, pending burial, be removed to the nearest mortuary.
- (2) If the order is not complied with, the local authority must ensure that the body to be buried immediately or is removed to a mortuary for the purpose of being buried.
- (3) Any order under this section may be complied with on behalf of and at the cost of the local authority by any—
 - (a) health protection officer; or
 - (b) member of the police; or
 - (c) any person authorised for that purpose by the medical officer of health or health protection office.
- (4) If the body is removed to the mortuary, the local authority must ensure that it is buried.
- (5) The expenses of the removal and burial of the body by the local authority may be recovered from any person legally liable to pay the expenses of the burial, as a debt due to the local authority.
- (6) Every person commits an offence against this Act who in any way prevents or obstructs the due and prompt execution of any order under this section or of any of the powers exercisable under this section.
- (7) In this section, references to burial include references to cremation in any case where cremation may be lawfully carried out.
Compare: 1956 No 65 s 86

Subpart 3—Control of nuisances

166 Nature of nuisance

- (1) A **nuisance** is an activity or state of affairs that is, or is likely to be, injurious to public health.
- (2) A nuisance may, without limitation, arise from or be constituted by any 1 or more of the following:
 - (a) buildings or structures;
 - (b) land, air, water, or land covered by water:

- (c) animals, insects, or birds:
- (d) refuse or accumulations of material:
- (e) noise or vibrations:
- (f) emissions or discharge.
- (3) In particular, a nuisance may arise from or be constituted by any 1 or more of the following:
 - (a) human or animal waste, defective toilets, sewers, or drains:
 - (b) locations that are, or are likely to become, breeding grounds for rats, mosquitoes, or other vectors and vermin:
 - (c) dwellings that are overcrowded or otherwise insanitary:
 - (d) dirt or odour:
 - (e) animal carcasses:
 - (f) composting.
- (4) In this section,—
 - (a) neither **subsection (2)** nor **(3)** limits **subsection (1)**; and
 - (b) **subsection (3)** does not limit **subsection (2)**.

167 Duties of territorial authority

- (1) A territorial authority must ensure that its district is regularly inspected to ascertain if any nuisances exist in its district.
- (2) If satisfied that a nuisance exists in its district, the territorial authority must take all proper steps to stop the nuisance.

168 Inspections to ascertain existence of nuisance

- (1) For the purpose of ascertaining whether any nuisance exists in any place, an environmental health officer may enter any land or premises at any reasonable time and inspect that land or those premises.
- (2) When entering land or premises under this section, an environmental health officer may—
 - (a) take on to the land or into the premises any appliances, machinery, and equipment reasonably necessary for ascertaining whether any nuisance exists; and
 - (b) for the purpose of ascertaining whether any nuisance exists, take samples using any equipment mentioned in **paragraph (a)**.
- (3) This section is subject to **sections 352 to 358** (general provisions relating to entry and search powers).

169 Offence to cause or permit nuisance

- (1) Every person who, without lawful justification or excuse, does anything in the knowledge that it causes or continues a nuisance commits an offence.
- (2) A person who has been convicted of an offence under this section commits a further offence or offences if the person, being lawfully able to stop the nuisance, fails or neglects, or continues to fail or neglect, to do so.
- (3) A person who commits any offence against this section is liable on summary conviction to a fine not exceeding \$10,000.

170 Provisions of this subpart do not limit other rights

- (1) This subpart does not limit any right, remedy, or proceeding under any other enactment or at law or in equity.
- (2) To avoid doubt, **subsection (1)** does not authorise the punishment of a person for the same offence both under this subpart and under any other enactment or bylaw.

171 Rectification orders

- (1) The District Court, if satisfied that a nuisance exists or that a nuisance that has been stopped is likely to recur may, on application, make a rectification order.
- (2) A rectification order may do either or both of the following:
 - (a) require the owner and the occupier to stop the nuisance:
 - (b) prohibit the recurrence of the nuisance.
- (3) The District Court may specify in the rectification order the work to be done in order to stop the nuisance or prevent its recurrence, and the time within which the work must be done.

172 Buildings unfit for human occupation

- (1) If, on making a rectification order in respect of a nuisance, the Court is of the opinion that the nuisance makes a dwelling or other building unfit for human occupation, the Court may, by the

same or any subsequent order, prohibit the use of the dwelling or building for that purpose until the nuisance has been effectively stopped to its satisfaction, or until provision has been made to its satisfaction to prevent the recurrence of the nuisance.

- (2) The Court may rescind the order when it is satisfied that the nuisance has been effectively stopped, or, as the case may be, that due provision has been made to prevent its recurrence.

173 Effect of order under section 172

Until an order under **section 172** is rescinded, it is not lawful to let or occupy the dwelling or building to which the order relates.

174 District Court Judge may view place and summon owner or occupier

In any proceedings for a rectification order, the District Court Judge may do 1 or more of the following:

- (a) examine the place where the nuisance is alleged to exist;
- (b) authorise any other person to do so and report to the Judge;
- (c) direct that another owner or occupier of a place be joined as a party to the proceedings.

175 Breach of order is offence

- (1) Every person who is bound by a rectification order commits an offence who, without reasonable excuse, fails to duly comply with that rectification order.
- (2) Every person commits an offence who does anything in the knowledge that it contravenes a rectification order.
- (3) A person who commits an offence against this section is liable on summary conviction to a fine not exceeding \$50,000.
- (4) This section does not limit the power of a District Court to punish any non-compliance or contravention as a contempt of Court.

176 On default of owner, territorial authority must carry out work

- (1) If the owner or occupier of land or premises in which a nuisance exists fails to do the work necessary to stop the nuisance effectively, or to prevent its recurrence, the territorial authority must do that work, or arrange for it to be done, at the expense of the owner and the occupier, who are jointly and severally liable for the cost of the work.
- (2) If there is no known owner or occupier of the land or premises in which the nuisance exists, or if the owner or occupier cannot be found, the Court may by order direct that the nuisance be stopped by the territorial authority at the expense of the territorial authority.

177 Power to stop nuisance without notice

- (1) If an environmental health officer of a territorial authority believes on reasonable grounds that a nuisance on any land or premises within the district of the territorial authority poses a significant risk to public health in the area, the environmental health officer may—
 - (a) enter that land or premises; and
 - (b) stop the nuisance.
- (2) Despite **subsection (1)**, no environmental health officer may enter any land or building that is a defence area (within the meaning of section 2(1) of the Defence Act 1990) except in accordance with a written agreement between the Director-General and the Chief of Defence Force entered into for the purposes of this section and for the time being in force.
- (3) In stopping any nuisance, the environmental health officer must avoid, to the greatest extent practicable, the destruction of, or any irreversible change to, any premises.
- (4) Despite **subsection (3)**, the environmental health officer may destroy 1 or more articles on the land if the environmental health officer believes on reasonable grounds that the destruction is necessary to eliminate or mitigate the risk to public health posed by the nuisance.
- (5) As soon as practicable after stopping, or attempting to stop, a nuisance under this section, the environmental health officer must apply for a rectification order under **section 171**.
- (6) No notice is required to exercise the powers under this section.
- (7) The owner and any occupier of the land or premises are jointly and severally liable for any costs incurred by the territorial authority in stopping the nuisance.
- (8) This section (other than **subsection (5)**) is subject to **sections 352 to 358** (general provisions about entry and search powers).

178 Interim closure of dwellinghouse posing serious risk to public health

- (1) If the insanitary condition of a dwellinghouse constitutes a nuisance that poses a significant risk to

the health of the occupants of the dwellinghouse, the environmental health officer may serve notice of a prohibition on the occupier of the dwellinghouse prohibiting the use of the dwellinghouse for human occupation while occupants are subject to that risk.

- (2) A prohibition under **subsection (1)** takes effect 24 hours after notice of the prohibition is served.
- (3) When the environmental health officer applies for a rectification order, as required by **section 177(4)**, the District Court may—
 - (a) quash the prohibition; or
 - (b) for the time that the application is heard and determined, confirm or vary the prohibition.

179 Nuisance caused by act or default outside district

For the purposes of this subpart, a location outside the district of a territorial authority is taken to be wholly inside that district if a nuisance existing within the district is wholly or partly caused by some act or default in that location.

180 Recovery of expenses and costs of territorial authority

- (1) All expenses incurred by or on behalf of a territorial authority in stopping a nuisance or in preventing its recurrence, together with reasonable costs in respect of the services of the territorial authority, are—
 - (a) recoverable from the owner or the occupier of the land or premises in respect of which they are incurred as a debt due to the territorial authority; and
 - (b) until paid, a charge on that land, which may be registered against that land in accordance with the Statutory Land Charges Registration Act 1928.
- (2) All materials, refuse, and things removed in doing any work done, or arranged by, the territorial authority in stopping a nuisance or in preventing its recurrence, must be sold, destroyed, or otherwise disposed of as the territorial authority thinks fit.
- (3) The territorial authority is entitled to the proceeds of a sale or other disposal under **subsection (2)**.

Medical officer of health may step in if territorial authority's response unsatisfactory

181 Inadequate response to nuisance representing significant health risk

- (1) This section applies if a medical officer of health who is responsible for an area in the district of a territorial authority believes on reasonable grounds that—
 - (a) a nuisance exists in the area; and
 - (b) the nuisance presents a significant risk to health; and
 - (c) the territorial authority has not taken adequate action to investigate the nuisance or take actions under this subpart that are appropriate in the circumstances.
- (2) The medical officer of health may direct the territorial authority—
 - (a) to take any action under this subpart in respect of the nuisance;
 - (b) to take any action to prevent or remedy risks to public health emanating from the nuisance.
- (3) The directions must be in writing.
- (4) The territorial authority must comply with the directions and must do so at the cost of the territorial authority.
- (5) Before the medical officer of health issues directions under this section, the medical officer of health must consult with the territorial authority about the proposed directions.

182 Medical officer of health may take enforcement action

- (1) **Subsection (2)** applies if the territorial authority fails to comply with a direction given under **section 181**.
- (2) The medical officer of health may take any action under this subpart in respect of the nuisance that the territorial authority could have taken.
- (3) **Sections 166 to 180** apply, with any necessary modifications, to any action taken by a medical officer of health under this section as if a reference in any of those sections to—
 - (a) the territorial authority were a reference to the medical officer of health; and
 - (b) a reference to an environmental health officer were a reference to a medical officer of health or health protection officer.
- (4) The territorial authority is liable for all costs incurred by the medical officer of health under this section.

Permitted activities

183 Determinations permitting activities not affected

- (1) No action taken or direction made under this subpart in respect of an activity affects any determination under an enactment (including a resource consent granted under the Resource Management Act 1991) by which the activity (a **permitted activity**) is permitted.
- (2) The provisions of this subpart apply to a permitted activity that wholly or partly constitutes a nuisance.
- (3) Despite **subsection (2)**, no action or determination under this subpart may stop a permitted activity, but any such action or determination may mitigate any health risks or nuisance posed by the activity.
- (4) However, the activity may be stopped if the health risks posed by the activity were not foreseen at the time that the activity became a permitted activity.
- (5) **Subsection (4)** overrides **subsection (3)**.

Subpart 4—Power to make bylaws

184 Public health bylaw defined

A **public health bylaw** is a bylaw made under this Act or under the Local Government Act 2002 or under any other enactment for any of the purposes specified in **section 186(1)**.

185 Consultation required before territorial authority makes public health bylaw

Before a territorial authority makes a public health bylaw, the territorial authority must consult about the proposed bylaw with the DHB responsible for the area in the district of the territorial authority.

186 Bylaws

- (1) Bylaws may provide for all or any of the following purposes:
 - (a) improving, promoting, or protecting public health, and preventing or stopping nuisances:
 - (b) the maintenance and operation, in a safe and efficient manner, of particular sanitary services or classes of sanitary services, whether owned or managed by the territorial authority or by any other person:
 - (c) the prevention of harm from particular sanitary services or classes of sanitary services, whether owned or managed by the territorial authority or by any other person:
 - (d) prescribing the minimum area of land on which a dwellinghouse may be erected in the district of the territorial authority or any specified part of the district:
 - (e) preventing the overcrowding of land with buildings and, in particular, prescribing the minimum air space adjacent to any dwellinghouse or any specified class of dwellinghouse that must be kept free of buildings or other structures:
 - (f) prescribing minimum frontages for buildings in relation to roads:
 - (g) regulating drainage and the collection and disposal of sewage, and prescribing conditions to be observed in the construction of approved drains:
 - (h) requiring the cleansing of buildings and the paving and sanitation of yards and other areas connected with buildings:
 - (i) regulating, licensing, or prohibiting the keeping of any animals in the district or in any part of the district:
 - (j) making provision for the proper cleansing, ventilation, sanitation (including the provision of public toilets), and disinfection of theatres, halls, and churches, and public meeting places, and requiring those buildings and places to be closed for admission to the public at any intervals and during any periods specified to enable that cleansing, ventilation, and disinfection to be effectively undertaken:
 - (k) regulating and prescribing the cleansing and renovation of public conveyances:
 - (l) prescribing the sanitary precautions to be adopted in respect of any business, trade, or trade waste:
 - (m) preventing the outbreak or spread of disease by the agency of rats, mosquitoes, or other vectors:
 - (n) protecting food for human consumption and any water supply from pollution:
 - (o) regulating the emission of smoke from the funnels of ships, and from chimneys other than chimneys of private dwellinghouses:
 - (p) providing for the inspection of any land or premises for the purposes of this Act:
 - (q) generally, providing for matters that are necessary for the administration, or for giving full effect to, the provisions of this Act relating to the powers and duties of territorial authorities.
- (2) The powers conferred by this section are in addition to the powers conferred on a territorial authority by any other Act.

- (3) This Part does not prevent a territorial authority from making bylaws that provide for greater protection of public health and greater protection from nuisances than this Part provides.
- (4) To avoid doubt, no bylaws made under this section or under the Local Government Act 2002 may permit a lower standard of public health protection than that required by this Act.

187 Application of other enactments to bylaws

Subpart 1 of Part 8 of the Local Government Act 2002, sections 162, 239, and 242 of that Act, and the Bylaws Act 1910 apply, with any necessary modifications, to bylaws made under **section 186**.

188 Local Government Act 2002 amended

- (1) This section amends the Local Government Act 2002.
- (2) The following section is inserted after section 152:

“152A Effect of Public Health Act 2007 on bylaws made under this Act

A council may make bylaws in respect of public health and safety under section 145(b) that provide protection in respect of circumstances and situations that are not expressly provided for by or under the **Public Health Act 2007**.”

Subpart 5—Reviews of territorial authorities and intervention by Minister

189 Review of territorial authorities

- (1) The Director-General may, on his or her own initiative or at the request of the Minister, review whether a territorial authority is properly exercising or performing its powers, functions, or duties under this Part.
- (2) The Director-General must—
 - (a) give the territorial authority a reasonable opportunity to make written submissions on the review; and
 - (b) consider those submissions (if any).
- (3) The Director-General must, after completing the review, report to the Minister if he or she believes that the territorial authority is not properly exercising or performing its powers, functions, or duties under this Part.

190 Non-performance by territorial authority

- (1) This section applies if, after considering a report under **section 189** on a territorial authority and any submissions by the territorial authority on the report, the Minister considers that the territorial authority is not properly performing its functions or duties, or exercising its powers, under this Part.
- (2) The Minister may, in consultation with the Minister of Local Government, appoint 1 or more persons to act in place of the territorial authority by performing all or any of the territorial authority’s powers, functions or duties under this Part.

191 Order for mandamus

The Minister may apply to the High Court for an order for mandamus to compel a territorial authority to perform any duty that the territorial authority has failed to perform under this Part.

Subpart 6—Relationship of this Part with certain other enactments

192 Action under certain other enactments to be preferred

- (1) This section applies if any activity takes place or a state of affairs exists in a district of a territorial authority in respect of which the territorial authority may take action either—
 - (a) under this Part; or
 - (b) under 1 or more of the following Acts:
 - (i) the Building Act 2004;
 - (ii) the Hazardous Substances and New Organisms Act 1996;
 - (iii) the Local Government Act 2002;
 - (iv) the Resource Management Act 1991.
- (2) The territorial authority may take action under this Part only if the territorial authority forms the view that—
 - (a) the activity or state of affairs is a risk to public health; and
 - (b) any action under any of the Acts mentioned in **subsection (1)(b)** would be less appropriate in the circumstances of the case.

193 Bylaws under this Part prevail over other bylaws

If there is an inconsistency between a bylaw made by a territorial authority under this Part and a bylaw made by the territorial authority under another enactment, the bylaw made under this Part prevails to the extent of the inconsistency.

Part 6 Regulated activities

Subpart 1—Objective

194 Objective

- (1) The objective of this Part is to enable the imposition of 1 or more controls on regulated activities in order to prevent, reduce, or eliminate the risks to public health associated with those activities.
- (2) Any restrictions imposed under this Part should, wherever practicable, be proportionate to those risks.

Subpart 2—Duties of operators of activities

195 Duty to comply with this Part

- (1) Every person who carries out a regulated activity must comply with this Act, the applicable regulations, any conditions on the consent (if any) granted for the activity, and the requirements of any public health risk management plan approved for the activity.
- (2) Every person who, without reasonable excuse, contravenes **subsection (1)** commits an offence punishable on summary conviction by a fine not exceeding \$200,000.
- (3) If the person convicted under **subsection (1)** holds a consent to carry out the risk activity, the Court may, in addition to, or instead of, imposing a fine, cancel the person's consent.

196 Taking of all practicable steps to prevent risks to public health

- (1) Every person responsible for carrying on a regulated activity must, in respect of circumstances that the person knows about or ought reasonably to know about, identify all reasonably identifiable risks to public health that may arise from the activity and must take all practicable steps to prevent those risks.
- (2) In **subsection (1)**, **all practicable steps**, in relation to the achievement of any particular result, means all steps to achieve that result that it is reasonably practicable to take in the circumstances, having regard to—
 - (a) the nature and severity of the harm that may be suffered if the result is not achieved; and
 - (b) the current state of knowledge about the likelihood that harm of that nature and severity will be suffered if the result is not achieved; and
 - (c) the current state of knowledge about harm of that nature; and
 - (d) the current state of knowledge about the means available to achieve the result, and about the likely efficacy of each; and
 - (e) the availability and cost of each of those means.
- (3) Every person who contravenes **subsection (1)** commits an offence punishable on summary conviction by a fine not exceeding \$200,000.
- (4) It is a defence to a prosecution under **subsection (3)** that the defendant complied with this Part, the applicable regulations, any conditions on any consent granted for the activity to which the alleged offence relates, and the requirements of any public health risk management plan approved for the activity.

197 Consent holder must advise relevant consent authority of important changes

- (1) A consent holder must advise the relevant consent authority of any important change in the consent holder's circumstances not later than 14 days after the change occurs.
- (2) For the purposes of **subsection (1)**, **an important change** is one that relates to any matter about which information is sought in, or in connection with, an application for a consent or an application for a renewal of a consent, or the occurrence of an event, action, or failure that disqualifies the consent holder from holding a consent, or a change of a kind specified by regulations.
- (3) Every person who contravenes **subsection (1)** commits an offence punishable on summary conviction by a fine not exceeding \$10,000.

198 Persons carrying on regulated activities must assist assessors and designated officers in exercise of powers

- (1) A person carrying on a regulated activity must, on request, provide an assessor or a designated officer with any reasonable assistance that the person is able to provide if that assistance is necessary for the lawful exercise of a power conferred on the assessor or officer in respect of the risk activity.
- (2) Every person who contravenes **subsection (1)** commits an offence punishable on summary conviction by a fine not exceeding \$10,000.
- (3) In this section, **designated officer** means a medical officer of health, a health protection officer, or an environmental health officer designated by a consent authority for the purpose of enforcing this Part.
- (4) This section does not require a person to give any answer or information tending to incriminate that person.

199 Periodic compliance assessments of operators of activities

- (1) If required by regulations, every person who carries out a regulated activity must arrange with an assessor to assess, at the intervals shown on the consent of the person or specified by regulations, the compliance of the operation of the regulated activity with this Act, the applicable regulations, any conditions imposed on the consent, any public health risk management plan, and any applicable rules or code of practice.
- (2) If the assessor, following an assessment under **subsection (1)**, is satisfied that the operation of the regulated activity complies with the Act, the applicable regulations, any conditions imposed on the consent, any public health risk management plan, and any applicable rules or code of practice, the assessor must issue to the consent holder a certificate to that effect.
- (3) The assessor must send a copy of the certificate to the relevant consent authority.
- (4) If, following an assessment, the assessor forms the opinion that the operation of the regulated activity fails to comply in any respect, the assessor must report that opinion and the reasons for it to the consent holder and to the relevant consent authority.

Subpart 3—Applications for, and granting of, consents

200 Application of subpart

This subpart applies to regulated activities specified by the regulations as requiring a consent.

201 Person proposing to carry on regulated activity must apply to relevant consent authority

- (1) A person proposing to carry on a regulated activity must apply to the relevant consent authority for a consent in a form provided by the consent authority.
- (2) The form must require the person completing the form to give the following information:
 - (a) the name and contact details of the applicant:
 - (b) in the case of a body corporate or partnership, the name and contact details of every director or partner:
 - (c) the activities for which the consent is sought:
 - (d) the description, address, and, if required for the purposes of identification, a plan of the location or locations to be used for the activities for which the consent is sought:
 - (e) an address for service of the applicant:
 - (f) the systems to be adopted and applied in satisfying the requirements of this Part, the applicable regulations, and any required public health risk management plan:
 - (g) any other information to enable the consent authority to assess whether the applicant is eligible to hold the consent sought.
- (3) The application must be signed and dated by or on behalf of the applicant.

202 Application to be accompanied by payment and public health risk management plan, if required

- (1) Every application must be accompanied by the payment of any administrative charge fixed under **section 210** and, if required by any regulations, by a duly completed and approved public health risk management plan.
- (2) The consent authority may refuse to consider an application or grant a consent until the appropriate charge has been paid.

203 Consent authority to obtain report and respond to application within 20 working days

- (1) On receipt of an application, the consent authority must obtain a report on the application from an

environmental health officer (if the consent authority is a territorial authority) or a medical officer of health or health protection officer (if the consent authority is a DHB).

- (2) A report under **subsection (1)** must state whether the application complies with this Part, any applicable regulations, and whether the public health risk management plan (if required) has been duly completed and approved.
- (3) Within 20 working days after receipt of an application for consent, the consent authority must—
 - (a) grant the application under **section 204**; or
 - (b) grant a provisional consent under **section 205**; or
 - (c) advise the applicant, in accordance with **section 206(1)**, that the application does not comply or that the authority requires further information.

204 Grant of application

- (1) A consent authority may grant an application for a consent if the consent authority—
 - (a) has obtained a report under **section 203** about the application; and
 - (b) is satisfied that the application complies with this Part, any applicable regulations, and that any public health risk management plan has been duly completed and approved.
- (2) If the consent authority grants an application for consent, the authority must issue the consent to the applicant.
- (3) The consent authority may issue the consent without conditions or subject to any conditions that, in the opinion of the consent authority, are necessary to minimise any risks from the activity to public health.
- (4) A consent must state the following:
 - (a) the nature of the activity;
 - (b) the name of the consent holder;
 - (c) the period of the consent;
 - (d) the premises in which or from which the activity is carried on;
 - (e) any conditions that attach to the consent;
 - (f) the intervals at which the compliance of the activity with this Part, any applicable regulations, and the consent must be assessed and certified in accordance with this Act and the regulations.

205 Provisional consent may be granted

- (1) The consent authority may grant a provisional consent for a period not exceeding 6 months.
- (2) The consent authority may make—
 - (a) the provisional consent subject to any conditions that, in the opinion of the consent authority, are necessary to minimise any risks from the activity to public health; and
 - (b) make the grant of a further consent dependent on the supply of further information or on the performance and compliance of the consent holder in carrying out the activity under the provisional licence.
- (3) The consent authority may grant only 1 provisional consent in respect of any application.

206 Advice about non-compliance and requests for further information

- (1) If the application does not comply with the requirements set out in, or provided under, this Part or if further information is required to enable the authority to consider the application, the consent authority must advise the applicant in writing on any of the following matters:
 - (a) why the application fails to comply and whether or not it can be brought into compliance;
 - (b) if the application fails to comply, the steps required to bring it into compliance;
 - (c) any further information that the authority requires for its consideration of the application.
- (2) The consent authority may require that any further information submitted with or in relation to the application be verified by statutory declaration.
- (3) If the application is not brought into compliance, or the further information is not supplied, within 6 months of the date of the advice given under **subsection (1)**, or within such further time as the consent authority allows, the application lapses.
- (4) If the consent authority states under **subsection (1)(a)** that the application cannot be brought into compliance, the application is refused and this must be stated in the advice.
- (5) If the consent authority is satisfied that, in view of the steps taken by the applicant or any further information provided, the application should be granted, the authority must grant the application in accordance with **section 204** and must advise the applicant within 10 working days of making that decision.

207 Renewal of consent

- (1) If an application for renewal of a consent is made 3 months before the expiry of the consent, the consent continues in force until the application for renewal is determined.
- (2) This Part and any applicable regulations apply to an application for a renewal of a consent as if it were an application for a new consent.
- (3) An applicant for renewal of a consent must submit with the application a memorandum, signed by the applicant, that states—
 - (a) whether it is the case that, since the consent was last granted, any new risks or other relevant issues have become apparent, including, without limitation, any inadequacies in any public health risk management plan or in other conditions on the consent; and
 - (b) if that is the case, the nature of those risks, issues, or inadequacies.
- (4) **Subsection (2)** is subject to any applicable regulations that provide for applications for renewals of consents.

208 Amendments to public health risk management plan may be required on renewal

- (1) On an application for the renewal of a consent, the consent authority may require, as a condition for granting the renewal, that amendments be made to any public health risk management plan—
 - (a) to rectify any deficiencies in the plan that have become apparent since its approval; or
 - (b) to respond to changes of the kind described in **subsection (2)**.
- (2) The kinds of changes are—
 - (a) changes in the nature of the risks to public health referable to the consent holder's activities or to activities of a comparable type;
 - (b) changes in the knowledge of experts about the risks to public health referable to the consent holder's activities or to activities of a comparable type.

209 Applicant for consent or renewal must advise consent authority of important changes

- (1) An applicant for a consent or for a renewal of a consent must promptly advise the consent authority of any important change in the applicant's circumstances.
- (2) For the purposes of **subsection (1)**, an important change is one that relates to any matter about which information is sought in, or in connection with, an application for a consent or an application for a renewal of consent, or the occurrence of an event, action, or failure that disqualifies the applicant from holding a consent under this Part, or a change of a kind specified by any applicable regulations.
- (3) Every person who contravenes **subsection (1)** commits an offence punishable on summary conviction by a fine not exceeding \$10,000.

210 Administrative charges

- (1) A consent authority may fix charges payable by applicants for a consent or for the renewal of a consent.
- (2) Charges fixed under **subsection (1)** may be either specific amounts or determined by reference to scales of charges or other formulae fixed by the consent authority.
- (3) If the consent authority is a territorial authority, charges may be fixed under **subsection (1)** only after using the special consultative procedure set out in section 83 of the Local Government Act 2002.
- (4) If the consent authority is a DHB, charges may be fixed under **subsection (1)** only at a public meeting of the board held after the DHB has given public notice of the substance of the proposal and the meeting of the board at which it is to be considered.
- (5) The sole purpose of a charge is to recover the reasonable costs incurred by the consent authority in respect of the activity to which the charge relates.
- (6) If a charge fixed under **subsection (1)** is payable to a consent authority, the consent authority need not perform the action to which the charge relates until the charge has been paid to it in full.

Subpart 4—Cancellation of consents by consent authority and surrender of consents

211 Mandatory cancellation

A consent authority must cancel a consent if, after giving notice under **section 213** and considering any submissions given under that section, the authority is satisfied that—

- (a) the consent was issued because of any false or fraudulent representation or declaration, made either orally or in writing; or
- (b) the cheque for the payment of the charge for the application on which the consent was issued has been dishonoured; or
- (c) the consent holder has ceased to carry on the activity for which the consent was issued.

212 Discretionary cancellation

A consent authority may cancel a consent if, after giving notice under **section 213** and considering any submissions given under that section, the authority is satisfied that the consent holder has breached 1 or more requirements of this Part or of any applicable regulations or of any conditions imposed on the consent, and that cancellation is in the interest of protecting public health.

213 Steps to be taken before consent cancelled

- (1) A consent authority may not cancel a consent under this Part unless it—
 - (a) has given notice to the consent holder stating why the authority believes that the consent must or should be cancelled and informing the consent holder that the consent holder may, within 10 working days after the date of the notice, make written submissions to the consent authority on the proposed cancellation; and
 - (b) has considered the submissions (if any) received in response to, and within the 10 working days specified by, the notice given under **paragraph (a)**.
- (2) The consent authority must give the person whose consent has been cancelled a notice stating the grounds on which the consent has been cancelled and the date on which the cancellation takes effect (which may not be earlier than the date of the notice).

214 Surrender of registration

- (1) A consent holder may at any time surrender the consent holder's consent.
- (2) If a consent holder ceases, for any reason, to carry on the activity for which the consent was issued, the consent holder must notify the authority within 20 working days after the cessation and surrender the consent to the authority.

Reviews and appeals

215 Review of refusal or cancellation

- (1) This section applies to a person—
 - (a) whose application for a consent or for a renewal of a consent has been refused; or
 - (b) whose consent has been cancelled; or
 - (c) who objects to a condition imposed on the consent issued to the person.
- (2) The person may apply to the chief executive of the body that is the consent authority for a review of the decision to refuse the application or to cancel the consent or to impose the condition.
- (3) The person must apply not later than 20 working days after the day on which the person is notified of the decision.

216 Appointment of reviewer and conduct of review

- (1) On receipt of an application made in accordance with **section 215**, the chief executive of the consent authority must appoint a person to conduct the review (the **reviewer**).
- (2) The reviewer—
 - (a) must conduct the review independently; and
 - (b) must not have had any previous involvement in the case; but
 - (c) may be an employee of the consent authority.
- (3) The purpose of the review is to determine whether or not the consent authority's decision is well founded.
- (4) The reviewer must conduct the review on the papers unless the reviewer finds that the purpose of the review cannot be achieved without holding a hearing.
- (5) If, after conducting the review, the reviewer considers the decision well-founded, the reviewer must confirm the decision.
- (6) If, after conducting the review, the reviewer does not consider the decision well-founded, the reviewer must direct the consent authority to reconsider the decision, and to have regard to any matters specified by the reviewer.
- (7) The reviewer must give notice of the outcome of the review to the person who sought the review and to the consent authority.

217 Reconsideration by consent authority

- (1) The consent authority must promptly reconsider its decision if it has been directed to do so under **section 216**.
- (2) In reconsidering its decision, the consent authority must have regard to any matters specified by the reviewer.
- (3) On reconsideration, the consent authority may confirm or modify its original decision or replace it

with a new decision.

- (4) The consent authority must give notice to the person who sought the review of the result of its reconsideration.

218 Right of appeal

- (1) A person whose application for a consent or for a renewal of a consent has been refused, or whose consent has been cancelled, may appeal to the District Court against the decision to refuse the application or to cancel the consent.
- (2) An appeal under **subsection (1)** may be exercised whether or not the appellant has sought a review under **section 231**.
- (3) An appeal—
 - (a) must be brought to the Court in accordance with rules of court; and
 - (b) must be filed in the Court within 20 working days after the person is notified of whichever of the following is the latest:
 - (i) the decision of the consent authority;
 - (ii) if that decision has been confirmed on a review under **section 216**, that confirmation;
 - (iii) if that decision has been reconsidered by the consent authority under **section 217**, the result of the reconsideration.
- (4) The District Court may, on application made before or after the expiry of the period fixed by **subsection (3)(b)**, extend that period.

219 Notice of right of appeal

When notifying a person under this Part of any decision against which **section 218** gives him or her a right of appeal, the consent authority must also notify the person in writing of the right of appeal and the time within which an appeal must be lodged.

220 Decisions to have effect pending determination of appeal

A decision against which an appeal is lodged under **section 218** continues in force, unless the District Court orders otherwise.

221 Procedure on appeal

- (1) An appeal under **section 218** must be heard as soon as is reasonably practicable after it is lodged.
- (2) An appeal under **section 218** is by way of rehearing.
- (3) On hearing the appeal, the District Court may—
 - (a) confirm, reverse, or modify the decision or action appealed against;
 - (b) make any other decision or take any other action that the consent authority could have made or taken;
 - (c) refer the matter or an aspect of the matter back to the consent authority for reconsideration under **section 217**.
- (4) The Court must not review—
 - (a) any decision or action not appealed against; or
 - (b) any part of any decision or action not appealed against.

222 Court's decision final

- (1) The decision of the District Court on an appeal under this Part is final.
- (2) **Subsection (1)** is subject to **section 225**.

223 Court may refer matter back for reconsideration

- (1) Instead of determining an appeal under this Part, the District Court may direct the consent authority to reconsider, either generally or in respect of any specified aspect, the whole or any part of the decision.
- (2) In giving a direction under **subsection (1)**, the Court—
 - (a) must state its reasons for the direction; and
 - (b) may give any other directions it thinks just in relation to the matter referred back for reconsideration.
- (3) The consent authority must reconsider the matter and, in doing so, must—
 - (a) take the Court's reasons into account; and
 - (b) give effect to the Court's directions.

224 Orders as to costs

On an appeal under **section 218**, the District Court may order any party to the appeal to pay to any other party to the appeal any or all of the costs incurred by the other party in respect of the appeal.

225 Appeal on question of law

- (1) A party to an appeal under this Part may appeal to the High Court on a question of law only.
- (2) The appeal must be heard and determined in accordance with rules of court.

Subpart 5—Public health risk management plan

226 Director-General may publish guidelines

- (1) The Director-General may publish guidelines for public health risk management plans for a regulated activity of a particular kind.
- (2) A public health risk management plan that follows or adopts the substance of relevant guidelines is presumed to be in order unless it is shown that in the circumstances of the particular case the guidelines are inapplicable.

227 When approved public health risk management plan required

If any applicable regulations require a public health risk management plan in respect of a regulated activity of a particular kind, a person proposing to carry on a regulated activity must have an approved plan,—

- (a) if that regulated activity may not be carried on without a consent, before applying for a consent for the activity; or
- (b) if that regulated activity does not require a consent, before commencing to carry on the regulated activity or, if the person was lawfully carrying on the activity before the commencement of any applicable regulations, before a date specified in those regulations.

228 Contents of public health risk management plan

- (1) Every public health risk management plan prepared for a regulated activity of a particular kind must—
 - (a) identify the risks to public health that may arise from that activity; and
 - (b) identify mechanisms for preventing risks to public health arising from that activity and reducing and eliminating those risks if they do arise; and
 - (c) set out a timetable—
 - (i) for managing the risks to public health that have been identified as arising from that activity; and
 - (ii) for implementing the mechanisms identified in accordance with **paragraph (b)**.
- (2) Every public health risk management plan must be in writing and comply with the applicable regulations.

229 Public health risk management plan to be approved by assessor

- (1) If required by regulations, every public health risk management plan must be submitted by the person proposing to carry on the regulated activity to an assessor for approval.
- (2) An assessor may, after any alteration to the public health risk management plan that is considered necessary by the assessor and made by agreement with the person proposing to carry on the regulated activity, approve that plan.
- (3) If an assessor decides not to approve a public health risk management plan, the assessor must notify the person proposing to carry on the regulated activity that the assessor has decided not to approve the plan and of the reasons for that decision.
- (4) If the assessor decides to approve a public health risk management plan, the assessor must—
 - (a) issue to the person proposing to carry on the regulated activity a certificate to that effect; and
 - (b) send a copy of the certificate to the relevant consent authority.

230 Duration of plans

- (1) A public health risk management plan expires—
 - (a) 12 months after the relevant date; or
 - (b) if a longer period (of not more than 48 months) or a shorter period (of not less than 6 months) is stated in the plan, on the expiry of that stated period after the relevant date.
- (2) The **relevant date** is the date of the plan's most recent approval by an assessor or by the consent authority.

231 Review and renewal of plans

- (1) Not later than 2 months before a public health risk management plan is due to expire, the person who carries on the regulated activity must—
 - (a) review it, to assess whether it needs to be altered for any reason or replaced with a new plan; and
 - (b) submit the existing, revised, or new plan to an assessor, or to the consent authority, as the case requires.
- (2) The provisions of **section 229** apply whenever a plan is submitted to an assessor under this section.

Subpart 6—Records of consents

232 Records

- (1) Each consent authority must keep a record of the consents it issues.
- (2) Two or more consent authorities may jointly operate a combined record of the consents issued by each authority.

233 Director-General may keep nationwide record

- (1) The Director-General may keep, in addition to the records kept by consent authorities, a nationwide record for all or any kinds of regulated activities.
- (2) If the Director-General keeps a record under this section, the consent authority must promptly send the Director-General a copy of any particulars placed on the record kept by the consent authority.

234 Form of record

- (1) A record kept by a consent authority or, as the case may be, the Director-General may be kept in any form the consent authority or the Director-General directs, including in an electronic form.
- (2) **Subsection (1)** is subject to any regulations made under this Part.

235 Information to be recorded

The information to be entered in each record is—

- (a) the name and contact details of each person to whom a consent has been issued:
- (b) if that person is a body corporate or a partnership, the address of the office or the principal office of the body corporate or partnership, and the name and contact details of every person concerned in the management of the body corporate or partnership:
- (c) the street address or other identification of every location in which or from which the regulated activity is carried on:
- (d) an address for service of the consent holder:
- (e) whether a public health risk management plan has been approved for the activity and, if so, a current copy of that plan:
- (f) any conditions imposed on the consent:
- (g) any other prescribed particulars.

236 Amendments of records

A consent authority may at any time amend the record to reflect any changes or to correct any errors.

237 Cancellation, etc, of entries

- (1) On the expiry, cancellation, or surrender of a consent, the consent authority must record that occurrence and its date on the record.
- (2) A record under **subsection (1)** cancels the former consent holder's consent as from the date shown in the record.

238 Inspection of records

- (1) Each consent authority that keeps a record must keep, during its ordinary office hours, a published form of the record open for public inspection at the offices of the authority where the consents are issued.
- (2) If the Director-General keeps a record under **section 233**, the Director-General must keep, during the ordinary office hours of any office of the Ministry of Health specified by the Director-General, a published form of the record open for public inspection at that office.
- (3) The consent authority and, if applicable, the Director-General must each ensure that there are available, during their respective ordinary office hours,—
 - (a) copies of the published form of the applicable record; or

- (b) suitable facilities for obtaining print-outs of the published form of the applicable record.
- (4) Each consent authority and the Director-General must each permit a member of the public, on payment of any fee set by the authority or, if applicable, by the Director-General to make copies of entries in the record or to obtain a print-out of required entries.

Subpart 7—Amendments to Schedule 3 and regulations

239 Minister may recommend amendment to Schedule 3

- (1) The Minister may recommend to the Governor-General that **Schedule 3** be amended.
- (2) Before the Minister makes a recommendation, the Minister must consult any persons likely to be affected by the recommendation, including, without limitation, representatives of local government and Māori interests, that the Minister considers appropriate.

240 Recommending additions to Schedule 3

- (1) In deciding whether to recommend that an activity be added to **Schedule 3**, the Minister must consider—
- (a) whether the activity poses a risk to public health and, if so, the nature and magnitude of the risk:
 - (b) if the risk to public health is constituted by potential harm, the likelihood of that harm occurring:
 - (c) whether the risk of that harm is likely to be prevented, mitigated, or adequately managed by regulations:
 - (d) whether the activity is already regulated under another enactment.
- (2) Before the Minister recommends that an activity be added to **Schedule 3**, the Minister must be satisfied that the activity poses a risk to public health.
- (3) Before the Minister recommends that an activity be added to **Part 1 of Schedule 3**, the Minister must be satisfied that it is appropriate that persons carrying on the activity be required to have 1 or more of the following:
- (a) a current consent:
 - (b) an approved public health risk management plan:
 - (c) a periodic assessment of the activity.
- (4) In deciding on the substance of the recommendations under **subsection (3)**, the Minister must consider the nature of the activity, the seriousness of the risk posed by the activity, and the degree to which proposed requirements to be specified in regulations are proportionate to the risk posed by the activity.

241 Recommending removals from Schedule 3

Before the Minister recommends that an activity be removed from **Schedule 3**, the Minister must be satisfied that the activity no longer poses a risk to public health.

242 Amendment to Schedule 3

The Governor-General may, by Order in Council, in accordance with a recommendation of the Minister, amend **Schedule 3** by—

- (a) adding the description of an activity; or
- (b) removing the description of an activity; or
- (c) amending the description of an activity.

243 Regulations in respect of regulated activities

The Governor-General may, by Order in Council, on the recommendation of the Minister, make regulations for all or any of the following purposes:

- (a) prescribing requirements, standards, criteria, mandatory objectives, functional requirements, performance measures, or objectives that must be observed or attained in carrying on a regulated activity of a particular kind:
- (b) prescribing specifications or criteria for any place or premises in which a regulated activity of a particular kind is carried on or for any equipment used in carrying on that activity:
- (c) providing that a regulated activity described in **Part 1 of Schedule 3** may not be carried on in a district without a current consent of a consent authority in the district and prescribing a maximum period of not more than 36 months up to which such a consent, or any renewal of any consent, may, in accordance with the determination of the consent authority, be in force:
- (d) providing that, instead of or in addition to the requirement for a consent authorised by

paragraph (c), a regulated activity described in **Part 1 of Schedule 3** may not be carried on in any district without a current public health risk management plan that has been approved by the consent authority in that district and prescribing the form of such a public health risk management plan:

- (e) determining whether a regulated activity described in **Part 1 of Schedule 3** may be carried on in any district only if the compliance in the district of the activity with this Part, the regulations, any conditions on any consent, or any public health risk management plan is periodically assessed by an assessor and prescribing the nature of such assessments and the intervals at which they must be made:
- (f) determining whether the relevant consent authorities for a regulated activity described in **Part 1 of Schedule 3** are to be DHBs or territorial authorities or authorising the Director-General to determine, in respect of a regulated activity of a particular kind, whether the relevant consent authority for any area is to be the DHB or the territorial authority that is responsible for that area:
- (g) prescribing the matters that must be contained in an application for a consent or in an application for a renewal of a consent:
- (h) prescribing the kinds and forms of records that persons carrying on regulated activities of particular kinds must keep and the particulars that must be recorded in those records:
- (i) requiring any person carrying on a regulated activity of a particular kind to be accredited by a professional or occupational body recognised by the Director-General, and requiring compliance with the applicable rules or code of practice issued or adopted by that body:
- (j) prescribing any particulars to be entered on a record under this Part:
- (k) prescribing the periods for which, and the ways in which, records that consent authorities receive and make under this Part must be held by those authorities.

244 Incorporation by reference

- (1) Any regulations made under **section 243** may incorporate material by reference.
- (2) **Sections 337 to 344** (the standard provisions about incorporation by reference) apply.

Subpart 9—Assessors

Appointment of assessors

245 Appointment of assessors

- (1) The Director-General or a territorial authority that is a consent authority may, by notice in writing, appoint 1 or more persons as assessors for 1 or more specified regulated activities on any terms and conditions that the Director-General or territorial authority considers appropriate.
- (2) Terms and conditions referred to in **subsection (1)** include, without limitation, terms enabling the Director-General or territorial authority to suspend or revoke the appointment in any specified circumstances.
- (3) Before appointing a person or body as an assessor, the Director-General or territorial authority must be satisfied that the person—
 - (a) has the experience, technical competence, and other qualifications to undertake the functions of an assessor; and
 - (b) has in place effective arrangements to avoid or manage any conflicts of interest that may arise; and
 - (c) meets any other requirements set out in regulations made under **section 258**.
- (4) No person appointed by the Director-General under **subsection (1)** to be an assessor is, because of that appointment, employed in the public service for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956.
- (5) It is a condition of every appointment of a body as an assessor that, with the exception of administrative functions and related support matters, any functions and activities of the body that are specified in the terms of the appointment are to be carried out only by individuals who have themselves been appointed as assessors.
- (6) The conditions that are imposed by or under this section are in addition to any condition as to the provision of returns, records, and other information that may be imposed on an assessor in relation to a particular regulated activity by regulations made under **Part 2**.

246 Surrender of appointment

- (1) An assessor may at any time surrender his or her or its appointment by notice in writing to that effect to the Director-General or territorial authority.

- (2) A surrender takes effect on the expiry of 3 months after the date of the receipt of the notice by the Director-General or territorial authority, or on such earlier date as the Director-General or territorial authority may approve.
- (3) On or before the date on which the surrender takes effect, the assessor must send his or her or its notice of appointment to the Director-General or territorial authority.

Directory of assessors

247 Directory of assessors

- (1) The Director-General must maintain a directory of persons who have been appointed as assessors.
- (2) The Director-General must—
 - (a) make the directory available for public inspection, without fee, at reasonable hours at the head office of the Ministry; and
 - (b) supply to any person, on request and on payment of a reasonable charge, a copy of the directory or part of the directory.
- (3) The directory may be kept—
 - (a) in electronic form (for example, on the Ministry's website); or
 - (b) in any other manner that the Director-General thinks fit.

248 Matters to be contained in directory

- (1) The directory must contain all of the following information, to the extent that the information is relevant, for each assessor whose name is entered on the directory:
 - (a) name and business contact details; and
 - (b) date and term of appointment; and
 - (c) any conditions on the appointment; and
 - (d) any other particulars that may be required by or under regulations made under **section 258**.
- (2) The directory may also include any other information relevant to a person's appointment as an assessor that the Director-General considers appropriate.

249 Territorial authority must supply information on assessors to Director-General

A territorial authority that has appointed an assessor must supply the Director-General with the information concerning that assessor that is necessary to maintain the directory kept under **section 247**.

Functions, duties, and powers of assessors

250 Functions of assessors

The functions of an assessor are—

- (a) to assess, review, and where appropriate, approve risk management plans; and
- (b) to monitor, verify, and certify that a regulated activity consent holder is undertaking the regulated activity in accordance with the provisions of this Act and the regulations, the activity consent, and any public health risk management plan; and
- (c) to monitor and verify whether regulated activities for which a regulated activity consent is not required are being undertaken in accordance with the provisions of this Act and the regulations.

251 Accountability of assessor for performance of functions

- (1) An assessor appointed by the Director-General is accountable to the Director-General for the discharge of the assessor's functions.
- (2) An assessor appointed by a territorial authority is accountable to that territorial authority for the discharge of the assessor's functions.
- (3) On the request of the person or body that appointed an assessor, the assessor must give that person or body reasonable access to any records held by the assessor in connection with the assessor's functions under this subpart, to enable the appointing person or body to assess whether the assessor is properly discharging those functions.

252 Duty of assessor to disclose potential conflict of interest

An assessor must, as soon as practicable, inform the Director-General or territorial authority that appointed the assessor in writing if either of the following arises:

- (a) an event or situation occurs that has the effect, or may have the effect, that the assessor cannot maintain an appropriate degree of impartiality and independence in relation to the

- relevant functions and activities of the assessor; or
- (b) the assessor is considering assuming any other statutory roles or functions that might conflict with the functions and activities of the assessor.

253 Powers of assessors

- (1) For the purpose of performing any function or activity as an assessor, an assessor may—
 - (a) enter any land, building, vehicle, or craft that is owned, occupied, or used by a person carrying on a regulated activity for the purpose of exercising any of the powers set out in this section; and
 - (b) inspect all records and documents of every description in the possession or control of a person carrying on a regulated activity that are required to be kept under this Part, and make copies of, or take extracts from, those records and documents; and
 - (c) require, by notice in writing, any person who has possession or control of information, records, or documents of the kind described in **paragraphs (b) and (c)** to supply to the assessor, in a manner specified in the notice, all or any of that information, or all or any of those records or documents; and
 - (d) seize any information, records, or documents of the kind described in **paragraphs (b) and (c)**; and
 - (e) conduct any inspections, surveys, inquiries, tests, and measurements in relation to the regulated activity that are reasonably necessary, and do all things that are reasonably necessary to enable those inspections, surveys, inquiries, tests, and measurements to be carried out (including the marking or photographing of any thing or article); and
 - (f) direct a person carrying on a regulated activity to conduct any inspections, surveys, inquiries, tests, and measurements that are reasonably necessary to assess a risk to public health associated with that activity; and
 - (g) provide information obtained from persons carrying on regulated activities to the Director-General.
- (2) When entering any land, building, vehicle, or craft under this section, an assessor may take on to the land or building or into the vehicle or craft any appliances, machinery, and equipment reasonably necessary to carry out the assessors functions.
- (3) This section is subject to **sections 352 to 358** (general provisions about entry and search powers).

254 Restrictions on entry

- (1) Despite **section 253**, no assessor may enter any land or building that is a defence area (within the meaning of section 2(1) of the Defence Act 1990) except in accordance with a written agreement between the Director-General and the Chief of Defence Force entered into for the purposes of this section and for the time being in force.
- (2) Nothing in **section 253** limits any enactment that imposes a prohibition or restriction on the availability of any information.

255 Requirement for warrant to enter dwellinghouse or marae

- (1) An assessor may not exercise the powers conferred by **section 253** to enter a dwellinghouse or a marae unless that assessor has obtained a warrant in accordance with **subsection (2)**.
- (2) Any District Court Judge or Justice of the Peace or Community Magistrate or any Registrar (the **issuing officer**) who is satisfied, on application in writing from an assessor made on oath, that there is good reason for an assessor to enter a dwellinghouse or marae in order to exercise a power under **section 253**, may issue a warrant.
- (3) This section is subject to **sections 346 to 351** (general provisions about search warrants).

256 Review of decisions of assessors

- (1) A regulated activity consent holder may request a review by the Director-General of any of the following decisions by an assessor:
 - (a) a finding, assessment, or recommendation in relation to the compliance of that regulated activity consent holder with the requirements of this Act, any regulations, the activity consent, or risk management plan; or
 - (b) a finding, assessment, or recommendation in relation to, or a refusal to approve, a public health risk management plan.
- (2) A person conducting a regulated activity for which a regulated activity consent is not required may request a review by the Director-General of any finding, assessment, or recommendation in relation to compliance of that person with this Act and any regulations.
- (3) Any request for a review made under this section must be forwarded to the Director-General within

2 months after the date when the decision of the assessor is made known to the person carrying on the regulated activity.

- (4) The Director-General must, after seeking any advice that her or she considers necessary, confirm, vary, or reverse the decision of the assessor.

Replacement of assessors

257 Consent holder must not replace assessor without consent of consent authority

A regulated activity consent holder must not replace an assessor engaged by the consent holder to perform the functions in **section 250** in relation to a regulated activity unless the consent holder obtains the prior written consent of the consent authority.

Regulations relating to assessors

258 Regulations

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing requirements, in addition to the requirements set out in **section 245(3)(a) and (b)**, for appointment as an assessor;
- (b) prescribing procedures relating to the appointment and suspension of assessors and the revocation of approval of assessors;
- (c) prescribing particulars to be contained in the directory of assessors maintained under **section 247**.

Part 7

Emergencies and border health

Subpart 1—Emergencies

259 Minister may declare emergency

- (1) The Minister may, by notice in the *Gazette*, declare a health emergency if he or she has reasonable grounds to believe that—
 - (a) there is throughout New Zealand or in any place or area in New Zealand a serious risk to public health (whether arising from within New Zealand or from overseas); and
 - (b) the exercise of powers in this subpart will help to prevent, reduce, or eliminate or manage that risk.
- (2) The declaration must—
 - (a) be in writing and signed by the Minister; and
 - (b) state the date on which it is signed; and
 - (c) state the nature of the emergency that exists in each place or area specified in the declaration.

Compare: 1956 No 65 s 70(1)

260 Duration of declaration by Minister

- (1) A declaration under **section 259** takes effect as soon as it is signed.
- (2) The declaration expires 90 days after it is made unless it is—
 - (a) sooner revoked by the Minister or by an emergency order; or
 - (b) extended under **subsection (3)**.
- (3) The Minister may extend the duration of the declaration if he or she is satisfied that the grounds for declaring the emergency still exist.
- (4) The extension of duration under **subsection (3)** must be in writing and be signed by the Minister and state the date on which it is signed.
- (5) A declaration that has been extended under **subsection (3)** expires, unless sooner revoked by the Minister or by the making of an emergency order, 90 days after the date of the instrument that extended it.
- (6) The power of extension under **subsection (3)** may be exercised only once.

261 Minister may amend or revoke declaration

- (1) The Minister may revoke or amend a declaration made under **section 259**.

- (2) The revocation or amendment must be in writing and be signed by the Minister and state the date on which it is signed.

262 Minister must review need for declaration

The Minister must, every 28 days while a declaration is in force, review the continuing need for the declaration.

263 Health emergency declared by Order in Council

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister, declare that a health emergency exists in 1 or more specified places, or in 1 or more specified areas, or throughout New Zealand.
- (2) The Minister may make a recommendation under **subsection (1)** only if the Minister has reasonable grounds to believe that—
 - (a) there is throughout New Zealand or in any place or area in New Zealand a serious risk to public health; and
 - (b) the exercise of powers in this subpart will help to prevent, reduce, eliminate, or manage that risk.
- (3) An emergency order expires, unless revoked earlier, 6 months after it comes into force.

264 When emergency powers may be exercised

- (1) This section applies if—
 - (a) an emergency has been declared by the Minister under **section 259**; or
 - (b) an emergency has been declared by the Governor-General, by Order in Council, under **section 263**; or
 - (c) a state of emergency has been declared under the Civil Defence Emergency Management Act 2002; or
 - (d) an epidemic notice is in force.
- (2) A medical officer of health may, if this section applies and the emergency or epidemic notice affects his or her district, exercise all or any of the powers in **sections 266 to 273**.
- (3) The Director-General may authorise a medical officer of health to operate in a specified area outside his or her district, and in that case **subsection (2)** and **sections 266 to 273** apply as if the specified area is part of both—
 - (a) the medical officer of health's district; and
 - (b) the health district of which it is in fact part.

Compare: 1956 No 65 s 70(1) and (4)

265 State of emergency under other enactments

- (1) This section applies to the exercise of any powers by a medical officer of health under this subpart arising from the declaration of a state of emergency under the Civil Defence Emergency Management Act 2002.
- (2) If this section applies, the medical officer of health is responsible, in relation to the exercise of powers under this subpart in connection with that state of emergency, to—
 - (a) the person who, under the Civil Defence Emergency Management Act 2002, is responsible for managing the emergency declared under that Act; but
 - (b) if, and to the extent that, the Director-General directs that **paragraph (a)** is not to apply, the Director-General, and the medical officer of health must comply with the Director-General's directions.

266 General emergency powers

- (1) The general emergency powers that may be exercised by a medical officer of health to whom **section 264(2)** applies are to—
 - (a) declare any land, building, or thing to be insanitary, and prohibit its use for any specified purpose;
 - (b) cause any insanitary, contaminated, or affected building to be pulled down, and the timber and other materials forming part of the building to be destroyed or otherwise disposed of in a manner he or she considers appropriate;
 - (c) cause insanitary, contaminated, or affected things to be destroyed or otherwise disposed of in a manner he or she considers appropriate;
 - (d) cause animals to be vaccinated and affected animals to be destroyed, in a manner he or she considers appropriate;
 - (e) cause—

- (i) vectors to be destroyed; and
- (ii) vector habitats or reservoirs to be decontaminated; and
- (iii) insects or animals that pose hygiene risks to be decontaminated or destroyed:
- (f) require persons to report or submit themselves for medical examination at specified times and places:
- (g) subject to **section 267**, require persons, places, buildings, ships, vehicles, aircraft, animals, or things to be isolated, quarantined, disinfected, decontaminated, or fumigated in a manner he or she considers appropriate:
- (h) require places, buildings, ships, vehicles, aircraft, animals, or things to be tested as he or she considers appropriate:
- (i) forbid persons, ships, vehicles, aircraft, animals, or things to—
 - (i) come or be brought to any port or place in the health district from any port or place that is, or is believed to be, affected by the emergency or epidemic; or
 - (ii) enter or leave any land, building, or place affected by the emergency or epidemic:
- (j) require people to remain in the health district or the place in which they are isolated or quarantined until they—
 - (i) have been medically examined and found to no longer pose a risk to public health; or
 - (ii) have undergone preventive treatment (including any specified kind of vaccination) that he or she may require in any case:
- (k) forbid the removal of ships, vehicles, aircraft, animals, or other things from the health district, or from one port or part of a port to another, or from the place where they are isolated or quarantined, until they have been decontaminated or otherwise treated or examined and found to no longer pose a risk to public health:
- (l) prohibit the keeping of animals or of any species of animal in any specified part of the health district:
- (m) authorise the storage of bodies anywhere (whether inside or outside the health district) for the purpose of enabling the identification of those persons:
- (n) authorise the disposal of bodies, if the medical officer of health considers it necessary in the interests of public health.
- (2) If a medical officer of health exercises any power under this section he or she must, as soon as practicable, notify—
 - (a) the Civil Aviation Authority and any airport likely to be affected by the exercise of the power; and
 - (b) Maritime New Zealand and any port likely to be affected by the exercise of the power; and
 - (c) any other agency likely to be affected by the exercise of the power.

Compare: 1956 No 65 s 70(1)(a)–(l)

267 Safeguards for persons isolated or subject to quarantine under section 266(1)(g)

- (1) A person who is quarantined under **section 266(1)(g)**—
 - (a) is subject to **section 290**; and
 - (b) the provisions of **sections 291 to 293** (rights of appeal) apply to that person; and
 - (c) the other provisions of **subpart 2** of this Part apply accordingly.
- (2) A person who is isolated under **section 266(1)(g)**—
 - (a) must not be required to remain in isolation for more than 28 days under **section 266(1)(g)**; but
 - (i) an application for a health risk order may be made under **section 112** while the person is in isolation; and
 - (ii) **subpart 3** of **Part 4** applies accordingly; and
 - (b) must, if he or she requests a review, have his or her isolation reviewed by a medical officer of health as soon as practicable after the expiry of 14 days after the person is required to be isolated under **section 266(g)**.

268 Emergency power relating to redirection of aircraft

- (1) If **section 264(2)** applies to any medical officer of health, the medical officer of health may require the pilot in charge of an aircraft that is flying to, or has arrived at an airport in, New Zealand to travel, as soon as practicable, to another airport in New Zealand.
- (2) A medical officer of health must not impose the requirement unless—
 - (a) he or she is satisfied that the redirection is necessary to prevent or manage the emergency or epidemic; and
 - (b) he or she is satisfied that measures necessary to deal with the situation can more practicably

- be carried out at the other place; and
 - (c) the medical officer of health has consulted about the proposed requirement with other agencies likely to be affected by it (including the Civil Aviation Authority).
- (3) If a requirement is imposed under this section the medical officer of health must, as soon as practicable, notify—
- (a) the Civil Aviation Authority and any airport likely to be affected by the requirement; and
 - (b) any other agency likely to be affected by the requirement.
- Compare: 1956 No 65 s 74D

269 Emergency powers relating to closure of premises and restriction of association

A medical officer of health to whom **section 264(2)** applies may—

- (a) by written order to the person in charge of the premises concerned, do either or both of the following:
 - (i) require to be closed immediately, until further order or for a fixed period, any premises within the health district (or a stated area of the district):
 - (ii) require any premises within the health district (or a stated area of the district) to undergo specified measures to address risks to public health within those premises, and require any premises in respect of which those measures are not taken to be closed immediately until further order or for a fixed period:
- (b) by order published or broadcast in a manner the medical officer of health considers appropriate and that is likely to come to the attention of affected persons, do any of the following:
 - (i) require to be closed, until further order or for a fixed period, all premises within the district (or a stated area of the district) of any stated kind or description:
 - (ii) require to be closed, until further order or for a fixed period, all premises within the district (or a stated area of the district) of any stated kind or description in which measures described in the order designed to contain risks to public health are not operating:
 - (iii) forbid people to gather in outdoor places of amusement or recreation of any stated kind or description (whether public or private) within the district (or a stated area of the district):
 - (iv) forbid people to gather in outdoor places of amusement or recreation of any stated kind or description (whether public or private) within the district (or a stated area of the district) in which measures described in the order designed to contain risks to public health are not operating.

Compare: 1956 No 65 s 70(1)(la) and (m)

270 Condition relating to orders made under section 269

- (1) An order under **section 269** does not apply to—
 - (a) any premises that are, or any part of any premises that is, used solely as a private dwellinghouse or a marae; or
 - (b) any premises within the parliamentary precincts (within the meaning of section 3 of the Parliamentary Service Act 2000); or
 - (c) any premises whose principal or only use is as a courtroom or judge’s chambers, or a court registry; or
 - (d) any premises that are, or are part of, a prison (within the meaning of section 3(1) of the Corrections Act 2004).
- (2) An order under **section 269** may exempt people engaged in necessary work in the premises to which it relates.

Compare: 1956 No 65 s 70(1A) and (1B)

271 Powers of medical officer of health to requisition things

- (1) A medical officer of health to whom **section 264(2)** applies may—
 - (a) by requisition in writing served on its owner or occupier or other person for the time being in charge of it, take possession of, occupy, and use any land or building (whether public or private) that in his or her opinion is required for the accommodation, assessment, treatment, or care of persons (including persons subject to isolation):
 - (b) by requisition in writing served on the owner, occupier, or other person for the time being in charge of it, take possession of, occupy, and use any land, building, vehicle, or craft (other than an aircraft), or other thing, whether public or private, that in his or her opinion is required for the storage, transport, or disposal of bodies:

- (c) by requisition in writing served on the owner or other person for the time being in charge of it, take possession of and use any vehicle or craft, or other thing, whether public or private, that in his or her opinion is required for the transport of—
 - (i) persons, medical personnel, medicine, medical equipment or devices, food, or drink; or
 - (ii) clothing, bedding, or tents or other temporary facilities or structures; or
 - (iii) personnel involved in loading, moving, unloading, distributing, erecting, or otherwise dealing with anything transported or to be transported under **subparagraph (i) or (ii)**;
 - (d) by requisition in writing served on the occupier of any premises or on any person for the time being in charge of any premises, require to be delivered to him or her in accordance with his or her order any medicines and articles of food or drink, and any other materials that he or she considers necessary for the treatment of persons:
 - (e) by requisition in writing served on the owner, occupier, or other person for the time being in charge of it, requisition any other thing that in his or her opinion is reasonably necessary to requisition to—
 - (i) preserve human life; or
 - (ii) manage the emergency or epidemic.
 - (2) If the owner or occupier or person in charge of any property that is to be requisitioned under this section cannot be immediately found, a medical officer of health or any person authorised by a medical officer of health may immediately take possession of it and use the requisitioned property.
 - (3) If a person takes possession of any requisitioned property under **subsection (2)**, the person must ensure that, as soon as is reasonably practicable in the circumstances and no later than 7 days after the property is taken into possession, a written notice is given to the owner, occupier, or person formerly in charge of the requisitioned property stating—
 - (a) that the property has been requisitioned; and
 - (b) the name of the person who has taken possession of it.
 - (4) If a medical officer of health or any other person exercises any power under this section, the medical officer of health or other person must, as soon as practicable, notify—
 - (a) the Civil Aviation Authority and any airport likely to be affected by the exercise of the power; and
 - (b) Maritime New Zealand and any port likely to be affected by the exercise of the power; and
 - (c) any other agency likely to be affected by the exercise of the power.
- Compare: 1956 No 65 s 71(1)

272 Power of entry and inspection

- (1) A medical officer of health, health protection officer, environmental health officer, or other person authorised by a medical officer of health may, for the purposes of enabling the exercise of the powers conferred by **sections 266, 269, and 271**,—
 - (a) enter any land, premises, or craft; and
 - (b) inspect that land, premises, or craft; and
 - (c) do anything in relation to any persons, places, land, premises, craft, animals, or other things that the medical officer of health considers reasonably necessary to enable the exercise of those powers.
 - (2) This section is subject to **sections 352 to 358** (general provisions about entry and search powers).
 - (3) If a medical officer of health or any other person exercises any power under this section, the medical officer of health or other person must, as soon as practicable, notify—
 - (a) the Civil Aviation Authority and any airport likely to be affected by the exercise of the power; and
 - (b) Maritime New Zealand and any ports likely to be affected by the exercise of the power; and
 - (c) any other agency likely to be affected by the exercise of the power.
- Compare: 1956 No 65 s 70(2)

273 Power to require information

- (1) A medical officer of health to whom **section 264(2)** applies, or a person authorised by the medical officer of health, may, by notice in writing, require any person to give to the medical officer of health the information described in **subsection (2)**.
- (2) The information referred to in **subsection (1)** is information that, in the opinion of the medical officer of health or the person authorised by the medical officer of health, is reasonably necessary for the management of the emergency or the epidemic, as the case may be, and that is—
 - (a) in the possession of the person who is asked to give the information; and

- (b) capable of being provided without unreasonable difficulty or expense.
- (3) The information required to be given under **subsection (1)** must be given—
 - (a) in the form specified by the medical officer of health or the person authorised by the medical officer of health; and
 - (b) within the reasonable time that is specified by the medical officer of health or the person authorised by the medical officer of health; and
 - (c) free of charge.

Compare: 2002 No 33 s 76

274 **Non-compliance with requisition offence**

Every person who refuses or fails to comply with any requisition under **section 271**, or who counsels, procures, aids, or incites any other person so to do, or who interferes with or obstructs the medical officer of health or any person acting under the authority of the medical officer of health in the exercise of any powers under **section 271**, commits an offence and is liable on summary conviction,—

- (a) in a case where the refusal, failure, or other unlawful action was intentional or reckless, to a term of imprisonment not exceeding 3 months or to a fine not exceeding \$50,000, or to both; or
- (b) in any other case where the refusal or failure is without reasonable excuse, to a fine not exceeding \$20,000.

Compare: 1956 No 65 s 71(3)

275 **Power of members of police to assist medical officer of health**

- (1) A member of the police may do any thing reasonably necessary (including using force)—
 - (a) to help a medical officer of health or any person authorised by a medical officer of health in the exercise or performance of powers or functions under any of **sections 266 to 273**; or
 - (b) to help a person to do a thing that a medical officer of health or any person authorised by a medical officer of health has caused or required to be done in the exercise or performance of powers or functions under any of **sections 266 to 273**; or
 - (c) to prevent people from obstructing or hindering a medical officer of health or any person authorised by a medical officer of health in the exercise or performance of powers or functions under any of **sections 266 to 273**; or
 - (d) to prevent people from obstructing or hindering a person doing a thing that a medical officer of health or any person authorised by a medical officer of health has caused or required to be done in the exercise or performance of powers or functions under any of **sections 266 to 273**; or
 - (e) to compel, enforce, or ensure compliance with a requirement made by a medical officer of health or any person authorised by a medical officer of health in the exercise or performance of powers or functions under any of **sections 266 to 273**; or
 - (f) to prevent, or reduce the extent or effect of, the doing of a thing that a medical officer of health or any person authorised by a medical officer of health has forbidden or prohibited in the exercise or performance of powers or functions under any of **sections 266 to 273**.
- (2) A member of the police acting under **subsection (1)** may at any time do any or all of the following things:
 - (a) enter into or on any land, building, aircraft, ship, or vehicle:
 - (b) inspect any land, building, aircraft, ship, or vehicle, and any thing in or on it:
 - (c) whether for the purposes of **paragraph (a) or (b)** (or both) or in the exercise of a power conferred by **subsection (1)**,—
 - (i) stop a ship or vehicle, or a taxiing aircraft; or
 - (ii) prevent a stationary aircraft, ship, or vehicle from moving; or
 - (iii) prevent an aircraft or ship or vehicle from departing.
- (3) **Subsection (2)**—
 - (a) does not limit the generality of **subsection (1)**; but
 - (b) is subject to **sections 352 to 358** (general provisions about entry and search powers).
- (4) A member of the police may do a thing authorised by **subsection (1) or (2)** whether or not a medical officer of health has asked him or her to do so.
- (5) Subsections (2) to (6) of section 314B, and sections 314C and 314D, of the Crimes Act 1961, with any necessary modifications, apply to the powers conferred by **subsection (2)(c)**—
 - (a) as if they were a statutory search power within the meaning of section 314A of that Act; but
 - (b) as if a ship or taxiing aircraft were a vehicle.

Compare: 1956 No 65 s 71A

276 Offences relating to obstructing medical officer of health or people assisting medical officer of health

- (1) A person commits an offence who in any way (directly or indirectly, by act or default)—
- (a) threatens, assaults, or intentionally obstructs or hinders a medical officer of health or any person authorised by a medical officer of health in the exercise or performance of powers or functions under any of **sections 266 to 273**; or
 - (b) threatens, assaults, or intentionally obstructs or hinders a member of the police acting under **section 275**; or
 - (c) does, or delays ceasing to do, a thing prohibited or forbidden by a medical officer of health or any person authorised by a health officer in the exercise of powers or functions under any of **sections 266 to 273**.

- (2) A person who commits an offence against this section is liable on summary conviction,—
- (a) in the case of an offence referred to in **subsection (1)(a) or (b)**, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding \$50,000, or to both; or
 - (b) in the case of an offence referred to in **subsection (1)(c)**, to a fine not exceeding \$20,000.

Compare: 1956 No 65 s 72

277 Medical officer of health may cause sanitary works to be undertaken

- (1) Without limiting the liability of any person for an offence under **section 276**, if any offence under that section consists in not doing any sanitary work or in failing to remedy any sanitary defect, the medical officer of health may cause the work to be done or the defect to be remedied at the entire expense of the offender.
- (2) All expenses incurred under **subsection (1)** are recoverable as a debt due to the Crown.

Compare: 1956 No 65 s 73

278 Priority for medicines

- (1) The Director-General may at any time devise policies determining the priorities with which supplies of medicines that are under the control of the Crown or a Crown entity are to be dispensed during any period while, under **section 264(2)**, emergency powers may be exercised.
- (2) During any period while, under **section 264(2)**, emergency powers may be exercised—
- (a) the Director-General may, if satisfied that there is or is likely to be a shortage of medicines, in accordance with a policy devised under **subsection (1)** for the medicines, by notice in the *Gazette*, require persons administering, dispensing, prescribing, or supplying stated medicines that are under the control of the Crown or a Crown entity to administer, dispense, prescribe, or supply them in accordance with priorities, and subject to any conditions, stated in the notice; and
 - (b) every person administering, dispensing, prescribing, or supplying medicines stated in the notice that are under the control of the Crown or a Crown entity must—
 - (i) comply with the priorities; and
 - (ii) comply with any conditions, stated in the notice.
- (3) A notice under **subsection (2)** must state whether it applies to—
- (a) all persons administering, dispensing, prescribing, or supplying the medicines concerned; or
 - (b) particular classes of person administering, dispensing, prescribing, or supplying the medicines concerned; or
 - (c) particular persons administering, dispensing, prescribing, or supplying the medicines concerned.
- (4) A notice under **subsection (2)** may relate to any medicine, whether or not it can be used in relation to the condition associated with the emergency or epidemic.
- (5) The Director-General must publish every policy devised under **subsection (1)**, but may do so by making it available on the Internet.
- (6) In this section, **medicine** means any substance used or capable of being used to prevent, treat, or palliate a disease, or the symptoms or effects of a disease.

Compare: 1956 No 65 s 74C

279 Offences against sections in this subpart

Every person commits an offence who contravenes, or permits a contravention of, a direction issued under **section 266(1), 268, or 269** and is liable on summary conviction,—

- (a) in a case where the contravention or other action was intentional or reckless, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$50,000, or to

- both; or
(b) in any other case, to a fine not exceeding \$20,000.

Subpart 2—Border health

280 Interpretation

- (1) In this subpart—
examination involving non-invasive procedures means an examination of a person by visual inspection, screening devices, or by other means that do not involve any physical contact with the person being examined other than physical contact that is—
(a) prescribed for the purposes of this definition; and
(b) that includes only a minor intrusion and is transitory in nature
quarantinable condition means—
(a) a notifiable condition;
(b) any other condition prescribed by regulations made under **section 322** as a quarantinable condition for the purposes of this Act;
(c) any other condition that in the opinion of a medical officer of health constitutes a serious risk to public health.
- (2) A condition referred to in **paragraph (c)** of the definition of **quarantinable condition**—
(a) ceases to be a quarantinable condition if—
(i) at any time the Director of Public Health directs that it is not to be treated as a quarantinable condition; or
(ii) within 14 days of the date on which the medical officer of health forms the opinion, the condition is not—
(A) identified as a notifiable condition or a condition already prescribed as a quarantinable condition for the purposes of this Act; or
(B) prescribed as a quarantinable condition for the purposes of this Act; and
(b) need not, for the purposes of this Act, be treated as a quarantinable condition by the pilot or master of a craft or any crew or passenger or any other person concerned, unless the person concerned has been informed of the opinion of the medical officer of health.

281 Director-General may designate points of entry

The Director-General may designate points of entry for the purposes of this subpart.

Quarantine

282 Places of inspection for ships

The Minister may, by notice in the *Gazette*, declare any specified portion of any harbour to be a place of inspection to which ships liable to quarantine must be taken while awaiting inspection by a medical officer of health.

Compare: 1956 No 65 s 94

283 Affected places

The Minister may, by notice in the *Gazette*, declare any place in New Zealand to be an affected place for the purposes of this subpart, on the ground that the place is affected by a quarantinable condition.

Compare: 1956 No 65 s 95

284 Ships and aircraft liable to quarantine

- (1) The following ships are liable to quarantine:
(a) every ship arriving in New Zealand from any port beyond New Zealand;
(b) every ship arriving at any port in New Zealand from any affected place in New Zealand;
(c) every ship on board which any quarantinable condition, or any condition reasonably believed or suspected to be a quarantinable condition, has broken out or been discovered.
- (2) The following aircraft are liable to quarantine:
(a) every aircraft arriving in New Zealand from any place beyond New Zealand;
(b) every aircraft arriving at an airport in New Zealand from any affected place in New Zealand.
- (3) Despite **subsections (1) and (2)**, ships and aircraft of a specified class may be exempted from liability to quarantine in circumstances, and subject to conditions, specified in regulations made under **section 322**.

Compare: 1956 No 65 s 96

285 Persons liable to quarantine

- (1) A person is liable to quarantine if he or she is on board, or disembarks from, a craft that is liable to quarantine.
- (2) **Sections 289 and 290** (which enable more significant powers to be exercised) apply to a person liable to quarantine if a medical officer of health or health protection officer, or any person authorised by a medical officer of health, believes or suspects, on reasonable grounds,—
 - (a) that the person is affected by a quarantinable condition; or
 - (b) that, within the 14 days before he or she arrived in New Zealand, he or she has been exposed to a condition that (whether or not it was a quarantinable condition at the time of the believed or suspected exposure) is a quarantinable condition.

Compare: 1956 No 65 s 97(2)

286 People liable to quarantine to comply with directions and supply information

- (1) A person who is liable to quarantine—
 - (a) must comply with all directions, requirements, or conditions given, made, or imposed by a medical officer of health or a person authorised by a medical officer of health, under this subpart; and
 - (b) must on request by a medical officer of health or a person authorised by a medical officer of health undergo an examination involving non-invasive procedures; and
 - (c) must, on request by a medical officer of health or a person authorised by a medical officer of health, give any information the officer believes on reasonable grounds to be necessary to enable the management of a risk to public health.
- (2) In the case of people arriving in New Zealand by craft, a medical officer of health or a person authorised by a medical officer of health may request information under **subsection (1)(c)** by requiring the person who appears to the officer to be in charge of the craft to collect or supply some or all of it—
 - (a) by requiring the person to distribute and collect cards or forms for passengers and crew to fill in; or
 - (b) in any other reasonable manner the officer may require.
- (3) A person required under **subsection (2)** to collect or supply information must take all reasonably practicable steps to do so promptly.
- (4) For the purposes of **subsection (1)(c)**, the information that may be requested from a person includes—
 - (a) his or her name; and
 - (b) his or her recent travel history; and
 - (c) his or her recent activities; and
 - (d) his or her previous and present addresses, and proposed routes, destinations, and addresses; and
 - (e) his or her movements during the 14 days before his or her arrival; and
 - (f) whether he or she is experiencing or has recently experienced particular symptoms.
- (5) A medical officer of health or a person authorised by a medical officer of health may obtain from the department of State responsible for keeping it (and the department may supply to the medical officer of health or a health protection officer) any information about a person's liability to quarantine or release from quarantine that the officer believes on reasonable grounds to be necessary to obtain in order to—
 - (a) trace the person's movements; or
 - (b) discover the contacts the person has had with other people.
- (6) **Subsection (2)** does not limit **subsection (1)**.

Compare: 1956 No 65 s 97A

287 Detention of craft and people for inspection

- (1) A medical officer of health, a health protection officer, or a person acting under the written directions of a medical officer of health or a health protection officer, may direct that a craft and its passengers and crew be detained for inspection if—
 - (a) the craft has arrived in New Zealand; and
 - (b) it appears to the officer that, during the voyage of the craft,—
 - (i) a person on it has died, or become ill, from a quarantinable condition; or
 - (ii) death not attributable to poison or other measures for destruction has occurred among birds, insects, rodents, or other vectors on the craft.

- (2) A medical officer of health or health protection officer must tell the person in charge of the airport or port concerned, and any other authorities likely to be affected by it, of any direction he or she gives under **subsection (1)**; and that person must not allow the craft concerned to leave the airport or port until given written notice under **section 288** of the lifting of the detention of the craft.
- (3) Every person commits an offence who allows a craft that is subject to a direction under **subsection (1)** to leave a port or airport before a written notice is issued in respect of that craft under **section 288** and is liable on summary conviction to a fine not exceeding \$50,000.

Compare: 1956 No 65 s 97B

288 Lifting of detention of craft

The detention of a craft under **section 287** ceases when a medical officer of health or a health protection officer gives the person in charge of the airport or port written notice to that effect.

Compare: 1956 No 65 s 97C

289 Powers and duties of medical officer of health or health protection officer in relation to quarantinable conditions

- (1) If a craft arrives in New Zealand carrying a person to whom **section 285(2)** applies, a medical officer of health or a health protection officer may—
 - (a) require the person to have a medical examination;
 - (b) require to be taken from the person any bodily sample the officer may reasonably require;
 - (c) after consulting with any relevant agency or other relevant authority that is likely to be affected by the requirement, require to be taken from the craft or any thing in or on it any sample the officer may reasonably require;
 - (d) require the pilot in command of the aircraft or the master of the ship to take or help take any steps that, in the opinion of the medical officer of health or health protection officer, are reasonably necessary—
 - (i) to prevent the spread of a quarantinable condition by the person; or
 - (ii) to destroy vectors and reservoirs; or
 - (iii) to remove or abate conditions on the craft likely to convey a quarantinable condition, including conditions that might facilitate the harbouring of vermin or other vectors or reservoirs or sources of contamination.
- (2) A person who is required under **subsection (1)** to undergo a medical examination or allow a sample to be taken must comply with that request.

Compare: 1956 No 65 s 97D

290 Surveillance of certain people liable to quarantine

- (1) This section applies to a person if—
 - (a) he or she is a person described in **section 285(2)**; or
 - (b) he or she is liable to quarantine and has been quarantined under **section 266(g)**.
- (2) A person to whom this section applies must (whether or not he or she is detained under **subsection (3)(a)** or kept under surveillance at large under **subsection (3)(b)**) give to a medical officer of health, on request, all information he or she reasonably requires to enable the management of risks to public health.
- (3) A medical officer of health or a health protection officer may cause a person to whom **subsection (1)** applies—
 - (a) to be removed to a hospital or other suitable place and detained under surveillance until a medical officer of health or a health protection officer is satisfied that he or she—
 - (i) does not have the condition concerned; or
 - (ii) is not able to pass that condition on; or
 - (b) to be kept under surveillance at large.
- (4) Detention under **subsection (3)(a)**—
 - (a) must not continue for more than 28 days; and
 - (b) must not continue for more than 14 days unless a medical officer of health or a health protection officer has considered the latest information available on the condition concerned, and is satisfied that the person is affected by it and still likely to be able to pass it on.
- (5) Before being placed under surveillance at large, a person must give an undertaking, in a form prescribed by regulations made under **section 322**, that he or she will report to a medical officer of health or a medical practitioner at the times and places required.
- (6) While kept under surveillance at large, a person must—
 - (a) present himself or herself for and submit to any medical examination required by a medical

- officer of health in whose district he or she may be:
- (b) give to a medical officer of health, on request, all information he or she reasonably requires to enable the management of the risk to public health:
 - (c) if instructed to do so by a medical officer of health, do either or both of the following:
 - (i) report on arrival in any district to a medical officer of health or to a medical practitioner nominated by a medical officer of health:
 - (ii) report in person daily or at stated intervals to a medical officer of health or a medical practitioner nominated by a medical officer of health:
 - (d) if he or she leaves for another place, tell a medical officer of health, or a medical practitioner nominated by a medical officer of health, and give details of the address to which he or she is going.

Compare: 1956 No 65 s 97E

291 Grounds of appeal

A person who is detained or kept under surveillance at large under **section 290** may appeal to the District Court against—

- (a) a decision of a medical officer of health or health protection officer to require the person to be detained or kept under surveillance at large; or
- (b) a decision of a medical officer of health or medical practitioner under **section 290** to require any person undergoing surveillance at large to do any thing.

292 Notice of appeal

- (1) A notice of appeal under **section 291** must—
 - (a) state the reason for the appeal and the relief sought; and
 - (b) be lodged with the District Court and served on the medical officer of health or medical practitioner who made the decision.
- (2) An appeal against a decision does not act as a stay of that decision.

293 Powers of District Court on appeal

- (1) On any appeal under **section 291** the Court may—
 - (a) allow the appeal, and issue any directions necessary to implement its decision; or
 - (b) dismiss the appeal.
- (2) A medical officer of health and (if applicable) a medical practitioner must comply with any directions issued by a District Court under **subsection (1)(a)**.

294 Children and people under disability

Every person who has the custody or charge of a child or the role of providing day-to-day care for a child, or has charge of a person who is under disability,—

- (a) must comply with every direction, requirement, or condition given, made, or imposed in respect of the child or person under disability under any of **sections 286 to 290**; and
- (b) must give in respect of the child or person under disability all information required under any of those sections.

Compare: 1956 No 65 s 97F

295 When liability of craft to quarantine ceases

Every ship or aircraft liable to quarantine continues to be so liable until pratique is granted.

Compare: 1956 No 65 s 98(1)

296 When liability of persons to quarantine ceases

Every person liable to quarantine continues to be so liable until he or she is released from quarantine in accordance with regulations made under **section 322**.

Compare: 1956 No 65 s 98(2)

297 Restrictions applying while craft liable to quarantine

- (1) While any craft is liable to quarantine it is not lawful, except in the case of urgent necessity due to a mechanical failure on board an aircraft, marine casualty, or other similar emergency, or except with the authority of a medical officer of health or health protection officer or in circumstances authorised by regulations made under **section 322**,—
 - (a) for any person to go on board that craft, except a medical officer of health or health protection officer, and the assistants of that officer, or a pilot, or a customs officer appointed under section 2 of the Customs and Excise Act 1996, or a member of the police, or an

officer appointed or authorised under the Immigration Act 1987, or an inspector appointed under section 15 of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995 or section 103 of the Biosecurity Act 1993; or

- (b) for any person to leave that craft, except the persons specified in **paragraph (a)**; or
 - (c) for any goods, mails, or other articles whatsoever to be landed or transhipped from that craft; or
 - (d) in the case of a craft that is a ship, for the master, pilot, or other officer in charge of the navigation of that ship to bring that ship or allow that ship to be brought to any wharf or other landing place; or
 - (e) in the case of a craft that is a ship, for any boat, launch, or vessel, other than one in the service of the police or a department of State, to be brought within 50 metres of that ship.
- (2) Any authority given by a medical officer of health or a health protection officer under this section may be given subject to any exceptions and conditions that the officer considers appropriate, and may be revoked by that officer at any time.

Compare: 1956 No 65 s 99

298 Quarantine signal for ship

The master of every ship liable to quarantine must ensure that the prescribed quarantine signal is displayed during any prescribed period until pratique is granted.

Compare: 1956 No 65 s 100

299 Inspection of craft liable to quarantine

- (1) A medical officer of health or health protection officer, or any person authorised by a medical officer of health, before granting pratique to any ship liable to quarantine, must board that ship and inspect it for the purpose of ascertaining whether any quarantinable condition exists on the ship, unless the officer is exempted from doing so by regulations made under **section 322**.
- (2) A medical officer of health or health protection officer, or any person authorised by a medical officer of health, may board any aircraft liable to quarantine and inspect it for the purpose of ascertaining whether any quarantinable condition exists on the aircraft.
- (3) In respect of any ship, aircraft, or person referred to in this section, the medical officer of health or health protection officer, or any person authorised by a medical officer of health, has any powers and duties prescribed for the purposes of this section.
- (4) If a medical officer of health or any other person exercises any power under this section, the medical officer of health or other person must, as soon as practicable, notify—
 - (a) the Civil Aviation Authority and any airport likely to be affected by the exercise of the power; and
 - (b) Maritime New Zealand and any port likely to be affected by the exercise of the power; and
 - (c) any other agency likely to be affected by the exercise of the power.
- (5) The master of every ship and the pilot in command of every aircraft referred to in this section, must facilitate, by all reasonable means, the boarding of the ship or aircraft by a medical officer of health or health protection officer, or any person authorised by a medical officer of health, and the exercise of his or her powers and duties under this section.

Compare: 1956 No 65 s 101

300 Ship's declaration of health

- (1) The master of any ship that is on its way to New Zealand from any port outside New Zealand must, before the ship arrives in New Zealand, ascertain the state of health of each person on board.
- (2) On arriving in New Zealand, the master must complete and deliver to a medical officer of health or health protection officer a maritime declaration in the prescribed form, unless the master is exempted from the requirement to deliver a declaration by regulations made under **section 322**.
- (3) The form must be countersigned by the ship's medical officer (if there is one).
- (4) The master, and the medical officer (if there is one), must supply to a medical officer of health, or to any person authorised by that officer for the purpose, any further information required by the officer relating to the state of health of any person who was on board the ship on its arrival in New Zealand.
- (5) The master or the medical officer commits an offence and is liable on summary conviction to a fine not exceeding \$20,000, if the master or medical officer refuses, or fails without reasonable excuse, to comply with any of the preceding provisions of this section.
- (6) The master or medical officer commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$50,000, or to both, if the master or medical officer gives to a medical officer of health, or to any person authorised by

that officer to perform functions under this section, any declaration, answer, or information that the master or medical officer knows to be false or misleading.

- (7) The master or medical officer commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$50,000, or to both, if the master or medical officer deceives or attempts to deceive a medical officer of health, or any person authorised by that officer to undertake functions under this subpart, in respect of any matter with intent—
- (a) to obtain pratique; or
 - (b) to influence in any other respect the exercise by or on behalf of a medical officer of health of any authority conferred on that officer by this subpart.

Compare: 1956 No 65 s 102

301 Aircraft declaration of health

- (1) The pilot in command of an aircraft that is on its way to New Zealand from any airport beyond New Zealand must, unless regulations made under **section 322** provide otherwise,—
- (a) ascertain the state of health of each person on board (including whether any person on board is showing symptoms of ill health); and
 - (b) on arriving in New Zealand, complete and deliver to a medical officer of health or a health protection officer an aircraft declaration in the prescribed form.
- (2) The pilot in command of an aircraft must supply to a medical officer of health, or to any person authorised by that officer for the purpose, any further information required by the officer relating to the state of health of any person who is a passenger on the aircraft on its arrival in New Zealand.
- (3) The pilot in command of an aircraft commits an offence and is liable on summary conviction to a fine not exceeding \$20,000 if the pilot refuses, or fails without reasonable excuse, to comply with **subsection (1)**.
- (4) The pilot in command of an aircraft commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$50,000, or to both, if the pilot gives to a medical officer of health or any person authorised by that officer to perform functions under this section, any declaration, answer, or information that the pilot knows to be false or misleading.
- (5) The pilot in command of an aircraft commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$50,000, or to both, if the pilot deceives or attempts to deceive a medical officer of health or any person authorised by that officer to undertake functions under this subpart with intent—
- (a) to obtain pratique; or
 - (b) to influence in any other respect the exercise by, or on behalf of, a medical officer of health of any authority conferred on that officer by this subpart.

302 Ship arriving from affected place

The master of any ship that arrives at any port from any affected place within New Zealand must not allow or permit the ship to be moored or berthed at any place except a place of inspection, unless he or she is otherwise instructed by a medical officer of health.

Compare: 1956 No 65 s 105

303 Ship with quarantinable condition on board

- (1) This section applies if—
- (a) any ship arrives at any port in New Zealand from any other port in New Zealand (not being an affected place); and
 - (b) any person suffering from any quarantinable condition or any condition reasonably believed or suspected to be a quarantinable condition is on board the ship.
- (2) If this section applies, the master must not allow or permit the ship to be moored or berthed at any place except a place of inspection, unless he or she is otherwise instructed by a medical officer of health or a person authorised by the medical officer of health.

Compare: 1956 No 65 s 106

304 Grant of pratique

- (1) If a medical officer of health or a health protection officer, or any person authorised by a medical officer of health, is satisfied, in relation to any ship liable to quarantine, that no quarantinable condition or insanitary condition exists on board the ship, he or she must give to the master of the ship a certificate of pratique in the prescribed form.
- (2) If a medical officer of health or health protection officer, or any person authorised by the medical

officer of health, is satisfied, in relation to any aircraft liable to quarantine, that no quarantinable or insanitary condition exists on board the aircraft, he or she must give to the pilot in command of the aircraft a certificate of pratique in the prescribed form.

- (3) **Subsections (1) and (2)** are subject to the provisions of any regulations made under **section 322** that—
- (a) allow pratique to be granted or to be assumed to have been granted in circumstances where the requirements of **subsection (1) or (2)** have not been satisfied; or
 - (b) require pratique to be withheld or withdrawn in circumstances where the requirements of **subsection (1) or (2)** have been satisfied.

Compare: 1956 No 105 s 107

305 Medical officer of health or health protection officer may order craft to another port or airport

- (1) A medical officer of health or health protection officer may require the pilot or master in charge of a craft liable to quarantine or that the officer believes is in an insanitary condition or in a condition favourable to the outbreak or spread of a quarantinable condition (whether the craft is travelling to, or has arrived in, New Zealand) to take the craft, as soon as practicable, to another port or airport in New Zealand where there are appropriate facilities for—
 - (a) dealing with that craft (for example, facilities for treating, disinfecting, decontaminating, or otherwise treating or cleansing an aircraft, or for implementing an emergency response); and
 - (b) dealing with people on that craft (for example, facilities for assessing whether those people may be suffering from a quarantinable condition).
- (2) Before exercising any power under **subsection (1)**, a medical officer of health or health protection officer must—
 - (a) if the craft is an aircraft, consult with the Civil Aviation Authority about the proposed requirement;
 - (b) if the craft is a ship, consult with Maritime New Zealand.
- (3) If a medical officer of health or health protection officer exercises any power under **subsection (1)**, he or she must, as soon as practicable,—
 - (a) if the craft is an aircraft, notify the Civil Aviation Authority;
 - (b) if the craft is a ship, notify Maritime New Zealand;
 - (c) notify the relevant ports or airports and any other agency likely to be affected by the requirement.

306 Affected baggage, cargo, or stores

- (1) If a medical officer of health or health protection officer believes that a quarantinable condition or notifiable contaminant is likely to be spread by any baggage, bedding, cargo, clothing, drink, equipment, food, linen, luggage, stores, water, or other substance or thing that is on or has been removed from a craft, or that any substance or thing of that kind is in an insanitary condition, he or she may do any thing, and give any directions, in respect of it authorised by regulations made under **section 322**.
- (2) **Subsection (1)** does not empower the medical officer of health or health protection officer to enter a private dwellinghouse or a marae.
- (3) A person who fails to comply with a direction under **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Compare: 1956 No 65 s 109

307 Decontamination, disinfection, and fumigation of craft

- (1) A medical officer of health or health protection officer may, if he or she believes that a craft is in an insanitary condition or in a condition favourable to the outbreak or spread of a quarantinable condition, sign and give to the master or pilot a written order requiring the craft to be decontaminated, fumigated, disinfected, or otherwise treated or cleansed, in a manner, within a time, and at a place stated in the order.
- (2) The order may be given whether or not the craft is liable to quarantine.
- (3) If the order is not complied with,—
 - (a) the master or pilot commits an offence, and is liable on summary conviction to a fine not exceeding \$10,000; and
 - (b) the medical officer of health may have the craft decontaminated, fumigated, disinfected, or otherwise treated or cleansed (whether in accordance with the order or otherwise).
- (4) All expenses incurred by the Crown in acting under **subsection (3)(b)** are recoverable from the

owner of the craft or its agent in New Zealand as a debt due to the Crown.

- (5) No action taken in respect of a craft under **subsection (3)(b)** limits the liability of its master or pilot under **paragraph (a)** of that subsection.
- (6) A medical officer of health or health protection officer may exercise any prescribed powers in respect of the destruction of reservoirs or vectors on the craft.
- (7) **Subsection (6)** does not limit the general powers given by this section.

Compare: 1956 No 65 s 110

308 Ship sanitation certificates

- (1) A medical officer of health or health protection officer may issue a ship sanitation certificate—
 - (a) in any manner the officer considers appropriate, if there are no prescribed requirements; or
 - (b) if there are any applicable requirements in regulations made under **section 322**, in accordance with those requirements.
- (2) A ship sanitation certificate—
 - (a) states whether or not a ship—
 - (i) is free from quarantinable conditions; and
 - (ii) is free from vectors or reservoirs or contamination; and
 - (iii) is in a sanitary condition; and
 - (iv) has in place appropriate control measures to address risks to public health; and
 - (b) contains any other prescribed information.
- (3) A ship sanitation certificate—
 - (a) may be issued in different forms and for different periods; and
 - (b) is subject to any prescribed conditions or other conditions imposed by the medical officer of health; and
 - (c) has the prescribed effect.
- (4) Without limiting **section 309**, a medical officer of health or health protection officer may exercise the powers conferred by that section before issuing a ship sanitation certificate.

309 Power to board any ship and inspect

- (1) A medical officer of health or health protection officer (or any person authorised by a medical officer of health or health protection officer) may at any time—
 - (a) board any ship in any port and enter and inspect any part of the ship; and
 - (b) inspect all animals and goods on board the ship, and the passenger list; and
 - (c) with the prior authority of the Director-General, inspect the logbook and other ship's papers.
 - (2) Where an officer boards any ship under this section he or she may require any person on board the ship who in his or her opinion may be suffering from any quarantinable condition to submit to any prescribed examination, and that person must comply with the requirement.
 - (3) This section is subject to **sections 352 to 358** (general provisions about entry and search powers).
- Compare: 1956 No 65 s 111

Departure of persons and craft from New Zealand

310 Persons with quarantinable condition about to leave New Zealand

- (1) If a medical officer of health or a health protection officer suspects or believes on reasonable grounds that a person intending to leave New Zealand has a quarantinable condition (the **affected person**), the officer—
 - (a) may advise the relevant airline or carrier, and any other department of State, agency, or person in New Zealand or overseas concerned in the matter, that—
 - (i) the person is believed to have a quarantinable condition; and
 - (ii) there is a health risk to any person coming in contact with the affected person if the affected person travels on a ship or aircraft; and
 - (b) may advise the affected person that—
 - (i) he or she should report to a health practitioner or relevant government agency in his or her country of destination as soon as practicable after arrival; and
 - (ii) the advice referred to in **subparagraph (i)** will be, or has been, provided to a relevant government agency or organisation in the affected person's country of destination.
- (2) If a health practitioner suspects or believes on reasonable grounds that a person intending to leave New Zealand has a quarantinable condition, the health practitioner may—
 - (a) advise a medical officer of health or health protection officer that the person is believed to

- have a quarantinable condition; and
- (b) advise the affected person that the advice referred to in **paragraph (a)** will be or has been provided to a medical officer of health or health protection officer.

311 Persons with quarantinable condition about to leave New Zealand to supply information and comply with directions

- (1) This section applies to a person intending to depart from New Zealand who a medical officer of health or health protection officer suspects or believes on reasonable grounds has a quarantinable condition (the **affected person**).
- (2) If this section applies the affected person, or the person appearing to be in charge of the craft on which the person is departing, must, on request by a medical officer of health or health protection officer, or a person authorised by one of those officers, give to the officer any information the officer believes on reasonable grounds to be necessary to enable the management of risks to public health.
- (3) A person required under **subsection (2)** to supply information must take all reasonably practicable steps to do so promptly.
- (4) For the purposes of **subsection (2)**, the information that may be requested from a person includes—
 - (a) his or her name; and
 - (b) his or her recent travel history; and
 - (c) his or her recent activities; and
 - (d) his or her previous and present addresses, and proposed routes, destinations, and addresses; and
 - (e) his or her movements during the 14 days before his or her departure; and
 - (f) whether he or she is experiencing or has recently experienced particular symptoms.
- (5) An affected person—
 - (a) must comply with all directions, requirements, or conditions given, made, or imposed by a medical officer of health under this section; and
 - (b) must, on request by a medical officer of health, undergo a medical examination.

312 Inspection of ship or aircraft departing from New Zealand

- (1) A medical health officer or health protection officer may at any reasonable time board any craft about to depart from New Zealand and enter and inspect any part of it for the purpose of ascertaining whether the craft contains any vector or reservoir.
- (2) If the medical officer of health or health protection officer believes that there is on board a craft inspected under **subsection (1)** a vector or reservoir, the officer may do either or both of the following:
 - (a) require the craft to be decontaminated, fumigated, disinfected, or otherwise treated or cleaned in any other manner; or
 - (b) require the destruction of any item on board the craft.
- (3) If the requirement is not complied with,—
 - (a) the master or pilot in command commits an offence, and is liable on summary conviction to a fine not exceeding \$10,000; and
 - (b) the medical officer of health may have the craft decontaminated, fumigated, disinfected, or otherwise treated or cleansed (whether in accordance with the requirement or otherwise).
- (4) All expenses incurred by the Crown in acting under **subsection (3)(b)** are recoverable from the owner of the craft or its agents in New Zealand as a debt due to the Crown.
- (5) No action taken in respect of a craft under **subsection (3)(b)** limits the liability of its master or pilot under **paragraph (a)** of that subsection.
- (6) **Subsection (1)** is subject to—
 - (a) the provisions of any regulations made under **section 322**; and
 - (b) **sections 352 to 358** (general provisions about entry and search powers).
- (7) If a medical officer of health or any other person exercises any power under this section, the medical officer of health or other person must, as soon as practicable, notify,—
 - (a) if the power is exercised in respect of any aircraft, the Civil Aviation Authority and any airport likely to be affected by the exercise of the power;
 - (b) if the power is exercised in respect of a ship, Maritime New Zealand and any port likely to be affected by the exercise of the power;
 - (c) any other agency likely to be affected by the exercise of the power.

313 Inspection of points of entry

- (1) A medical officer of health or health protection officer may at any reasonable time enter any port or airport or any place designated as a point of entry under **section 281** for the purpose of ascertaining whether the place contains any vector or reservoir or contamination.
- (2) If a medical officer of health believes that there is at a port, airport, or other place, a vector or reservoir or contamination, the medical officer of health or health protection officer may do one or more of the following:
 - (a) require the place to be decontaminated, fumigated, disinfected, or treated or cleansed in any other manner; or
 - (b) require the destruction of any item at the place.
- (3) If the requirement is not complied with,—
 - (a) the person in control of the port, airport, or other place commits an offence and is liable on summary conviction to a fine not exceeding \$50,000; and
 - (b) the medical officer of health may have the craft decontaminated, fumigated, disinfected, or otherwise treated or cleansed (whether in accordance with the requirement or otherwise).
- (4) All expenses incurred by the Crown in acting under **subsection (3)(b)** are recoverable from the owner of the craft or its agents in New Zealand as a debt due to the Crown.
- (5) No action taken in respect of a craft under **paragraph (b) of subsection (3)** limits the liability of its master or pilot under **paragraph (a)** of that subsection.
- (6) **Subsection (1)** is subject to—
 - (a) the provisions of any regulations made under **section 322**; and
 - (b) **sections 352 to 358** (general provisions about entry and search powers).

314 Power to obtain information about craft, freight, and passengers

- (1) A medical officer of health or health protection officer may, for an authorised purpose, require the owner of a craft or any agent of the owner, any department of State, or the master or pilot in command of a craft, to provide any specified information in the person's or department's possession about—
 - (a) the craft; and
 - (b) the freight that is, or has been, on board the craft; and
 - (c) any person who is on board the craft.
- (2) A person required under **subsection (1)** to collect or supply information—
 - (a) must take all practicable steps to do so promptly; but
 - (b) is not required to supply any information that might incriminate the person.
- (3) In this section, **authorised purpose** means the purpose of ascertaining whether a craft that is expected to arrive or has arrived in New Zealand or that is expected to depart from New Zealand, or freight or a person on board that craft, contains or has, or may contain or have, a quarantinable condition or insanitary condition.

315 Offences involving ships or aircraft

- (1) The master of any ship who permits any person liable to quarantine to leave that ship without the authority of a medical officer of health or a health protection officer commits an offence and is liable on summary conviction,—
 - (a) if the master knows that he or she is not entitled to permit the person to leave the ship or is reckless as to whether he or she is authorised to give permission, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$10,000, or to both; or
 - (b) in any other case, to a fine not exceeding \$10,000.
- (2) Every person on any ship who, being liable to quarantine, leaves the ship without the authority of a medical officer of health or a health protection officer commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.
- (3) Every person arriving by any aircraft who, being liable to quarantine, leaves the airport, or that part of the airport in which passengers are lawfully detained pending the granting of pratique, or any place where he or she is lawfully detained pending his or her release from quarantine, without the authority of a medical officer of health or a health protection officer commits an offence and is liable on summary conviction,—
 - (a) if the person knows that he or she is not entitled to leave the airport or that part of the airport where he or she is detained or is reckless as to whether he or she is entitled to leave, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$10,000, or to both; or
 - (b) in any other case, to a fine not exceeding \$10,000.

316 Offences against sections in this subpart

Every person commits an offence who contravenes or fails to comply with—

- (a) any direction under **section 286(1)**; or
- (b) the requirement imposed under **section 286(2) or (3)**; or
- (c) any requirement or obligation under **section 289 or 290**; or
- (d) any direction or requirement or condition referred to in **section 294(a) or (b)**; or
- (e) the requirements of **section 297(1)(a) or (b) or 309(2) or 311(5)**; or
- (f) the requirements of **section 297(1)(c), (d), or (e)**; or
- (g) the requirement of **section 298**; or
- (h) the requirements of **section 299(5)**; or
- (i) the requirements of **section 302 or 303(2)**; or
- (j) a direction under **section 305(1)**; or
- (k) the requirements of **section 311(2)**; or
- (l) the requirements of **section 314(1) and (2)**.

317 Strict liability and defence to offences under section 316

- (1) In any prosecution for an offence under **section 316** it is not necessary to prove that the defendant intended to commit the offence.
- (2) It is a defence to a prosecution under **section 316(a), (b), (c), (e), (f), (g), (h), (i), (j), and (l)** if the defendant proves—
 - (a) that the defendant did not intend to commit the offence; and
 - (b) that the defendant took all reasonable steps to prevent the commission of the offence, including (without limitation) steps required to prevent or mitigate any risks to public health arising from the matter constituting the offence.
- (3) It is a defence to a prosecution under **section 316(d)** relating to a failure to comply with a direction or requirement under **section 289 or 290**, if the defendant proves—
 - (a) that the defendant did not intend to commit the offence; and
 - (b) that the defendant took all reasonable steps to prevent the commission of the offence, including (without limitation) steps required to prevent or mitigate any risk to public health arising from the matter constituting the offence.

318 Penalties for offences under section 316

- (1) A person who commits an offence against **section 316(a)** is liable on summary conviction,—
 - (a) if the person knew he or she was contravening the law or was reckless as to his or her authority to act, to a term of imprisonment not exceeding 3 months or to a fine not exceeding \$10,000 or to both; or
 - (b) in any other case, to a fine not exceeding \$10,000.
- (2) A person who commits an offence against **section 316(b), (d), or (e)** is liable on summary conviction to a fine not exceeding \$10,000.
- (3) A person who commits an offence against **section 316(c)** is liable on summary conviction,—
 - (a) if the person knew that he or she was contravening the law or was reckless as to his or her authority to act, to a term of imprisonment not exceeding 3 months or to a fine not exceeding \$50,000 or to both; or
 - (b) in any other case, to a fine not exceeding \$20,000.
- (4) A person who commits an offence against **section 316(f) or (i) or (l)** is liable on summary conviction to a fine not exceeding \$50,000.
- (5) A person who commits an offence against **section 316(g)** is liable on summary conviction to a fine not exceeding \$2,000.
- (6) A person who commits an offence against **section 316(h)** is liable on summary conviction to a fine not exceeding \$20,000.
- (7) A person who commits an offence against **section 316(j)** is liable on summary conviction to a fine not exceeding \$100,000.
- (8) A person who commits an offence against **section 316(k)** is liable on summary conviction,—
 - (a) in the case of the person appearing to be in charge of the craft, to a fine not exceeding \$50,000; or
 - (b) in any other case, to a fine not exceeding \$10,000.

319 Health risk orders

- (1) The Court may, instead of, or in addition to, sentencing a person who has been convicted of an offence against **section 316(c) or (i)**, make an order imposing whichever 1 or more of the requirements stated in **section 114(1)** that the Court thinks are necessary to prevent or minimise the

health risk that the individual poses.

- (2) An order made under **subsection (1)** has effect as a health risk order made under **section 113** and **subpart 3** of **Part 4** applies to the order with any necessary modifications.

320 Power to arrest without warrant

If a member of the police, medical officer of health, or health protection officer has reasonable grounds to believe that a person has committed an offence against **section 315(2) or (3)**,—

- (a) a member of the police may—
- (i) arrest the person; and
 - (ii) take the person involved to the ship, aircraft, hospital, or place of isolation where the person is supposed to be; and
- (b) the person may be detained until he or she is released from quarantine under **section 296**.

321 Subpart 1 and this subpart operate independently

The powers conferred by **subpart 1** and the powers conferred by this subpart may be used in respect of the same situation or persons and—

- (a) nothing in **subpart 1** limits or affects the powers conferred by this subpart; and
- (b) nothing in this subpart limits or affects the powers conferred by **subpart 1**.

Compare: 1956 No 65 s 112AA

322 Regulations about risks to public health at border

- (1) The Governor-General may, by Order in Council, provide for all or any of the following matters:
- (a) prescribing quarantinable conditions;
 - (b) the procedure to be adopted in the inspection of ships or aircraft arriving in New Zealand and in the examination of persons on those ships or arriving by those aircraft; and generally the performance of quarantine;
 - (c) the conditions subject to which pratique may be granted including (without limitation)—
 - (i) the circumstances in which pratique may be assumed to have been granted on arrival and the circumstances in which that assumption ceases to apply;
 - (ii) provision for a specified craft or classes of craft to apply for and be granted pratique before arrival in New Zealand;
 - (d) the measures of decontamination, fumigation, disinfection, or other treatment or cleansing, including the treatment or cleansing of any things, to be adopted in respect of—
 - (i) any ship or aircraft on which any quarantinable condition or insanitary condition exists or is reported to exist; or
 - (ii) any contaminated baggage, cargo, or stores;
 - (e) the isolation and treatment of persons arriving in New Zealand who are or are suspected to be suffering from any quarantinable condition, or who have or are suspected to have been exposed to a quarantinable condition, or who are otherwise liable to quarantine under **section 285**;
 - (f) a requirement to file health declarations in respect of aircraft and ships arriving in New Zealand, the form of those declarations, the circumstances in which aircraft and ships are exempt from filing health declarations, and the circumstances in which the requirements may be waived;
 - (g) the payment by any person who has been isolated under regulations made under this section of the reasonable cost of his or her treatment and maintenance while in isolation and the exemption of any person, in whole or in part, from liability to make all or part of the payment;
 - (h) the release of persons from quarantine, either unconditionally or subject to conditions as to medical surveillance or otherwise:
 - (i) the requirements for ship sanitation for the purposes of **section 308**;
 - (j) the exemption of ships, aircraft, persons, or things of any specified classes, or in any specified circumstances or classes of circumstances, from the operation of any of the provisions of this subpart or of any other regulations under this section, either wholly or in part or subject to conditions;
 - (k) the powers, functions, and duties of medical officers of health and health protection officers in respect of quarantine, the departure of craft or persons from New Zealand, and related matters:
 - (l) prescribing forms to be used for the purposes of this subpart.
- (2) **Subsection (1)** does not limit or affect any other provision in this subpart that empowers the making of regulations.

Part 8

Miscellaneous provisions

Health impact assessments

323 Purpose of health impact assessments

The purpose of a health impact assessment is, in general terms, to enable departments of State, Crown entities, and local authorities to identify and assess whether proposed actions have a positive or negative effect on public health objectives before those actions are taken.

324 Health impact assessments

- (1) A department of State, Crown entity, or local authority may at any time undertake a health impact assessment of any proposed plan, policy, strategy, project, rule, consent, standard, guideline, or programme.
- (2) If a health impact assessment is undertaken, it must be undertaken, having regard to any criteria specified by the Director-General in relation to the undertaking of health impact assessments, either generally or in relation to particular classes of health impact assessment.

325 Copy of health impact assessment must be supplied to Director-General

A copy of a health impact assessment must be supplied by the organisation that undertakes it to the Director-General, as soon as is practicable after completing it.

General powers of entry and inspection

326 General power of entry and inspection

- (1) For the purposes of assessing whether the provisions of this Act and any regulations made under this Act, or any compliance order or other document issued under this Act, are being complied with, the following persons may enter into any building, land, craft, vehicle, or other thing and inspect that thing:
 - (a) a medical officer of health;
 - (b) a health protection officer;
 - (c) any person authorised in writing for the purpose by a medical officer of health or health protection officer.
- (2) For the purposes of assessing whether the provisions of **Part 5** and any regulations relating to that Part, or any compliance order or other document issued under this Act relating to that Part, are being complied with, an environmental health officer or any person authorised in writing for the purpose by an environmental health officer may enter into any building, land, craft, vehicle, or other thing and inspect that thing.
- (3) This section is subject to **sections 352 to 358** (general provisions about entry and search powers).

327 Requirement for warrant to enter dwellinghouse or marae

- (1) A person may not exercise the powers conferred by **section 326** to enter a dwellinghouse or a marae unless that person—
 - (a) is a medical officer of health, health protection officer, or an environmental health officer (an **authorised person**); and
 - (b) has obtained a search warrant in accordance with **subsection (2)**.
- (2) Any District Court Judge or Justice of the Peace or Community Magistrate or any Registrar (the **issuing officer**) who is satisfied, on application in writing from an authorised person made on oath, that there is good reason for an authorised person to enter a dwellinghouse or a marae in order to exercise a power under **section 326** may issue a search warrant.
- (3) This section is subject to **sections 346 to 351** (general provisions about search warrants).

Examination of children

328 Examination of children at early childhood centres and schools

- (1) Any designated officer may enter any early childhood centre or school and, subject to **subsection (2)**, may examine, test, or screen any child attending the school.

- (2) A person aged under 16 years may not be examined, tested, or screened under this section unless the parent or guardian of the person has given his or her consent.
- (3) However, if the consent referred to in **subsection (2)** has not been obtained or has been refused, and the designated officer considers that the child in question may have a significant health condition that requires further investigation, the designated officer may—
 - (a) advise the parent or guardian and the school or centre accordingly; and
 - (b) refer the child to an appropriately qualified health professional for further investigation.
- (4) This section is subject to **sections 352 to 358** (general provisions about entry and search powers).
- (5) In this section—

designated officer means—

 - (a) a medical officer of health;
 - (b) a health protection officer;
 - (c) any other person authorised to carry out functions under this section by a medical officer of health

early childhood centre has the same meaning as in section 308(1) of the Education Act 1989

school means a registered school as defined in section 2(1) of the Education Act 1989.

Compliance orders

329 Medical officer of health or health protection officer or environmental health officer may issue compliance order

- (1) A medical officer of health or health protection officer or environmental health officer may serve a compliance order on any person—
 - (a) requiring that person to stop, or prohibiting that person from starting, anything done or to be done by, or on behalf of, that person that the medical officer of health or health protection officer or environmental health officer believes, on reasonable grounds,—
 - (i) contravenes, or is likely to contravene, any specified provision; or
 - (ii) will or may create a significant risk to public health; or
 - (b) requiring that person to do something that the medical officer of health or health protection officer or environmental health officer believes, on reasonable grounds, is necessary to—
 - (i) ensure compliance by, or on behalf of, that person with a specified provision; or
 - (ii) prevent, remedy, or mitigate any significant risk to public health.
- (2) A compliance order may be made subject to conditions.
- (3) A compliance order may specify the time within which compliance must be achieved.
- (4) In this section, **specified provision** means,—
 - (a) in relation to a medical officer of health or health protection officer,—
 - (i) any provision of this Act (except **Part 6**);
 - (ii) any provision of any regulations made under this Act;
 - (iii) a regulated activity consent issued under **Part 6**;
 - (iv) a risk management plan approved under **Part 6**;
 - (b) in relation to an environmental health officer,—
 - (i) any provision of **Part 5**;
 - (ii) any provision in regulations relating to that Part.

330 Compliance with compliance order

- (1) A person on whom a compliance order is served must—
 - (a) comply with the order within the period specified in it; and
 - (b) unless the order directs otherwise, pay all the costs and expenses of complying with it.
- (2) This section is subject to the rights of appeal in **section 332**.

331 Form and content of compliance order

Every compliance order must state—

- (a) the name of the person to whom it is addressed; and
- (b) the reasons for the order; and
- (c) the action required to be taken, stopped, or not taken; and
- (d) the period within which the action must be taken or stopped, being a reasonable period within which to take the action required or to stop the action; and
- (e) the consequences of not complying with the order or lodging a notice of appeal; and
- (f) the rights of appeal under **section 332**; and
- (g) the name and office address of the medical officer of health or health protection officer or environmental health officer who issued the order.

332 Appeals

- (1) Any person on whom a compliance order is served may appeal to the District Court in accordance with **subsection (2)** against the whole or any part of that order.
- (2) A notice of an appeal must—
 - (a) state the reasons for the appeal and the relief sought; and
 - (b) be lodged with the District Court and served on the officer who issued the order.
- (3) An appeal against a compliance order does not operate as a stay of that order unless a stay is granted by the District Court under **section 333**.
- (4) On an appeal under this section, the District Court may—
 - (a) confirm the compliance order; or
 - (b) vary the compliance order; or
 - (c) set the compliance order aside.

333 Stay of compliance order pending approval

- (1) Any person who appeals under **section 332** may also apply to a District Court Judge for a stay of the compliance order pending a decision on the appeal.
- (2) An application for a stay must—
 - (a) state the reasons why the appellant considers it impossible or unreasonable to comply with the compliance order; and
 - (b) be lodged with the District Court and served immediately on the medical officer of health or health protection officer or environmental health officer who issued the order.
- (3) If an appellant applies for a stay, a District Court Judge must consider the application for a stay as soon as is reasonably practicable after the application has been lodged.
- (4) Before granting a stay, the District Court Judge must consider—
 - (a) the likely effect of not granting a stay on the appellant and whether it is impossible or unreasonable for the appellant to comply with the compliance order pending the decision of the appeal; and
 - (b) any evidence from—
 - (i) the appellant; and
 - (ii) the medical officer of health or health protection officer or environmental health officer who issued the compliance order; and
 - (c) the likely effect of granting a stay on the risk to public health in respect of which the compliance order was issued; and
 - (d) any other matters that the Judge considers appropriate.
- (5) The District Court Judge may grant or refuse a stay and, if the Judge grants a stay, may impose any terms and conditions on that stay that the Judge considers appropriate.
- (6) Any appellant to whom a stay is granted must serve a copy of it on the medical officer of health or health protection officer or environmental health officer who issued the order.
- (7) A stay does not have effect until it is served in accordance with **subsection (6)**.

334 Variation and cancellation of compliance order

- (1) If a medical officer of health or health protection officer or environmental health officer considers that a compliance order is no longer required, he or she may cancel the compliance order.
- (2) The medical officer of health or health protection officer or environmental health officer must give written notice of his or her decision to cancel a compliance order to the person who is subject to that compliance order.
- (3) Any person who is directly affected by a compliance order may apply in writing to the medical officer of health or health protection officer or environmental health officer to change or cancel the compliance order.
- (4) The medical officer of health or health protection officer or environmental health officer—
 - (a) must, as soon as practicable, consider the application, having regard to—
 - (i) the purpose for which the compliance order was issued; and
 - (ii) the effect of a change or cancellation on that purpose; and
 - (iii) any other matter that the medical officer of health or health protection officer or environmental health officer considers appropriate; and
 - (b) may confirm, change, or cancel the compliance order.
- (5) The medical officer of health or health protection officer or environmental health officer must give written notice of his or her decision to the person who applied under **subsection (3)** for a change or cancellation of the compliance order.

335 Appeals against decision on change or cancellation of compliance order

- (1) If the medical officer of health or health protection officer or environmental health officer, after considering an application made under **section 334(3)** by a person who is directly affected by a compliance order, confirms that compliance order or changes it in a way other than that sought by that person, that person may appeal to the District Court in accordance with **section 332** against the whole or any part of the compliance order.
- (2) No person who lodges an appeal under **subsection (1)** may apply for, or be granted, a stay of the compliance order pending a decision on that appeal.

336 Failure to comply with compliance order is offence

Every person commits an offence who fails, without reasonable excuse, to comply with a compliance order, and is liable on summary conviction to a fine not exceeding \$1,000.

Incorporation by reference

337 Incorporation of material by reference into regulations and compliance documents

- (1) The following material may be incorporated by reference into this Act or into any regulations, standards, or other compliance documents (**instruments**) made or issued under the provisions of this Act:
 - (a) standards, requirements, or recommended practices of national or international organisations;
 - (b) any other written material that, in the opinion of the Minister or, as appropriate, the Director-General, is too large or is impractical to include in, or print as part of, the instruments concerned.
- (2) Material may be incorporated by reference in an instrument—
 - (a) in whole or in part; and
 - (b) with modifications, additions, or variations specified in the instrument.
- (3) The incorporated material—
 - (a) is the material as it exists at the time that the instrument is made or issued; and
 - (b) forms part of the instrument for all purposes and has legal effect accordingly.

338 Effect of amendments to, or replacement of, material incorporated by reference

An amendment to, or replacement of, material incorporated by reference in this Act or in an instrument has legal effect as part of the Act or instrument only if—

- (a) the amendment or replacement material is made by the person or organisation originating the incorporated material; and
- (b) the amendment or replacement material is of the same general character as the material amended or replaced; and
- (c) either,—
 - (i) in the case of material incorporated in the principal Act or in regulations, regulations are made that state that the particular amendment or replacement has that effect; or
 - (ii) in the case of material incorporated in a compliance document, the Director-General, by notice in the *Gazette*, adopts the amendment or replacement.

339 Proof of material incorporated by reference

- (1) A copy of material incorporated by reference in this Act or in an instrument, including any amendment to, or replacement of, the material (**material**), must be—
 - (a) certified as a correct copy of the material by the Minister or, as appropriate, the Director-General; and
 - (b) retained by the Minister or, as appropriate, the Director-General.
- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation in the instrument of the material.

340 Effect of expiry of material incorporated by reference

Material incorporated by reference in this Act or an instrument that expires or that is revoked or that ceases to have effect ceases to have legal effect as part of the Act or the instrument only if the Minister or, as appropriate, the Director-General, by notice in the *Gazette*, states that the material ceases to have legal effect.

341 Requirement to consult

- (1) This section applies if—
 - (a) the Minister proposes to make a recommendation for—

- (i) regulations to be made under this Act that incorporate material by reference; or
- (ii) regulations to be made under **section 338(c)(i)** that state that an amendment to, or replacement of, material incorporated by reference in regulations has legal effect as part of the regulations; or
- (b) the Director-General proposes to—
 - (i) issue a code of practice or guidelines under **Part 3** that incorporates material by reference; or
 - (ii) publish, under **section 338(c)(ii)**, a notice in the *Gazette* that adopts an amendment to, or replacement of, material incorporated by reference in a standard or other compliance document.
- (2) Before doing any of the things referred to in **subsection (1)**, the Minister or, as the case may be, the Director-General must—
 - (a) make copies of the material proposed to be incorporated by reference or the proposed amendment to, or replacement of, material incorporated by reference (**proposed material**) available for inspection during working hours for a reasonable period, free of charge, at the Ministry's office in Wellington; and
 - (b) make copies of the proposed material available for purchase at a reasonable price at the Ministry's office in Wellington; and
 - (c) give notice in the *Gazette* stating that—
 - (i) the proposed material is available for inspection during working hours, free of charge, the place at which it can be inspected, and the period during which it can be inspected; and
 - (ii) copies of the proposed material can be purchased and the place at which they can be purchased; and
 - (d) allow a reasonable opportunity for persons to comment on the proposal to incorporate the proposed material by reference; and
 - (e) consider any comments they make.
- (3) Before doing any of the things referred to in **subsection (1)**, the Minister or, as the case may be, the Director-General—
 - (a) may make copies of the proposed material available in any other way that he or she considers appropriate in the circumstances (for example, on an Internet website); and
 - (b) must, if **paragraph (a)** applies, give notice in the *Gazette* stating that the proposed material is available in other ways and the details of where or how it can be accessed or obtained.
- (4) The reference in **subsections (2) and (3)** to the proposed material includes, if the material is not in an official New Zealand language, an accurate translation in an official New Zealand language of the material.
- (5) A failure to comply with this section does not invalidate an instrument that incorporates material by reference.

342 Access to material incorporated by reference

- (1) The Director-General—
 - (a) must make the material referred to in **subsection (2) (material)** available for inspection during working hours free of charge at the Ministry's office in Wellington; and
 - (b) must make copies of the material available for purchase at a reasonable price at all of the Ministry's offices; and
 - (c) may make copies of the material available in any other way that the Director-General considers appropriate in the circumstances (for example, on an Internet website); and
 - (d) must give notice in the *Gazette* stating that—
 - (i) the material is incorporated in an instrument and the date on which the instrument was made; and
 - (ii) the material is available for inspection during working hours, free of charge, at the Ministry's office in Wellington and the location of that office; and
 - (iii) copies of the material can be purchased at all of the Ministry's offices and the location of those offices; and
 - (iv) if copies of the material are made available under **paragraph (c)**, the material is available in other ways and the details of where or how it can be accessed or obtained.
- (2) The material is—
 - (a) material incorporated by reference in this Act or in an instrument;
 - (b) any amendment to, or replacement of, that material that is incorporated in the instrument or the material referred to in **paragraph (a)** with the amendments or replacement material

incorporated:

- (c) if the material referred to in **paragraph (a) or (b)** is not in an official New Zealand language, as well as the material itself, an accurate translation in an official New Zealand language of the material.
- (3) A failure to comply with this section does not invalidate an instrument that incorporates material by reference.

343 Acts and Regulations Publication Act 1989 not applicable to material incorporated by reference

The Acts and Regulations Publication Act 1989 does not apply to material incorporated by reference in this Act or in an instrument or to an amendment to, or replacement of, that material.

344 Application of Regulations (Disallowance) Act 1989 to material incorporated by reference

Nothing in section 4 of the Regulations (Disallowance) Act 1989 requires material that is incorporated by reference in this Act or in an instrument made or issued under this Act to be laid before the House of Representatives.

General provisions about search warrants

345 Application of sections 346 to 351

The provisions of **sections 346 to 351** apply in respect of every warrant applied for, or issued, under this Act that would enable entry and search of any land, premises, vehicle, or other thing (a **search warrant**).

346 Application for search warrant

- (1) An application for a search warrant must contain, in reasonable detail, the following particulars:
 - (a) the name of the applicant;
 - (b) the provision authorising the making of the application;
 - (c) the grounds on which the application is made;
 - (d) the address or other description of the place or thing proposed to be searched;
 - (e) a description of the item or items believed to be in or on the place or thing that are sought by the applicant;
 - (f) the period for which the warrant is sought;
 - (g) if the applicant wants to be able to execute the warrant on more than 1 occasion, the grounds on which execution on more than 1 occasion is believed to be necessary.
- (2) The issuing officer may require the applicant to supply further information concerning the grounds on which the search warrant is sought.
- (3) The applicant must disclose in the application—
 - (a) details of any other applications for a search warrant that the applicant knows to have been made within the previous 3 months in respect of the place or thing proposed to be searched;
 - (b) the result of that application or those applications.
- (4) The applicant must, before making an application for a search warrant, make reasonable inquiries within the agency in which the applicant is employed or engaged for the purpose of complying with **subsection (3)**.
- (5) The issuing officer may authorise the search warrant to be executed on more than 1 occasion during the period in which the warrant is in force if he or she is satisfied that this is required for the purposes for which the warrant is being issued.

347 Mode of application for search warrant

- (1) An application for a search warrant—
 - (a) must be in writing, unless **subsection (3)** applies; and
 - (b) may be transmitted to the issuing officer electronically.
- (2) The applicant must appear in person before the issuing officer unless **subsection (3)** applies.
- (3) An issuing officer may allow an application for a search warrant to be made verbally (for example, by telephone call) and excuse the applicant from making a personal appearance if the issuing officer is satisfied that—
 - (a) the delay that would be caused by requiring an applicant to appear in person would compromise the effectiveness of the search; and
 - (b) the question of whether the warrant should be issued can properly be determined on the basis of a verbal communication (together with the material described in **paragraph (c)**); and

- (c) the information required by **section 346(1) to (3)** has been supplied to the issuing officer.
- (4) An issuing officer who allows an application for a search warrant to be made verbally must record the grounds for the application as soon as practicable.

348 Form and content of search warrant

- (1) Every search warrant issued must be in the prescribed form.
- (2) Every search warrant issued must be directed,—
 - (a) in the case of a warrant issued under **section 255**, to an assessor by name or to every assessor; or
 - (b) in the case of a warrant issued under **section 327**, to an authorised person by name or to every authorised person holding a specified office or authorisation or to every authorised person.
- (3) A search warrant—
 - (a) may be executed by all or any of the persons to whom it is directed;
 - (b) may be subject to any conditions specified in the warrant that the issuing officer considers reasonable;
 - (c) may be executed only once, unless execution on more than one occasion has been authorised.
- (4) Every search warrant must contain, in reasonable detail, the following particulars:
 - (a) the name of the issuing officer and the date of issue;
 - (b) the provisions authorising the issue of the warrant;
 - (c) that the person executing the warrant may use any assistance that is reasonable in the circumstances;
 - (d) that the person executing the warrant may use any force that is reasonable in the circumstances to enter or break open or access any area within the place or thing being searched, or the thing found;
 - (e) the address or description of the place or thing that may be searched;
 - (f) a description of what may be seized;
 - (g) the period during which the warrant may be executed, being—
 - (i) a period specified by the issuing officer not exceeding 14 days from the date of issue; or
 - (ii) if the issuing officer is satisfied that a period of longer than 14 days is necessary for execution, a period specified by the issuing officer not exceeding 30 days from the date of issue;
 - (h) any conditions specified by the issuing officer under **subsection (3)(b)**;
 - (i) if the warrant may be executed on more than 1 occasion, the number of times that the warrant may be executed.

349 Transmission of search warrant

If it is not possible for the person charged with executing the warrant to have it in his or her possession at the time of execution, 1 of the following documents (which is deemed for all legal purposes to constitute the warrant) may be executed:

- (a) a facsimile or other electronic copy of a warrant issued by the issuing officer;
- (b) a copy made by the person to whom the warrant is directed, at the direction of the issuing officer and endorsed to that effect.

350 Retention of documents

- (1) A copy of every written application for a search warrant, or (in the case of a verbal application) the written record of the application made by the issuing officer, must be retained at the District Court at which, or the District Court that is closest to the place at which, the application was made, until,—
 - (a) in a case where a search warrant is issued, the completion of any proceedings in respect of which the validity of the warrant may be in issue; and
 - (b) in any other case, the expiry of 2 years after the documents were first retained by the District Court.
- (2) An applicant to whom a search warrant is issued must retain the warrant, a copy of the application (if made in written form) and all documents tendered by the applicant in support of the application until—
 - (a) in the case of a warrant that is executed, the completion of any proceedings in respect of which the validity of the warrant may be in issue; and
 - (b) in any other case, the destruction or transfer of the warrant and other documents is required

by the Public Records Act 2005 or any other enactment or rule of law.

351 When search warrant is executed

A search warrant is executed when the person executing the warrant—

- (a) has seized all the items specified in the warrant; or
- (b) leaves the place or thing being searched and does not return within 4 hours.

General provisions about entry and search powers

352 Application

- (1) The provisions of **sections 353 to 358** apply in respect of—
 - (a) every search warrant issued under this Act; and
 - (b) every power of entry and inspection (without warrant) or entry and search (without warrant) conferred under this Act or regulations made under this Act.
- (2) For the purposes of **sections 353 to 358**—
 - (a) every power of entry and inspection under this Act is a power to enter and search, and a power of inspection confers a power to search:
 - (b) **entry and search power** means every power of entry and inspection or entry and search or search warrant referred to in **subsection (1)**:
 - (c) a power to enter and search at any time that is reasonable in the circumstances includes (without limitation) a power to enter and search at any time in circumstances where—
 - (i) emergency powers may be exercised by a medical officer of health under **section 264(2)**; and
 - (ii) the entry and search relates to those circumstances.

353 Entry and search powers

- (1) Every entry and search power authorises the person exercising it—
 - (a) to enter and search the place or thing that the person is authorised to enter and search, and any item or items found in that place, at any time that is reasonable in the circumstances:
 - (b) to request any person to assist with the entry and search (including, without limitation, a member of a hapu or iwi if the place to be entered is of cultural or spiritual significance to that hapu or iwi):
 - (c) to use any force that is reasonable for the purposes of the entry and search:
 - (d) to seize any thing authorised to be seized:
 - (e) to bring and use in or on the place or thing searched any equipment, to use any equipment found on the place or thing, and to extract any electricity from the place or thing to operate the equipment that it is reasonable to use in the circumstances, for the purposes of carrying out the entry and search:
 - (f) to copy any document, or part of a document, that may lawfully be seized:
 - (g) to take photographs or sound or video recordings of the place or thing searched, and of any thing found in that place, if the person exercising the power has reasonable grounds to believe that the photographs or sound or video recordings may be relevant in any proceedings related to the entry and search.
- (2) The person exercising the entry and search power may seize any item or items that he or she, or any person assisting him or her, finds in the course of carrying out the search, if the person exercising the entry and search power has reasonable grounds to believe that he or she could have seized the item or items under—
 - (a) any search warrant that could have been obtained by him or her under this Act; or
 - (b) any other entry and search power exercisable by him or her under this Act.
- (3) The person responsible for carrying out the search may, in a manner and for the duration that is reasonable for the purposes of carrying out the search,—
 - (a) secure the place or thing inspected or searched, any area within that place or thing, or any thing found within that place or thing:
 - (b) exclude any person from the place or thing inspected or searched, or from any area within the place or thing, or give any other reasonable direction to such a person, if the person carrying out the search has reasonable grounds to believe that the person will obstruct or hinder the exercise of the power.
- (4) If the entry and search power is a search warrant,—
 - (a) the powers conferred by this section are subject to any conditions imposed under **section 348(3)(b)**; and
 - (b) section 198B of the Summary Proceedings Act 1957 applies as if for each reference to a

constable there were substituted a reference to the person authorised to exercise the search warrant.

354 Powers of persons called to assist

- (1) Every person called on to assist a person exercising a power of entry and search is subject to the control of the person with overall responsibility for exercising that power.
- (2) Every person called on to assist a person exercising a power of entry and search may—
 - (a) enter the place or thing to be searched;
 - (b) while in the company and under the direction of the person exercising the power, use reasonable force in respect of any property for the purposes of carrying out the entry and search;
 - (c) search areas within the place or thing that the person exercising the power has determined may lawfully be searched;
 - (d) seize any thing that the person exercising the power has determined may lawfully be seized;
 - (e) take photographs and sound and video recordings of the place or thing and things found in the place or thing if the person exercising the power has determined that those things may be lawfully taken;
 - (f) bring in or on to the place or thing and use any equipment, make use of any equipment found on the place or thing, or extract electricity from the place or thing for the purposes of operating the equipment that the person exercising the power has determined may be lawfully used;
 - (g) copy any document, or part of a document, that the person exercising the power has determined may be lawfully copied.
- (3) If a member of the police is assisting another person exercising the entry and search power, that member of the police may exercise any power ordinarily exercisable by him or her.
- (4) The person exercising the entry and search power must—
 - (a) accompany any assistant on the first occasion when the assistant enters the place or thing to be searched; and
 - (b) provide such other supervision of any assistant as is reasonable in the circumstances.

355 Powers and duties of person exercising entry and search power

- (1) The person exercising the entry and search power must,—
 - (a) before initial entry into or onto the place or thing to be searched,—
 - (i) announce his or her intention to enter and search the place or thing under a statutory power;
 - (ii) identify himself or herself; and
 - (b) before or on initial entry into or onto the place or thing to be searched,—
 - (i) give the occupier (if present) of the place or thing a copy of the search warrant or provision (the **authority**) that authorises him or her to conduct the entry and search; and
 - (ii) produce to the occupier (if present) of the place or thing evidence of his or her identity (which may include details of a unique identifier instead of a name).
- (2) The person exercising the power of entry and search is not required to comply with **subsection (1)(a)** if he or she believes on reasonable grounds that—
 - (a) no person is lawfully present in or on the place or thing to be searched; or
 - (b) compliance with **subsection (1)(a)** would—
 - (i) endanger the safety of any person; or
 - (ii) prejudice the successful exercise of the entry and search power; or
 - (iii) prejudice ongoing investigations under this Act.
- (3) The person exercising the power of entry and search may use reasonable force in order to effect entry into or onto the place or thing if—
 - (a) **subsection (2)** applies; or
 - (b) following a request, the person present refuses entry or does not allow entry within a reasonable time.
- (4) If the occupier is not present at any time during the search, the person carrying out the search must,—
 - (a) on completion of the search, leave a copy of the authority referred to in **subsection (1)(b)(i)** and the notice referred to in **subsection (5)** in a prominent position at the place or on the thing; or
 - (b) if this is not reasonably practicable, provide the copy of the authority referred to in **subsection (1)(b)(i)** and the notice referred to in **subsection (5)** to the occupier no later than

7 days after the execution of the warrant.

- (5) The notice required by **subsection (4)** is a written notice containing the following particulars:
 - (a) the date and time of the commencement and completion of the search;
 - (b) the name or unique identifier of the person who had overall responsibility for that search;
 - (c) the address of the office to which enquiries should be made;
 - (d) if nothing is seized, the fact that nothing was seized;
 - (e) if anything was seized, the fact that seizure occurred and (if an inventory is not provided at the same time under **section 356**) that an inventory of the things seized will be provided to the occupier or person in charge of the place or thing no later than 7 days after the seizure.
- (6) For the purposes of this section and **section 356**, the following persons may not be treated as the occupier:
 - (a) any person who appears to be under 14 years of age;
 - (b) any person whom the person executing the warrant has reasonable grounds to believe is not the occupier.
- (7) **Subsections (4) and (5)** are subject to **sections 357 and 358**.

356 Inventory of items seized

- (1) The person who carries out a search must, at the time he or she seizes any thing, or as soon as practicable after the seizure of any thing, and in any case not later than 7 days after that seizure, provide to the occupier, and to every other person whom the person who carried out the search has reason to believe is the owner of the thing that was seized,—
 - (a) written notice specifying what was seized; and
 - (b) a copy of the authority referred to in **section 355(1)(b)(i)**.
- (2) A written notice referred to in **subsection (1)(a)**—
 - (a) must contain information about the extent to which a person from whom a thing was seized or the owner of the thing has a right—
 - (i) to have access to the thing; or
 - (ii) to have access to any document relating to the application for a search warrant or the exercise of any other entry and search power that led to the seizure; and
 - (b) must contain information about the right to bring a claim that any privileged or confidential information has been seized; but
 - (c) need not be provided to the occupier if the person who carries out the search is satisfied that none of the items seized are owned by the occupier.
- (3) If the occupier is not present at the time of seizure, a written notice referred to in **subsection (1)(a)** and a copy of the authority referred to in **section 355(1)(b)(i)** may be provided to the occupier by leaving the notice in a prominent position at the place or on the thing.
- (4) A person who carries out a search must make reasonable inquiries for the purposes of complying with **subsections (1) and (2)**.
- (5) **Subsection (1)** is subject to **subsections (2) and (3)**.
- (6) This section is subject to **sections 357 and 358**.

357 Compliance with certain provisions may be deferred in certain circumstances

- (1) A person exercising an entry and search power may apply to a District Court Judge for a postponement of the obligation to comply with **section 355(4) or (5) or 356** on the grounds that compliance would—
 - (a) endanger the safety of any person; or
 - (b) prejudice ongoing investigations under this Act or exercises of the entry and search power on subsequent occasions.
- (2) An application may be made under **subsection (1)**,—
 - (a) in the case of an entry and search power that is a search warrant, at the time of the initial application or until the expiry of 7 days after the warrant is finally executed; and
 - (b) in the case of any other entry and search power, until the expiry of 7 days after the entry and search power is exercised.
- (3) On an application under **subsection (1)**, the District Court Judge may postpone for a specified period not exceeding 12 months the obligation to comply with **section 355(4) or (5) or 356**, if the Judge is satisfied there are reasonable grounds for believing that compliance would—
 - (a) endanger the safety of any person; or
 - (b) prejudice ongoing investigations under this Act or the exercise of the entry and search power on subsequent occasions.

358 Further extension to, or dispensation from, obligation to comply with certain provisions

- (1) A person who has obtained an order under **section 357(3)** may, before the expiry of that order, apply to a District Court Judge for a further postponement of, or dispensation from, the obligation to comply with **section 355(4) or (5) or 356** on the grounds that compliance would—
 - (a) endanger the safety of any person; or
 - (b) prejudice ongoing investigations under this Act or the exercise of the entry and search power on subsequent occasions.
- (2) An application for a further postponement may only be made on one occasion.
- (3) On an application under **subsection (1)**, the District Court Judge may postpone for a further specified period not exceeding 12 months, or order a permanent dispensation from, the obligation to comply with **section 355(4) or (5) or 356** if the Judge is satisfied that compliance would—
 - (a) endanger the safety of any person; or
 - (b) prejudice ongoing investigations under this Act or the exercise of the entry and search power on subsequent occasions.
- (4) A District Court Judge may not grant, under **subsection (3)**, any postponement of, or dispensation from, an obligation in respect of any thing that has been seized, unless the thing seized is a copy or clone of any information taken or made.

General

359 Evidence of authority of medical officer of health or health protection officer

The fact that any medical officer of health or any health protection officer exercises his or her functions in any health district is sufficient evidence of his or her authority to do so.

Compare: 1920 No 45, s 18

360 Building Act 2004

- (1) Where any person making an inspection of a building or land under this Act believes that any building or sitework does not comply with the Building Act 2004, that person must by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply.
- (2) For the purposes of this section, the terms **building**, **sitework**, and **territorial authority** have the meanings given to them by the Building Act 2004.

361 Protection of persons acting under authority of Act

- (1) A person who, in the exercise or intended exercise of any of the provisions of this Act or any regulations made under this Act, does any act, or fails or refuses to do any act, is not under any civil or criminal liability in respect of that act, whether on—
 - (a) the ground of want of jurisdiction; or
 - (b) mistake of law or fact; or
 - (c) any other ground.
- (2) **Subsection (1)** does not apply if the person has acted, or failed or refused to act, in bad faith or without reasonable care.

362 Obstruction of officers

- (1) Every person commits an offence who—
 - (a) wilfully obstructs, hinders, or resists any person in the execution of any powers conferred on him or her by or under this Act or any regulations made under this Act; or
 - (b) threatens or assaults any person exercising powers conferred on him or her by or under this Act or any regulations made under this Act.
- (2) Every person who commits an offence against **subsection (1)(a)** is liable on summary conviction to a term of imprisonment not exceeding 3 months or to a fine not exceeding \$10,000, or to both.
- (3) Every person who commits an offence against **subsection (1)(b)** is liable on summary conviction to a fine not exceeding \$10,000.

363 Compensation for property requisitioned or destroyed or damaged

- (1) Reasonable compensation is payable for any loss or destruction of or damage to property if a person exercising powers conferred by this Act or regulations made under this Act—
 - (a) requisitions any property from any person; or
 - (b) destroys or damages any property (including an animal).
- (2) Reasonable compensation under **subsection (1)** is payable, on written application by any person having an interest in the property, by the Director-General or out of money appropriated by Parliament for the purpose.

- (3) Compensation is not payable under this section to any person who caused or contributed substantially to the emergency or other circumstances that brought about the requisition or destruction or damage.
- (4) The Director-General may—
 - (a) require a person who has caused or contributed substantially to an emergency or other circumstances to reimburse the Crown for all or part of any compensation paid on behalf of the Crown under this section in relation to that emergency or those other circumstances;
 - (b) require 1 or more territorial authorities whose district or districts were affected by that emergency or those other circumstances to reimburse the Crown for any shortfall between the amount of compensation paid under this section and the amount of reimbursement received under **paragraph (a)**.
- (5) If there is any dispute as to the entitlement of any person to compensation under this section, or as to the amount of that compensation, or as to the liability of the Crown to pay compensation, or as to the liability of any person to reimburse the Crown under **subsection (4)**, the matter must be determined by a court of competent jurisdiction.

364 Director-General may order post-mortem examination

The Director-General may order a post-mortem examination of the body of a deceased person to be made by a medical practitioner if—

- (a) the death of any person is suspected to have been due to a communicable condition and the facts relating to the death cannot with certainty be ascertained without a post-mortem examination; or
- (b) it is desirable for preventing the occurrence or spread of a communicable condition that the facts relating to the death of any person should be ascertained.

Compare: 1956 No 65 s 78

365 Attendance of medical officer of health at meetings of local authorities

- (1) At the request or with the consent of any local authority, the medical officer of health may—
 - (a) attend any meeting of the local authority, or of any committee of the local authority; and
 - (b) take part in the discussion of any matter relating to public health or to the powers and duties of the local authority under this Act.
- (2) The medical officer of health—
 - (a) does not have the right to vote on any question at any meeting referred to in **subsection (1)**; and
 - (b) must retire from the meeting whenever he or she is requested to do so by the chairperson of the meeting.

Compare: 1956 No 65 s 127

366 Expenses of local authorities

All expenses incurred by or on behalf of any local authority in carrying out any of the provisions of this Act or any regulation made under this Act may be paid by the local authority out of its general funds.

Compare: 1956 No 65 s 130

Service of documents

367 Service of documents

- (1) If a notice or other document served under this Act or any regulations made under this Act is to be served on a person, it may be served—
 - (a) by delivering it personally to the person (other than a Minister of the Crown); or
 - (b) by delivering it at the usual or last known place of residence or business of the person by any means, including by facsimile; or
 - (c) by sending it by pre-paid post addressed to the person at the usual or last known place of residence or business of that person.
- (2) If a notice or other document is to be served on a body (whether incorporated or not) for the purposes of this Act or any regulations made under this Act, service on an officer of the body, or on the registered office of the body, in accordance with **subsection (1)** must be treated as service on the body.
- (3) If a notice or other document is to be served on a committee for the purposes of this Act or any regulations made under this Act, service on the chairperson of the committee or the administering authority of the committee must be treated as service on the committee.

- (4) If a notice or other document is to be served on a partnership for the purposes of this Act, service on any 1 of the partners in accordance with **subsection (1)** must be treated as service on the partnership.
 - (5) If a notice or other document is sent by post to a person in accordance with **subsection (1)(c)**, it must be treated, in the absence of proof to the contrary, as having been received by the person at the time at which the letter would have been delivered in the ordinary course of the post.
- Compare: 2002 No 33 s 114

Offences generally

368 General penalty for offences

Every person who commits an offence against this Act, or against any regulations made under this Act, for which no penalty is provided elsewhere than in this section is liable to a fine not exceeding \$2,000.

Compare: 1956 No 65 s 136

369 Strict liability

In any prosecution for an offence under **sections 30, 42, 169(3), 175(3), 195(2), 197(3), 198(2), 209(3), and 274**, it is not necessary to prove that the defendant intended to commit the offence.

370 Defences

It is a defence to a prosecution under **sections 30, 42, 169(3), 175(3), 195(2), 197(3), 198(2), 209(3), and 274** if the defendant proves—

- (a) that the defendant did not intend to commit the offence; and
- (b) that the defendant took all reasonable steps to prevent the commission of the offence including (without limitation) steps required to mitigate or prevent any risk to public health arising from the matter constituting the offence.

371 Additional penalty for certain offences for commercial gain

- (1) If a person is convicted of an offence against **section 169(3), 195(2), or 196(3)**, the Court may, if it is satisfied that the offence was committed in the course of producing a commercial gain, and in addition to any penalty that the Court may impose under this Act, order that person to pay an amount not exceeding—
 - (a) 3 times the value of any commercial gain resulting from the commission of the offence; or
 - (b) if the person is a body corporate, and the value of any gain cannot be readily ascertained, 10% of the turnover of the body corporate and all of its interconnected bodies corporate (if any).
- (2) For the purposes of **subsection (1)**, the value of any gain (if readily ascertainable) must be assessed by the Court, and any amount ordered to be paid under **subsection (1)(a) or (b)** is recoverable in the same manner as a fine.
- (3) In this section, **interconnected bodies corporate** and **turnover** have the same meaning as in the Commerce Act 1986.

372 Liability of principal for acts of agents

- (1) If an offence is committed against this Act by any person (**person A**) acting as the agent (including any contractor) or employee of another person (**person B**), person B is, without prejudice to the liability of person A, liable under this Act in the same manner and to the same extent as if he, she, or it had personally committed the offence.
- (2) Despite **subsection (1)**, if any proceedings are brought under that subsection, it is a good defence if the defendant proves,—
 - (a) in the case of a natural person (including a partner in a firm), that—
 - (i) he or she did not know, and could not reasonably be expected to have known, that the offence was to be or was being committed; or
 - (ii) he or she took all reasonable steps to prevent the commission of the offence; or
 - (b) in the case of a body corporate, that—
 - (i) neither the directors of the body corporate knew, or could reasonably be expected to have known, that the offence was to be or was being committed or
 - (ii) the body corporate took all practicable steps to prevent the commission of the offence; and
 - (c) in all cases, that the defendant took all practicable steps to remedy any effects of the act or omission giving rise to the offence.

- (3) If any body corporate is convicted of an offence against this Act, every director and every person concerned in the management of the body corporate is also guilty of that offence if it is proved—
- (a) that the act that constituted the offence took place with his or her authority, permission, or consent; and
 - (b) that he or she knew, or could reasonably be expected to have known, that the offence was to be or was being committed and failed to take all practicable steps to prevent or stop it.

373 Offences punishable on summary conviction

Every offence against this Act or against any regulations made under this Act is punishable on summary conviction.

Compare: 1956 No 65 s 137

Regulations about public health generally

374 Regulations about public health generally

The Governor-General may, by Order in Council, make regulations at any time for all or any of the following purposes:

- (a) the inspection, cleaning, purifying, disinfection, fumigation, and isolation of ships, aircraft, dwellinghouses, buildings, yards, conveyances, drains, sewers, and things:
- (b) the destruction of insanitary things:
- (c) the vaccination of persons for the prevention of quarantinable conditions and other conditions, and the adoption of any other measures for the prevention and mitigation of significant risks to public health:
- (d) the provision of medical aid, transport, accommodation, and treatment for the sick:
- (e) the transportation and disposal of the dead:
- (f) the isolation, disinfection, and treatment of persons suffering from any communicable condition:
- (g) the isolation or medical observation and surveillance of persons suspected to be suffering from any communicable condition, of persons in charge of or in attendance on person suffering from any communicable condition, and of other persons who may have been exposed to the infection of any communicable condition:
- (h) the prevention of the spread of any communicable condition by any persons, and the keeping of those persons under medical surveillance, and the restriction of the movements and the preventative treatment of those persons:
- (i) with respect to any communicable condition, prescribing the period which is deemed to be the period of incubation or communicability of that condition for the purposes of this Act:
- (j) the clinical, chemical, bacteriological, and other examinations and investigations necessary to determine whether any person is suffering from any disease or is a carrier of any communicable condition, and whether any person who has been suffering from any communicable condition has ceased to be likely to convey it:
- (k) the closing of schools or the regulation or restriction of school attendance to prevent or restrict the spread of any communicable condition with significant public health impact:
- (l) prescribing the duties of parents or guardians of children who are suffering from, or have recently suffered from or been exposed to, any communicable condition, and the duties of persons in charge of schools in respect of any such children:
- (m) prescribing the accommodation to be provided in connection with boarding schools, residences for children, or other similar institutions in which persons who may be suffering from any communicable condition are living:
- (n) the regulation or restriction of the attendance of the public, or of any section of the public, at any place of public recreation or amusement or concourse, or the closing of any such places for admission to the public:
- (o) the regulation, restriction, or prohibition of the convening, holding, or attending of any public gatherings:
- (p) the regulation or restriction of traffic and the movements of persons within or from any area in which a communicable condition is prevalent:
- (q) imposing obligations in relation to notifiable conditions and notifiable contaminants including (without limitation) matters relating to the method of notification:
- (r) the prohibition or regulation of the importation manufacture, packing, or sale of any thing likely to introduce or increase a risk to public health:
- (s) the destruction of vectors and reservoirs, whether on land or on board any ship or any aircraft, the abolition or prevention of conditions favourable to vectors and reservoirs and

- (t) contamination, and the prevention of the migration of vectors from ships and aircraft: securing and maintaining the cleanliness and efficient sanitation of ships and aircraft, and preventing danger to health from overcrowding on any ship within any harbour in New Zealand, and preventing the pollution of the waters of any harbour with matter from any ship:
- (u) the protection of food from becoming infected by any communicable condition on any premises used for the manufacture, preparation, packing, storage, or handling of any article of food for sale, and the prohibition or restriction of the handling, by persons suffering from any communicable condition, of any article of food intended for sale:
- (v) prescribing the qualifications and competencies required for appointment as a health protection officer or an environmental health officer (which may differ for different classes of each kind of officer):
- (w) prescribing or providing for the fixing of reasonable fees to be paid in respect of any specified matter under this Act or regulations made under this Act, and the persons or authorities entitled to claim and receive those fees:
- (x) reducing, or assisting in reducing, risk factors (within the meaning of **section 79**) associated with, or related to, non-communicable diseases:
- (y) regulating the minimum or maximum period for which information collected from a person under **Part 7** (other than under a provision in respect of which any of **sections 346 to 358** apply) may be retained and the retention or disposal of that information:
- (z) prescribing offences in respect of the contravention of or non-compliance with any regulation made under this Act or any requirement or direction made or given under any such regulation, and the amounts of fines that may be imposed in respect of any such offences not exceeding \$5,000:
- (za) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Compare: 1956 No 65 s 117(1)

375 Regulations about needles and syringes and related products

Without limiting anything in **section 374**, the Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) regulating the importation, sale, exchange, supply, use, and disposal of needles and syringes and any related product, whether new or used:
- (b) empowering or requiring the Director-General to approve kinds of needles and syringes and any related product, and the packaging and labelling of needles and syringes and any related product, for importation into, or sale, exchange, or supply in, New Zealand, and prohibiting the importation, sale, exchange, or supply of needles and syringes and any related product of any other kind or packaged or labelled in any other manner:
- (c) empowering the Director-General to fix any fee or cost to be charged for the sale, exchange, or supply of any needle or syringe and any related product (whether or not the fee or cost includes the cost of packaging).

Compare: 1956 No 65 s 117(1A)

376 Regulations about housing improvement and overcrowding

- (1) Subject to the Building Act 2004, for the purpose of prescribing standards of fitness with which any dwellinghouse, whether erected before or after the commencement of this section, must comply, or for the purpose of preventing overcrowding, the Governor-General may, by Order in Council, make regulations for the purpose of preventing overcrowding in dwellinghouses.
- (2) Without limiting the general power conferred by **subsection (1)**, regulations may be made under that subsection for all or any of the following purposes:
 - (a) prescribing the number of persons permitted to reside in dwellinghouses, having regard to the number of rooms, the amount of floor space, air space, or available ventilation and the amenities provided:
 - (b) prescribing methods of calculating the number of persons, the number of rooms, and the amount of the floor space, air space, or ventilation in the dwellinghouse:
 - (c) prescribing offences in respect of the contravention of or non-compliance with any regulations made under that subsection, and the amounts of fines that may be imposed in respect of any such offences not exceeding \$5,000.

Compare: 1956 No 65 s 120C

377 Special provisions as to regulations

- (1) Any regulations made under this Act may apply generally, or may apply, or be applied from time to time by the Minister by notice in the *Gazette*,—
 - (a) within any specified district or subdivision of a district of any local authority; or
 - (b) within any specified part of New Zealand; and
 - (c) any such notice may be revoked or varied at any time in the same way.
- (2) If at any time while any regulations referred to in **subsection (1)** apply within any specified district or subdivision of a district of any local authority the boundaries of the district or subdivision are altered, the regulations, unless the context otherwise requires, subsequently apply within the district or subdivision as so altered.
- (3) The operation of any regulations made under this Act may, if permitted by the regulations, be suspended until they are applied by the Minister by notice under **subsection (1)**.
- (4) If any bylaws of any local authority in force in any locality are inconsistent with, or repugnant to, any regulations made under this Act in force in that locality, the bylaws are deemed to be subject to those regulations.
- (5) The Minister, before recommending the making of any regulations under **section 374** relating to hazardous substances (as defined in section 2(1) of the Hazardous Substances and New Organisms Act 1996), must—
 - (a) consult with the Environmental Risk Management Authority established under that Act about the contents of those regulations; and
 - (b) take into account any submissions made by the Authority.

Compare: 1956 No 65 s 122

378 Transitional regulations

Without limiting the powers conferred by **section 374 or 375**, the Governor-General may from time to time, by Order in Council, make regulations—

- (a) prescribing transitional and savings provisions concerning the coming into force of this Act, which may be in addition to or in place of the transitional and savings provisions of this Part;
- (b) to facilitate the bringing into force of any regulations under this Act; and to remove any inconsistency between regulations or orders made under the Health Act 1956;
- (c) providing that subject to such conditions as are specified in the regulations, during a specified transitional period,—
 - (i) specified provisions of this Act (including definitions) do not apply;
 - (ii) specified terms have the meanings given to them by the regulations;
 - (iii) specified provisions repealed or amended or revoked by this Act are to continue to apply.

379 Expiry of section 378

Section 378 expires on the close of 1 July 2012 and on the close of that date is repealed.

380 Regulations and other enactments having effect under this Act

- (1) The following regulations are to be treated as regulations made under this Act:
 - (a) Anthrax Prevention Regulations 1987 (SR 1987/345):
 - (b) Camping-Grounds Regulations 1985 (SR 1985/261):
 - (c) Environmental Health Officers Qualification Regulations 1993 (SR 1993/155):
 - (d) Fire Extinguishers Regulations 1958 (SR 1958/148):
 - (e) Fireguards Regulations 1958 (SR 1958/21):
 - (f) Health (Burial) Regulations 1946 (SR 1946/132):
 - (g) Health (Cervical Screening (Kaitiaki)) Regulations 1995 (SR 1995/29):
 - (h) Health (Hairdressers) Regulations 1980 (SR 1980/143):
 - (i) Health (Immunisation) Regulations 1995 (SR 1995/304):
 - (j) regulations 1 to 3, 9, 14, and Schedules 1 and 2 of the Health (Infectious and Notifiable Diseases) Regulations 1966 (SR 1966/87):
 - (k) Health (Needles and Syringes) Regulations 1998 (SR 1998/254):
 - (l) Health (Quarantine Inspection Places) Notice 2005 (SR 2005/328):
 - (m) Health (Quarantine) Regulations 1983 (SR 1983/52):
 - (n) Health (Registration of Premises) Regulations 1966 (SR 1966/73):
 - (o) Health (Retention of Health Information) Regulations 1996 (SR 1996/343):
 - (p) Housing Improvement Regulations 1947 (except Part 1) (SR 1947/200):
 - (q) Microwave Ovens Regulations 1982 (1982/221):
 - (r) Plastic Wrapping Regulations 1979 (SR 1979/272):

- (s) Venereal Diseases Regulations 1982 (SR 1982/215).
- (2) The enactments specified in **subsection (1)** may be amended, revoked, or replaced at any time under the corresponding empowering provision (if any) in this Act or (if there is no corresponding empowering provision in this Act) as if this section contained the relevant empowering provision (as it read immediately before the commencement of **section 374**).
- (3) Every regulation prescribing or providing for the fixing of fees and charges that was made under the Health Act 1956 and is in force immediately before the commencement of this section, continues to have effect and may be amended, revoked, or replaced under **section 374**.

381 Expiry of section 380

Section 380 expires with the close of 1 July 2012 and on the close of that date is repealed.

Transitional provisions

382 Bylaws

- (1) Every bylaw made under section 64 of the Health Act 1956 that is in effect immediately before the commencement of this section continues in effect as if it had been made under **section 186**, and may be amended, revoked, or replaced by a bylaw made under that section.
- (2) Despite **subsection (1)**, any provision in a bylaw made under section 64 of the Health Act 1956 ceases to have effect on the commencement of this section so far as it regulates the conduct of offensive trades.
- (3) In this section, **offensive trade** has the meaning it had in section 2(1) of the Health Act 1956.

383 Existing health districts continue

The health districts constituted under section 19 of the Health Act 1956 and in existence immediately before the commencement of this section—

- (a) continue in existence on and after the commencement of this section as if they had been constituted under **section 14**; and
- (b) may be altered under that section.

384 Director of Public Health continues in office

The person who, immediately before the commencement of this section, held office as the Director of Public Health is deemed to have been appointed as Director of Public Health in accordance with **section 17**.

385 Medical officers of health continue in office

Every person who, immediately before the commencement of this section, was a medical officer of health (as defined in section 2(1) of the Health Act 1956), is deemed to have been appointed as a medical officer of health under **section 12(1)(a)**.

386 Health protection officers continue in office

Every person who, immediately before the commencement of this section, was a health protection officer (as defined in section 2(1) of the Health Act 1956), is deemed to have been appointed as a health protection officer under **section 12(1)(b)**.

387 Other designated persons continue in office

Every person who, immediately before the commencement of this section, was designated as an officer under section 7A(4) of the Health Act 1956, is deemed to have been appointed under **section 12(4)** as an officer with the same functions, duties, and powers.

388 Environmental health officers continue in office

Every person who, immediately before the commencement of this section, was an environmental health officer (as defined in section 2(1) of the Health Act 1956), is deemed to have been appointed as an environmental health officer under **section 153(1)(a)**.

389 Personal information

- (1) Any request or requirement made before the commencement of this section in relation to health information under sections 22B to 22J of the Health Act 1956, that has not been dealt with, or complied with, on the commencement of this section must continue to be dealt with, or complied with, as if those sections were still in force.
- (2) This section does not limit sections 17 to 21 of the Interpretation Act 1999.

390 Civil proceedings relating to nuisances

- (1) The Health Act 1956 continues in effect for the purpose of commencing or continuing any proceedings under section 33 or 35 of that Act, if those proceedings relate to nuisances in existence before the commencement of this section.
- (2) **Subsection (1)** does not prevent the commencement of proceedings under **section 171** in respect of a nuisance in existence both before and after the commencement of this section, but in that case proceedings under section 33 or 35 in respect of that nuisance—
 - (a) may not be commenced;
 - (b) may, if pending, be stayed by the District Court.
- (3) This section does not limit section 19 of the Interpretation Act 1999.

391 Requirements to clean, repair, or close premises

- (1) Every cleansing notice served under section 41 of the Health Act 1956, and every repair notice served under section 42, 44, or 46 of that Act, that is in effect immediately before the commencement of this section continues in effect as if this Act (other than this section) had not been passed.
- (2) Every closing order issued under section 42, 44, or 46 of the Health Act 1956 that is in effect immediately before the commencement of this section continues in effect as if this Act (other than this section) had not been passed.
- (3) The powers that could have been exercised under the Health Act 1956, and the actions that could have been taken under that Act, in respect of, or consequent on the non-compliance with, any notice or order described in **subsection (1) or (2)**, may be exercised or taken as if this Act (other than this section) had not been passed.
- (4) Without limiting the generality of **subsection (3)**, the powers referred to in that subsection include the power to issue a closing notice under section 42, 44, or 46 of the Health Act 1956.
- (5) Every person who, but for the repeal of sections 43 and 45 of the Health Act 1956, would have been entitled to appeal under either of those sections in respect of a closing order described in **subsection (2)** or authorised by **subsection (3)**, may appeal in respect of that order under, and in accordance with, section 43 or, as the case requires, section 45 of that Act as if this Act (other than this section) had not been passed.

392 Consents relating to offensive trades and stock saleyards

- (1) Every consent issued under section 54 or 58 of the Health Act 1956 (including every condition imposed on such a consent) that is in effect on the commencement of this section continues in effect according to its tenor as if this Act (other than this section) had not been passed.
- (2) Every consent to which **subsection (1)** applies that is in effect on the date that is 12 months after the commencement of this section expires on the close of that date.
- (3) The definition of **offensive trade** in section 2(1) of the Health Act 1956 and Schedule 3 of that Act continue in effect for the purposes of this section.

393 Specified requirements

- (1) This section applies to any order, prohibition, notice, or requirement (the **specified requirement**) that is made, under the Health Act 1956, by the Minister, the Director-General, a medical officer of health, or a health protection officer and that is in effect on the commencement of this section.
- (2) A specified requirement continues in effect until it is cancelled or modified or replaced in the manner referred to in **subsection (4)** or until its purpose has been fulfilled.
- (3) For the purposes of **subsection (2)**, the Health Act 1956 continues in effect.
- (4) A specified requirement may be modified, cancelled, or replaced by the exercise of a power conferred by a provision of this Act that corresponds in whole or in part to the provision of the Health Act 1956 under which the specified requirement was made.

394 Tuberculosis Act 1948

- (1) The Tuberculosis Act 1948 and the Tuberculosis Regulations 1951 continue in effect for the purpose of—
 - (a) continuing any proceedings that, on the commencement of this section, are pending under section 16 of that Act; and
 - (b) commencing any proceedings under section 16 of that Act in respect of a person about whom a medical officer of health was, before the commencement of this section, notified under section 3(1) of that Act.
- (2) The Tuberculosis Act 1948 and the Tuberculosis Regulations 1951 continue in effect for the purpose of—

- (a) continuing any appeals that, on the commencement of this section, are pending under section 17 of that Act; or
 - (b) commencing any appeals that arise out of proceedings described in **subsection (1)**.
- (3) **Subsection (4)** applies to any notice under section 3(1) or 5(1) of the Tuberculosis Act 1948 that—
- (a) a medical officer of health receives before the commencement of this section; and
 - (b) is current on that commencement.
- (4) In relation to the notice, the medical officer of health continues to have the duties and powers set out in the Tuberculosis Act 1948 that the medical officer of health had immediately before the commencement of this section.

395 Ongoing matters under Part 3 or 4 of Health Act 1956

- (1) Any person or craft that, immediately before the commencement of this section, is liable to quarantine under the Health Act 1956 continues to be liable to quarantine until that liability ceases under that Act, and the provisions of that Act (including the powers and functions conferred in relation to persons or craft liable to quarantine) continue in force for this purpose.
- (2) The places of inspection noted in the Schedule of the Health (Quarantine Inspection Places) Notice 2005 are deemed to have been declared as places of inspection under **section 282**.
- (3) This section does not limit sections 17 to 21 of the Interpretation Act 1999.

Related amendments to other enactments

396 Amendments to New Zealand Public Health and Disability Act 2000

- (1) This section amends the New Zealand Public Health and Disability Act 2000.
- (2) Section 23(1) is amended by inserting the following paragraph after paragraph (k):
“(ka) to perform the public health functions described in **section 19** of the Public Health Act **2007**.”.
- (3) Section 72(1) is amended by inserting the following paragraphs after paragraph (b):
“(ba) the management of any publicly owned organisation providing public health services:
“(bb) a complaint or matter that arises or may arise under the Public Health Act **2007** or out of the administration of that Act.”.

Repeals and consequential amendments

397 Repeals and revocations

- (1) The enactments set out in **Part 1 of Schedule 4** are repealed.
- (2) The regulations set out in **Part 2 of Schedule 4** are revoked.

398 Consequential amendments

- (1) The Acts set out in **Part 1 of Schedule 5** are amended in the manner set out in that schedule.
- (2) The regulations set out in **Part 2 of Schedule 5** are amended in the manner set out in that schedule.

Part 1
Notifiable conditions

Disease	Required to be notified by	Required to be notified on reasonable suspicion	Details identifying person may be contained in the notification	Period of time within which notification must occur
Acquired Immunodeficiency Syndrome (AIDS)	Medical practitioner	Yes	No	
	Specified person Person in charge of a laboratory			
Acute gastroenteritis	Medical practitioner	Yes	Yes	
	Specified person Person in charge of a laboratory			
Amoebic encephalitis	Medical practitioner	Yes	Yes	
	Specified person Person in charge of a laboratory			
Anthrax	Medical practitioner	Yes	Yes	
	Specified person Person in charge of a laboratory			
Arboviral diseases	Medical practitioner	Yes	Yes	
	Specified person Person in charge of a laboratory			
Botulism	Medical practitioner	Yes	Yes	
	Specified person Person in charge of a laboratory			
Brucellosis	Medical practitioner	Yes	Yes	
	Specified person Person in charge of a laboratory			
Campylobacteriosis	Medical practitioner	Yes	Yes	
	Specified person Person in charge of a laboratory			
Chlamydia	Medical practitioner	Yes	No	
	Specified person Person in charge of a laboratory			
Cholera	Medical practitioner	Yes	Yes	
	Specified person Person in charge of a laboratory			
Creutzfeldt-Jakob disease and other spongiform encephalopathies	Medical practitioner	Yes	Yes	
	Specified person Person in charge of a laboratory			
Cryptosporidiosis	Medical practitioner	Yes	Yes	
	Specified person Person in charge of a laboratory			
Cysticercosis	Medical practitioner	Yes	Yes	
	Specified person			

NOTE: If no time is specified in the fifth column, the disease or other condition must be

Disease	Required to be notified by	Required to be notified on reasonable suspicion	Details identifying person may be contained in the notification	Period of time within which notification must occur
		Part 2 Epidemic diseases		
Cholera Highly Pathogenic Avian Influenza Plague Yellow fever				

Schedule 2 Notifiable contaminants

s 4

Part 1 Contaminants of drinking water

Contaminant

E. coli if present at more than 10 organisms per 100mL or infectious pathogenic protozoa (*Cryptosporidium* or *Giardia*) if present at more than 1 (oo) cyst per 100L.

Any substance for which a maximum acceptable value is set under the *Drinking-water Standards for New Zealand* if the amount exceeds the maximum acceptable value.

Period of time within which notification must occur

Part 2 Contaminants of pool water¹

Contaminant

Any micro-organism, including a standard plate count, for which a maximum recommended upper limit is set by a New Zealand Standard for swimming pool and spa water quality if the amount of the micro-organism exceeds the maximum recommended upper limit.

Cryptosporidium species

Legionella species

Period of time within which notification must occur

Part 3 Contaminants of cooling water systems²

Contaminant

Legionella (at a concentration of 1 000 or more colony forming units of *Legionella* per millilitre of water)

NOTE: If no time is specified in the second column, the contaminant must be notified as soon as practicable (see **sections 34(3) and 35(4)**).

Period of time within which notification must occur

Schedule 3 Regulated activities

ss 4, 329, 240, 243

Part 1 Class 1 activities

1 Operating camping grounds

- (1) The operation of camping grounds, including any of the following:
 - (a) erecting and operating buildings, cabins, and other premises in a camping ground:
 - (b) locating, sizing, and spacing of cabins and camp sites:
 - (c) installing and maintaining facilities available for use in connection with cabins and camp sites:
 - (d) maintaining and operating water supplies:
 - (e) collecting, storing, and disposing of refuse:
 - (f) installing, maintaining, and providing any of the following:
 - (i) ablutions and sanitary fixtures:
 - (ii) cooking places:
 - (iii) laundry facilities:
 - (iv) drainage.
- (2) In this item, **camping ground** means any area of land used, or designed or intended to be used, for rent, hire, donation, or otherwise for reward, for the purposes of placing or erecting on the land temporary living places for occupation by 2 or more families or parties (whether consisting of 1 or more persons) living independently of each other, whether or not such families or parties enjoy the use in common of entrances, water supplies, cookhouses, sanitary fixtures, or other premises and equipment.

2 Operating mortuaries

- (1) Operating mortuaries, which includes any of the following:
 - (a) constructing or maintaining mortuaries:
 - (b) storing dead bodies in a mortuary:
 - (c) preparing dead bodies for burial or cremation:
 - (d) embalming dead bodies.
- (2) In this item, **mortuary** means a room regularly used or intended to be regularly used for the preparation of dead bodies for burial or for the embalming of dead bodies or the examination or treatment of dead bodies prior to burial; but does not include premises so used or intended to be so used exclusively in or in connection with a hospital care institution (within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001), or a school of anatomy established under section 7 of the Human Tissue Act 1964.

3 Hairdressing

- (1) Providing hairdressing services in a hairdresser's shop, including constructing or maintaining a hairdresser's shop.

- (2) In this item—

hairdresser's shop means any premises in which hairdressing services are provided, other than premises occupied by a customer of the person providing those services

hairdressing services means the dressing, curling, waving, cleansing, cutting, shaving, trimming, singeing, bleaching, tinting, colouring, or other treatment of the hair or beard of any person.

Part 2 Class 2 activities

1 Microwave ovens

- (1) Manufacturing, importing, servicing, or selling microwave ovens.

- (2) In this item,—

microwave means an electromagnetic wave with a frequency in the range of 3×10^2 to 1×10^5 megahertz

microwave oven means an appliance that—

- (a) is designed to supply microwave energy to material within an area of the oven in which the microwave field is enclosed and confined; and
- (b) is or is likely to be commonly used for the cooking or heating of food for immediate consumption

sell includes hire, lease, and lend.

2 Plastic wrapping

Wrapping products intended for sale in polyethylene or similar plastic material.

3 Needles and syringes

- (1) Selling or supplying needles or syringes.
- (2) In this item, **needle** means a needle forming part of, or attached to, or designed for attachment to and use with, a syringe.

Schedule 4
Repeals and revocations

s 397

Part 1
Enactments repealed

Health Act 1956 (1956 No 65)

Part 1, Part 2 (except sections 60 to 63), Part 3, Part 3A (except section 92H), Parts 4 to 7 (except sections 129 to 131 and sections 137A to 137H), and the Schedules.

Tuberculosis Act 1948 (1948 No 36)

Whakatane Board Mills, Limited, Water-Supply Empowering Act 1936 (1936 No 7 (P))
Section 26.

Part 2
Regulations revoked

Health (Bursaries) Regulations 1965 (SR 1965/141)

Health (Diseases Communicated by Animals) Regulations 1965 (SR 1965/167)

Health (Infectious and Notifiable Diseases) Regulations 1966 (SR 1966/87)

Other than regulations 1 to 3, 9, 14, and Schedules 1 and 2

Health (Infirm and Neglected Persons) Regulations 1958 (SR 1958/54)

Housing Improvement Regulations 1947 (1947/200)

Part 1

Infectious and Notifiable Disease (Enterobacter sakazakii Invasive Disease) Order 2005 (SR 2005/168)

Infectious and Notifiable Disease (Highly Pathogenic Avian Influenza) Order 2004 (SR 2004/8)

Infectious and Notifiable Disease (SARS) Order 2003 (SR 2003/70)

Kakapo Stream Pollution Control Order 1976 (SR 1976/35)

Lead Process Regulations 1950 (SR 1950/172)

Noxious Substances Regulations 1954 (SR 1954/128)

Offensive Trades Order 1959 (SR 1959/79)

Spray Coating Regulations 1962 (SR 1962/54)

Tuberculosis Regulations 1951 (SR 1951/290)

Schedule 5

s 398

Consequential amendments

Part 1

Amendments to other Acts

Public Acts

Animal Products Act 1999 (1999 No 93)

Section 161(5)(a)(iii): omit “Health Act 1956” and substitute “Public Health Act 2007”.

Biosecurity Act 1993 (1993 No 95)

Section 7(2): omit “Health Act 1956” and substitute “Public Health Act 2007”.

Burial and Cremation Act 1964 (1964 No 75)

Section 52(1): omit “Health Act 1956” and substitute “Public Health Act 2007”.

Civil Defence Emergency Management Act 2002 (2002 No 33)

Section 17(3)(f): repeal and substitute:

“(f) Public Health Act 2007.”.

Coroners Act 2006 (2006 No 38)

Paragraph (j) of the definition of **other investigating authority** in section 9: omit “Health Act 1956” and substitute “Public Health Act 2007”.

Section 32(b): omit “section 78 of the Health Act 1956” and substitute “section 364 of the Public Health Act 2007”.

Dog Control Act 1996 (1996 No 13)

Section 75(1)(a): omit “section 120 of the Health Act 1956” and substitute “**section 374** of the Public Health Act 2007”.

Education Act 1989 (1989 No 80)

Section 19(1)(b): repeal and substitute:

“(b) may have a notifiable disease (within the meaning of the Public Health Act 2007),—”.

Electronic Transactions Act 2002 (2002 No 35)

Part 2 of the Schedule: omit the item relating to the Health Act 1956.

Environment Act 1986 (1986 No 127)

Schedule: omit “The Health Act 1956.” and substitute “The Public Health Act 2007”.

Epidemic Preparedness Act 2006 (2006 No 85)

Section 5(1): omit “quarantinable disease (within the meaning of the Health Act 1956)” and substitute “epidemic disease within the meaning of the Public Health Act 2007”.

Section 8(1): omit “quarantinable disease” and substitute “epidemic disease”.

Section 14(2): omit “quarantinable disease” and substitute “epidemic disease”.

Section 15(2)(a)(i): omit “quarantinable disease” and substitute “epidemic disease”.

Section 24(1): omit “quarantinable disease” and substitute “epidemic disease”.

Fees and Travelling Allowances Act 1951 (1951 No 79)

Schedule 1: omit the item relating to the Board of Health.

Food Act 1981 (1981 No 45)

Definition of **medical officer of health** in section 2: omit “Health Act 1956” and substitute “Public Health Act 2007”.

Hazardous Substances and New Organisms Act 1996 (1996 No 30)

Section 19(2)(h): omit “any Medical Officer of Health (as defined in section 2(1) of the Health Act 1956)” and substitute “any medical officer of health (as defined in **section 4(1)** of the Public Health Act 2007)”.

Paragraph (f) of the definition of **responsible Minister** in section 49A: repeal and substitute:

“(f) the Public Health Act **2007**; or”.

Section 136(4): omit paragraph (d) and substitute the following paragraphs:

“(d) when an emergency is declared under the Biosecurity Act 1993; or

“(e) when an emergency is declared under the Public Health Act **2007**,—”

Health Act 1956 (1956 No 65)

Section 1: Insert “(Drinking Water)” after “Health”.

Health Practitioners Competence Assurance Act 2003 (2003 No 48)

Definition of **medical officer of health** in section 5(1): omit “section 2(1) of the Health Act 1956” and substitute “**section 4(1)** of the Public Health Act **2007**”.

Section 67(b)(v): repeal and substitute:

“(v) the Public Health Act **2007**; or”.

Section 100(2)(a)(v): repeal and substitute:

“(v) the Public Health Act **2007**; or”.

Local Government Act 2002 (2002 No 84)

Definition of **sanitary services** in section 124: omit “has the same meaning as sanitary works in section 25(1)(a), (b), (c), (d), (h), and (i) of the Health Act 1956” and substitute “means a service described in **section 160(1)(a), (b), (c), (d), and (g)** of the Public Health Act **2007**”.

Section 128(1)(b): omit “under section 23 of the Health Act 1956” and substitute “under **section 153** of the Public Health Act **2007**”.

Section 128(4): repeal and substitute:

“(4) In this subpart, Medical Officer of Health has the meaning given to it in **section 4(1)** of the Public Health Act **2007**.”

Section 129(1)(d): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Section 148(6): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Maritime Security Act 2004 (2004 No 16)

Definition of **medical officer of health** in section 5: repeal and substitute:

“**medical officer of health** has the same meaning as in **section 4(1)** of the Public Health Act **2007**”.

Section 80(3)(d): repeal and substitute:

“(d) a person under **subpart 2 of Part 7** of the Public Health Act **2007**”.

Medicines Act 1981 (1981 No 118)

Definition of **medical officer of health** in section 2(1): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Definition of **medical officer of health** in section 2(1): omit “section 22 of that Act” and substitute “**section 17** of that Act”.

Misuse of Drugs Act 1975 (1975 No 116)

Definition of **medical officer of health** in section 2(1): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Definition of **medical officer of health** in section 2(1): omit “section 22 of that Act” and substitute “**section 17** of that Act”.

Plumbers, Gasfitters, and Drainlayers Act 1976 (1976 No 69)

Section 11(1)(g): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Section 25(1)(a): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Section 27(a): omit “or the Health Act 1956” and substitute “or the Public Health Act **2007**”.

Section 38(6): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Section 40(1): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Section 42(1)(a): omit “or the Health Act 1956,” and substitute “or the Public Health Act **2007**”.

Section 50(4): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Plumbers, Gasfitters, and Drainlayers Act 2006 (2006 No 74)

Section 89(h): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Section 137(q): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Privacy Act 1993 (1993 No 28)

Section 46(7): omit “section 22B of the Health Act 1956” and substitute “**section 20** of the Public Health Act **2007**”.

Prostitution Reform Act 2003 (2003 No 28)

Section 25(1): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Radiation Protection Act 1965 (1965 No 23)

Definition of **Director-General** in section 2(1): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Reserves and other Lands Disposal Act 1961 (1961 No 128)

Section 13(1): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Section 13(2): repeal.

Reserves and Other Lands Disposal and Public Bodies Empowering Act 1913 (1913 No 67)

Section 102(1): omit “Health Act 1956, relating to the establishment of offensive trades within the district of any local authority” and substitute “Public Health Act **2007**”.

Reserves and other Lands Disposal and Public Bodies Empowering Act 1920 (1920 No 75)

Heading to section 68: omit “**Health Act 1956**” and substitute “**Public Health Act 2007**”.

Section 68: omit “local authority within the meaning and for the purposes of section 27 of the Health Act 1956” and substitute “territorial authority for the purposes of **sections 160 to 163** of the Public Health Act **2007**”.

Sale of Liquor Act 1989 (1989 No 63)

Section 108(c): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Smoke-free Environments Act 1990 (1990 No 108)

Section 14(1)(c): omit “section 7A of the Health Act 1956” and substitute “**section 12** of the Public Health Act **2007**”.

Social Security Act 1964 (1964 No 136)

Section 61CE(1): omit “quarantinable disease” and substitute “quarantinable condition”.

Section 61CE(5): omit “**quarantinable disease** has the meaning given to it by section 2(1) of the Health Act 1956” and substitute “**quarantinable condition** has the same meaning as in **section 280(1)** of the Public Health Act **2007**.”

Local Acts

Auckland Harbour Board (Auckland Regional Authority Pikes Point East Reclamation) Empowering Act 1976 (1976 No 9 (L))

Heading to section 7: omit “**the Health Act 1956**” and substitute “**Public Health Act 2007**”.

Section 7(a): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Auckland Harbour Board (Half Moon Bay) Vesting and Empowering Act 1968 (1968 No 6 (L))

Heading to section 13: omit “**the Health Act 1956**” and substitute “**Public Health Act 2007**”.

Section 13(a): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Auckland Harbour Board (Reclamation) Empowering Act 1967 (1967 No 8 (L))

Section 6(1)(a): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Auckland Harbour Board (Westhaven) Vesting and Empowering Act 1979 (1979 No 20 (L))

Section 11(a): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Auckland Metropolitan Drainage Act 1960 (1960 No 15 (L))

Section 9(2): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Section 28(6): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Section 36A(1): omit “section 29 of the Health Act 1956” and substitute “**section 166** of the Public Health Act **2007**”.

Section 36A(4): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Section 36A(4): omit “section 76 of that Act” and substitute “**subpart 3** of **Part 5** of that Act”.

Auckland Regional Authority Act 1963 (1963 No 18 (L))

Section 32(4): omit “Health Act 1956” in each place where it appears and substitute in each case “Public Health Act **2007**”.

Bay of Plenty Harbour Board (Sulphur Point) Vesting and Empowering Act 1981 (1981 No 8 (L))

Section 10(a)(i): repeal and substitute:

“(i) the Public Health Act **2007**; or”.

Christchurch District Drainage Act 1951 (1951 No 21 (L))

Section 4(2): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Section 92(b): repeal and substitute:

“(b) the Public Health Act **2007**”.

Hutt Valley Drainage Act 1967 (1967 No 3 (L))

Section 51: omit “section 29 of the Health Act 1956” in each place where it appears and substitute in each case “**section 166** of the Public Health Act **2007**”.

Section 87(d): repeal and substitute:

“(d) the Public Health Act **2007**”.

Invercargill City Council (Reclamations) Empowering Act 1973 (1973 No 1 (L))

Section 10(a): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Mount Maunganui Borough Reclamation and Empowering Act 1975 (1975 No 11 (L))

Section 7(a): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Nelson Harbour Board Empowering Act 1970 (1970 No 4 (L))

Section 9(1)(a): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Nelson Harbour Board Empowering Act 1979 (1979 No 11 (L))

Section 12(a): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

North Shore Drainage Act 1963 (1963 No 15 (L))

Section 4(2): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Section 31(1)(g): omit “section 29 of the Health Act 1956” and substitute “**section 166** of the Public Health Act **2007**”.

Section 32(1): omit “section 29 of the Health Act 1956” and substitute “**section 166** of the Public Health Act **2007**”.

Section 40(1): omit “section 29 of the Health Act 1956” and substitute “**section 166** of the Public Health Act **2007**”.

Section 40(3): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Section 41: omit “section 29 of the Health Act 1956” in each place where it appears and substitute in each case “**section 166** of the Public Health Act **2007**”.

Section 80(h): repeal and substitute:

“(h) The Public Health Act **2007**”.

Northland Harbour (Tutukaka) Vesting and Empowering Act 1983 (1983 No 4 (L))

Section 10(a)(i): repeal and substitute:

“(i) The Public Health Act **2007**; or”.

Onslow Borough Drainage Empowering Act 1906 (1906 No 36 (L))

Section 8: omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Rodney County Council (Gulf Harbour) Vesting and Empowering Act 1977 (1977 No 6 (L))

Section 15(a): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Rodney County Council (Mahurangi Harbour) Vesting and Empowering Act 1977 (1977 No 16 (L))

Section 5: omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Section 10(a): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Tamaki River Reclamation Act 1960 (1960 No 14 (L))

Section 4(1): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Taranaki Harbours Board Reclamation and Empowering Act 1988 (1988 No 8 (L))

Section 13(a)(i): repeal and substitute:

“(i) the Public Health Act **2007**; or”.

Tauranga District Council (Waikareao Estuary Expressway) Empowering Act 1989 (1989 No 10 (L))

Section 8(a)(1): repeal and substitute:

“(i) the Public Health Act **2007**.”.

Timaru Harbour Board Reclamation and Empowering Act 1980 (1980 No 1 (L))

Section 8(a): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Waitemata City Council (West Harbour) Empowering Act 1979 (1979 No 17 (L))

Section 17(a): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Waitemata County Council Empowering Act 1966 (1966 No 21 (L))

Section 4(1): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Waitemata County Council Empowering Act 1971 (1971 No 7 (L))

Section 6(a): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Wellington Harbour Board and Wellington City Council Vesting and Empowering Act 1987 (1987 No 5 (L))

Section 18(1)(c): repeal and substitute:

“(c) the Public Health Act **2007**.”.

Wellington Harbour Board Reclamation and Empowering Act 1972 (1972 No 1 (L))

Section 7(a): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Wellington Harbour Board (Seaview Marina) Reclamation Act 1989 (1989 No 1 (L))

Section 6(b): repeal and substitute:

“(b) the Public Health Act **2007**; or”.

Wellington Regional Water Board Act 1972 (1972 No 3 (L))

Section 26(5): omit “Health Act 1956” in each place where it appears and substitute in each case “Public Health Act **2007**”.

Part 2

Amendments to regulations

Animal Products (Dairy) Regulations 2005 (SR 2005/104)

Regulation 12: omit “(including a notifiable infectious disease listed in section A of Part 1 of Schedule 1 of the Health Act 1956)” and substitute “(including a notifiable condition listed in **Part 1 of Schedule 1** of the Public Health Act **2007**)”.

Animal Products (Regulated Control Scheme—Limited Processing Fishing Vessels) Regulations 2001 (SR 2001/334)

Regulation 20: omit “(including a notifiable infectious disease listed in section A of Part 1 of Schedule 1 of the Health Act 1956)” and substitute “(including a notifiable condition listed in **Part 1 of Schedule 1** of the Public Health Act **2007**)”.

Animal Products Regulations 2000 (SR 2000/207)

Regulation 13: omit “(including a notifiable infectious disease listed in section A of Part 1 of Schedule 1 of the Health Act 1956)” and substitute “(including a notifiable condition listed in **Part 1 of Schedule 1** of the Public Health Act **2007**)”.

Camping-Grounds Regulations 1985 (SR 1985/261)

Definition of **the Act** in regulation 2: revoke and substitute:

“**Act** means the Public Health Act **2007**”.

Cremation Regulations 1973 (SR 1973/154)

Definition of **Medical Officer of Health** and **Inspector of Health** in regulation 2: omit and substitute:
“**medical officer of health** and **health protection officer** have the same meanings as in **section 4(1)** of the Public Health Act **2007**.”

Regulation 3(6): omit “section 128 of the Health Act 1956” and substitute “**section 326** of the Public Health Act **2007**”.

Regulation 4(4): omit “under section 9 of the Health Act 1956”.

Education (Hostels) Regulations 2005 (SR 2005/332)

Regulation 64(2): omit “infectious disease” and substitute “any notifiable condition”.

Fire Extinguishers Regulations 1958 (SR 1958/148)

Regulation 4: omit “, as defined in section 2 of the Health Act 1956,” and substitute “, as defined in **section 4(1)** of the Public Health Act **2007**”.

Regulation 6: omit “sections 136 and 137 of the Health Act 1956” and substitute “**sections 368 and 373** of the Public Health Act **2007**”.

Fireguards Regulations 1958 (SR 1958/21)

Regulation 2: omit “Expressions defined in the Health Act 1956 have the meanings so defined.” and substitute “Expressions defined in the Public Health Act **2007** have the same meaning in these regulations.”

Regulation 9: omit “sections 136 and 137 of the Health Act 1956” and substitute “**sections 368 and 373** of the Public Health Act **2007**”.

Food Hygiene Regulations 1974 (SR 1974/169)

Paragraph (a) of the definition of **premises** in regulation 2(1): omit “the Health Act 1956” and substitute “**section 4(1)** of the Public Health Act **2007**”.

Regulation 2(2): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Regulation 19(7): omit “, whether suffering from a communicable disease or not,” and substitute “who has a notifiable condition (within the meaning of **section 4(1)** of the Public Health Act **2007**)”.

Regulation 86(1): revoke and substitute:

“(1) Every person commits an offence against these regulations, and is liable accordingly under **sections 368 and 373** of the Public Health Act **2007**, who contravenes or fails to comply with any of the provisions of Part 1 or the requirements of any notice served on that person under regulation 82.”

Food (Safety) Regulations 2002 (SR 2002/396)

Regulation 10(2)(a): omit “communicable disease” and substitute “communicable condition (within the meaning of **section 4(1)** of the Public Health Act **2007**)”.

Regulation 10(2)(b): omit “a person who is a carrier as defined in the Health Act 1956” and substitute “a person who harbours a condition within the meaning of **section 4(1)** of the Public Health Act **2007** (as applied by **section 4(2)** of that Act)”.

Regulation 12(1): omit “communicable disease within the meaning of the Health Act 1956” and substitute “communicable condition within the meaning of **section 4(1)** of the Public Health Act **2007**”.

Regulation 24(2): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Hazardous Substances and New Organisms (Personnel Qualifications) Regulations 2001 (SR 2001/122)

Regulation 6(1)(e): revoke and substitute:

“(e) Public Health Act **2007**.”

Regulation 8(1)(a): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Health and Safety in Employment (Prescribed Matters) Regulations 2003 (SR 2003/90)

Regulation 6(1)(b)(v): revoke and substitute:

“(v) as a health protection officer within the meaning of **section 4(1)** of the Public Health Act **2007**.”

Health (Cervical Screening (Kaitiaki)) Regulations 1995 (SR 1995/29)

Definition of **the Act** in regulation 2(1): revoke and substitute:

“**Act** means the Public Health Act **2007**”.

Regulation 3(1): omit “under section 74A(5)(f)” and substitute “**section 53(1)(a)**”.

Regulation 11(a): omit “under section 74A(5)(f)” and substitute “**section 53(1)(a)**”.

Health Entitlement Cards Regulations 1993 (SR 1993/169)

Paragraph (b) of the definition of **Director-General** in regulation 2(1): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Health (Hairdressers) Regulations 1980 (SR 1980/143)

Regulation 15(2): omit “section 136 of the Health Act 1956” and substitute “**section 368** of the Public Health Act **2007**”.

Health (Immunisation Regulations) 1995 (SR 1995/304)

Regulation 2(2): omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Health (Quarantine) Regulations 1983 (SR 1983/52)

Definition of **the Act** in regulation 2: revoke and substitute:

“**Act** means the Public Health Act **2007**”.

Form 2 in Schedule 2: omit “Section 107(2) of the Health Act 1956” and substitute “**Section 304(2)** of the Public Health Act **2007**”.

Form 3 in Schedule 2: omit “Section 107(1) of the Health Act 1956” and substitute “**Section 304(1)** of the Public Health Act **2007**”.

Health (Quarantine Inspection Places) Notice 2005 (SR 2005/328)

Regulations 4: omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Health (Registration of Premises) Regulations 1966 (SR 1966/73)

Definition of **the Act** in regulation 2: revoke and substitute:

“**Act** means the Public Health Act **2007**”.

Regulation 8(3)(b): omit “section 7A” and substitute “**section 12**”.

Medicines Regulations 1984 (SR 1984/143)

Regulation 27: omit “communicable disease (within the meaning of the Health Act 1956), or is a carrier (within the meaning of that Act)” and substitute “a communicable condition (within the meaning of **section 4(1)** of the Public Health Act **2007**) or harbours a communicable condition within the meaning of **section 4(1)** of that Act (as applied by **section 4(2)** of that Act)”.

Misuse of Drugs Regulations (SR 1977/37)

Definition of **Director-General** in regulation 2: omit “Health Act 1956” and substitute “Public Health Act **2007**”.

Plastic Wrapping Regulations 1979 (SR 1979/272)

Regulation 3: omit “sections 136 and 137 of the Health Act 1956” and substitute “**sections 368 and 373** of the Public Health Act **2007**”.

Sale of Liquor Regulations 1990 (SR 1990/61)

Definition of **Medical Officer of Health** in regulation 2: omit “section 2(1) of the Health Act 1956” and substitute “**section 4(1)** of the Public Health Act **2007**”.

Social Security (Long-term Residential Care) Regulations 2005 (SR 2005/183)

Regulation 5(h): omit “section 79 of the Health Act 1956” and substitute “**section 113** of the Public Health Act **2007**”.

Regulation 5(i): omit “section 126 of the Health Act 1956” and substitute “**section 128** of the Public Health Act **2007**”.

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- 1 Pool means any pool (including fresh and sea water swimming pools, geothermal pools, and spa pools) other than domestic pools as defined by New Zealand Standard NZS 5826:2000.
 - 2 Cooling water system means a heat exchange system comprising a heat-generating plant, a heat rejection plant and interconnecting water recirculating pipework and associated pumps, valves, and controls as defined by Australia/New Zealand Standard AS/NZS 3666.