



Queensland

# Public Health (Infection Control for Personal Appearance Services) Act 2003

Reprinted as in force on 1 July 2006

Reprint No. 1C

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This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

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# **Public Health (Infection Control for Personal Appearance Services) Act 2003**

[as amended by all amendments that commenced on or before 1 July 2006]

**An Act to minimise the risk of infection that may result from the provision of personal appearance services, and for other purposes**

## **Part 1                      Preliminary**

### **Division 1                      Introduction**

#### **1                      Short title**

This Act may be cited as the *Public Health (Infection Control for Personal Appearance Services) Act 2003*.

#### **2                      Commencement**

This Act commences on a day to be fixed by proclamation.

### **Division 2                      Application and purpose of Act**

#### **3                      Application of Act**

This Act does not apply to a personal appearance service provided in a health-care facility.

#### **4                      Act binds all persons**

(1) This Act binds all persons.

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- (2) However, except for part 2, division 1,<sup>1</sup> this Act does not bind the State.
- (3) Nothing in this Act makes the State liable to be prosecuted for an offence.

**5 Contravention of this Act does not create civil cause of action**

No provision of this Act creates a civil cause of action based on a contravention of the provision.

**6 Act does not affect other rights or remedies**

- (1) This Act does not affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise.
- (2) Without limiting subsection (1), compliance with this Act does not necessarily show that a civil obligation that exists apart from this Act has been satisfied or has not been breached.

**7 Purpose of Act**

The purpose of this Act is to minimise the risk of infection that may result from the provision of personal appearance services.

**8 How purpose is to be achieved**

The purpose is to be achieved by—

- (a) requiring business proprietors and operators to take reasonable precautions and care to minimise infection risks; and
- (b) requiring business proprietors whose business provides higher risk personal appearance services to hold a licence; and

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<sup>1</sup> Part 2 (Obligations relating to personal appearance services), division 1 (Obligations to minimise infection risks for personal appearance services)

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- (c) requiring operators providing higher risk personal appearance services to hold an infection control qualification; and
- (d) providing for compliance with this Act to be monitored and enforced.

## **Division 3 Administration and enforcement**

### **9 Local government to administer Act**

- (1) The administration and enforcement of this Act is a function of local government for each local government's local government area.
- (2) To remove doubt, it is declared that a local government may do either or both of the following—
  - (a) make a resolution or local law that is not inconsistent with this Act about the fees payable to it for providing a service or taking action under this Act;
  - (b) make a local law that is not inconsistent with this Act about any matter dealt with by this Act for which it is necessary or convenient to make provision for carrying out or giving effect to the matter.
- (3) A resolution or local law under subsection (2)(a) may only prescribe a fee for providing a service or taking action that—
  - (a) is not more than the cost to the local government of providing the service or taking the action for which the fee is charged; and
  - (b) if a fee is prescribed under a regulation for providing the service or taking the action, is not more than the fee prescribed.
- (4) Subsection (5) applies if—
  - (a) the chief executive is satisfied a local government has failed to do anything in the administration or enforcement of this Act; or

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- (b) a local government and the chief executive agree that the chief executive do anything in the administration or enforcement of this Act.
- (5) The chief executive may do the thing and, if subsection (4)(a) applies, the reasonable costs and expenses incurred by the chief executive are a debt payable by the local government to the State.
- (6) Without limiting subsections (4) and (5), the chief executive may perform the functions and exercise the powers of a local government including appointing the following to be authorised persons for this Act—
  - (a) a public service employee in the department;
  - (b) a health service employee under the *Health Services Act 1991*.
- (7) An appointment under subsection (6) may be made before or after a failure under subsection (4)(a) or an agreement under subsection (4)(b).

## **Division 4                      Interpretation**

### **10            Definitions**

The dictionary in schedule 2 defines particular words used in this Act.

### **11            Meaning of *beauty therapy***

*Beauty therapy* means a procedure, other than hairdressing, intended to maintain, alter or enhance a person's appearance, including the following—

- (a) facial or body treatments;
- (b) application of cosmetics;
- (c) manicure or pedicure;
- (d) application of, or mending, artificial nails;
- (e) epilation including by electrolysis or hot or cold wax.

## **12 Meaning of *body piercing***

- (1) *Body piercing* means the process of penetrating a person's skin or mucous membrane with a sharp instrument for the purpose of implanting jewellery or other foreign material through or into the skin or mucous membrane.
- (2) However, it does not include the process of piercing a person's ear or nose with a closed piercing instrument that—
  - (a) does not come into contact with the person's skin or mucous membrane; and
  - (b) is fitted with a sterilised single-use disposable cartridge containing sterilised jewellery and fittings.

## **13 Meaning of *hairdressing***

*Hairdressing* means a procedure intended to maintain, alter or enhance a person's appearance involving facial or scalp hair and includes cutting, trimming, styling, colouring, treating or shaving the hair.

## **14 Meaning of *higher risk personal appearance service***

*Higher risk personal appearance service* means a personal appearance service involving any of the following skin penetration procedures in which the release of blood or other bodily fluid is an expected result—

- (a) body piercing;
- (b) implanting natural or synthetic substances into a person's skin, including, for example, hair or beads;
- (c) scarring or cutting a person's skin using a sharp instrument to make a permanent mark, pattern or design;
- (d) tattooing;
- (e) another skin penetration procedure prescribed under a regulation.

**15 Meaning of *non-higher risk personal appearance service***

*Non-higher risk personal appearance service* means a personal appearance service other than a higher risk personal appearance service.

**16 Meaning of *personal appearance service***

*Personal appearance service* means beauty therapy, hairdressing or skin penetration that is provided as part of a business transaction.

**17 Meaning of *skin penetration***

*Skin penetration* means a procedure intended to alter or enhance a person's appearance that involves the piercing, cutting, scarring, scraping, puncturing, or tearing of a person's skin or mucous membrane with an instrument.

**18 Meaning of *tattooing***

- (1) *Tattooing* means the process of penetrating a person's skin and inserting into it colour pigments to make a permanent mark, pattern or design on the skin.
- (2) Tattooing also includes any process that penetrates the skin and inserts into it colour pigments to make a semipermanent mark, pattern or design on the skin including, for example—
  - (a) the process known as cosmetic tattooing; or
  - (b) the process for applying semipermanent make-up.



## **Part 2                                  Obligations relating to personal appearance services**

### **Division 1                              Obligations to minimise infection risks for personal appearance services**

#### **19                              Obligation of business proprietor and operator**

- (1) A business proprietor must—
- (a) take all reasonable precautions and care to minimise the risk of infection (the *infection risk*) to the proprietor’s clients; and
  - (b) ensure each operator employed or otherwise engaged by the proprietor takes all reasonable precautions and care to minimise the infection risk to the proprietor’s clients.

Maximum penalty—500 penalty units.

- (2) An operator must take all reasonable precautions and care to minimise the infection risk when providing personal appearance services to a client.

Maximum penalty—500 penalty units.

- (3) Division 4 provides for defences relating to this section.

#### **20                              How an obligation to minimise an infection risk may be discharged if there is a regulation or infection control guideline**

- (1) If a regulation prescribes a way of minimising an infection risk, a proprietor or operator may discharge the proprietor’s or operator’s obligation relating to the risk only by following the prescribed way.
- (2) Subject to subsection (1), if infection control guidelines made by the Minister state a way of minimising an infection risk, a business proprietor or operator may discharge the proprietor’s or operator’s obligation to minimise the risk only by—

- (a) adopting and following the stated way; or
- (b) adopting and following another way that minimises the infection risk.

**21 How an obligation to minimise an infection risk may be discharged if there is no regulation or infection control guideline**

- (1) This section applies if there is no regulation or infection control guideline prescribing or stating a way to discharge a business proprietor's or operator's obligation to minimise an infection risk.
- (2) The proprietor or operator may choose an appropriate way to discharge the proprietor's or operator's obligation to minimise the risk.
- (3) However, the proprietor or operator discharges the proprietor's or operator's obligation to minimise the risk only if the proprietor or operator takes all reasonable precautions and care to minimise the risk.

**Division 2 Further obligations for higher risk personal appearance services**

**22 Licence required for business providing higher risk personal appearance services**

A person must not carry on business providing higher risk personal appearance services unless the person holds a licence authorising the person to carry on the business.

Maximum penalty—500 penalty units.

**23 Premises at which higher risk personal appearance services may be provided**

A licensee must not provide higher risk personal appearance services from premises unless the premises are stated on the licensee's licence.

Maximum penalty—500 penalty units.

**24 Particular person must hold infection control qualification**

A person must not personally provide a higher risk personal appearance service unless the person holds an infection control qualification.

Maximum penalty—200 penalty units.

**25 Business proprietor must ensure particular operator holds an infection control qualification**

A business proprietor must ensure an operator employed or otherwise engaged by the proprietor does not provide a higher risk personal appearance service to a client of the proprietor unless the operator holds an infection control qualification.

Maximum penalty—500 penalty units.

**Division 3 Obligations for non-higher risk personal appearance services**

**26 Business proprietor must notify commencement of business**

- (1) Subsection (2) applies if a business proprietor starts carrying on business providing non-higher risk personal appearance services in a local government area.
- (2) If required to do so under a local law of the local government for the local government area, the business proprietor must give notice, as required by this section, to the local government that the proprietor has started carrying on business.

Maximum penalty—50 penalty units.

- (3) Notice must be given to the local government within 30 days of starting to carrying on business.
- (4) The notice must state the following particulars—
  - (a) the business proprietor's name and address;

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- (b) the type of business and the date the business proprietor started carrying on business;
  - (c) for fixed premises, the address of the premises;
  - (d) for mobile premises, a description of the premises that includes the registration number if the premises are a vehicle that is required to be registered.
- (5) A local government must not charge a fee for a notice given under this section.
- (6) In this section—
- address** means a place where the business proprietor resides or carries on business.

## **Division 4                    Defences**

### **27            Defences for div 1**

- (1) Subsection (2) applies if—
- (a) there is a proceeding against a person for an offence against section 19<sup>2</sup> relating to an infection risk; and
  - (b) there is an infection control guideline in force stating a way of minimising the infection risk; and
  - (c) the prosecution has proved that the person has not adopted or followed the stated way.
- (2) In the proceeding against the person, it is a defence for the person to prove the person, under section 20(2)(b), adopted and followed another way that minimised the infection risk.
- (3) Also, in a proceeding against a person for an offence against section 19—
- (a) it is a defence for the person to prove that the commission of the offence was due to causes over which the person had no control; and

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2            Section 19 (Obligation of business proprietor and operator)

- (b) the Criminal Code, sections 23 and 24,<sup>3</sup> do not apply.
- (4) In this section, a reference to an infection control guideline is a reference to the guideline as in force at the time of the alleged offence.

## Part 3 Infection control guidelines

### 28 Minister may make infection control guidelines

- (1) The Minister may make guidelines (*infection control guidelines*) stating ways to minimise infection risks.
- (2) An infection control guideline has no effect unless the Minister notifies the making of the guideline.
- (3) The chief executive must keep a copy of each infection control guideline and any document applied, adopted or incorporated by the guidelines available for inspection, without charge, during normal business hours at the part of the department that deals with infection control.
- (4) The chief executive must, if asked, state where a copy of an infection control guideline may be obtained.
- (5) A notice mentioned in subsection (2) is subordinate legislation.

### 29 Use of infection control guideline in a proceeding

In a proceeding under this Act a document purporting to be an infection control guideline is admissible as evidence of the guideline if—

- (a) the proceeding relates to a contravention of an obligation imposed on a person under section 19; and
- (b) it is claimed that the person contravened the obligation by failing to minimise an infection risk; and

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<sup>3</sup> Criminal Code, sections 23 (Intention—motive) and 24 (Mistake of fact)

- (c) the infection control guideline is about minimising the infection risk.

## **Part 4                      Licences to carry on business    providing higher risk personal    appearance services**

### **Division 1                Applications for and issue of    licences**

#### **30            Application for licence**

- (1) A person may apply for a licence to carry on business providing higher risk personal appearance services.
- (2) The application must be made to—
  - (a) if the services are to be provided from fixed premises—the local government for the area in which the premises are located; or
  - (b) if the services are to be provided from mobile premises—any local government.
- (3) An application may be made under subsection (2)(b) even though services—
  - (a) are to be, or may be, provided in another local government area; and
  - (b) are not to be, or may not be, provided in the local government area of the local government to which the application is made.
- (4) The application must comply with section 58.<sup>4</sup>

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4      Section 58 (Applications)

### **31 Single licence may cover 2 or more premises**

Subject to section 30, if the person proposes to carry on business from 2 or more premises, the person may apply to a local government for a single licence to cover all the premises.

### **32 What the application must state**

- (1) The application must state the following—
  - (a) the name and address of the applicant or, if the applicant is a corporation, the corporation's registered office under the Corporations Act and the names of its directors;
  - (b) for fixed premises, the address of the premises;
  - (c) for mobile premises—
    - (i) a description of the premises that includes the registration number if the premises are a vehicle that is required to be registered; and
    - (ii) an address, in the local government area of the local government to which the application is made, at which the premises may be inspected for deciding the application;
  - (d) an address for service of documents;
  - (e) the details, required in the approved form for the application, to enable the local government to decide whether—
    - (i) the applicant is a suitable person to hold a licence; and
    - (ii) the premises at which higher risk personal appearance services are to be provided are suitable for providing the services.
- (2) In this section—

***address for service*** means a place where the applicant resides or intends to carry on business.

### **33 Consideration of application for licence**

The local government must consider the application and either grant, or refuse to grant, the application.

### **34 Criteria for granting application for licence**

The local government may grant the application for a licence only if the local government is satisfied—

- (a) the applicant is a suitable person to hold a licence; and
- (b) the premises at which the higher risk personal appearance services are to be provided are suitable for providing the services.

### **35 Suitability of person to hold licence**

(1) In deciding whether a person is a suitable person to hold a licence, the local government may have regard to the following matters—

- (a) whether the person, or if the person is a corporation, an executive officer of the corporation, has a conviction for a relevant offence, other than a spent conviction;
- (b) whether the person, or if the person is a corporation, an executive officer of the corporation—
  - (i) held a licence under this division, or a licence or registration under a corresponding law, that was suspended or cancelled; or
  - (ii) has been refused a licence under this division or a licence or registration under a corresponding law; or
  - (iii) has had an application for the registration of an establishment refused under the *Health Regulation 1996*, part 15; or
  - (iv) has had the registration of an establishment suspended or cancelled under the *Health Regulation 1996*, part 15;



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- (c) anything else relevant to the person's ability to conduct a business providing higher risk personal appearance services in a way that minimises infection risks.

(2) In this section—

***corresponding law*** means a law applying, or that applied, in another State, the Commonwealth or a foreign country that provides, or provided for the same matter as this Act or a provision of this Act.

***Health Regulation 1996, part 15*** means the *Health Regulation 1996*, part 15<sup>5</sup> as in force before the commencement of this Act.

***relevant offence*** means—

- (a) an indictable offence, other than an indictable offence that is taken to be a simple offence under the *Criminal Code*, section 659; or
- (b) an offence against this Act; or
- (c) an offence against a corresponding law; or
- (d) an offence against the *Health Act 1937* or a law of another State or the Commonwealth that provides for the same matter as that Act or a provision of that Act; or
- (e) an offence, relating to the provision of higher risk personal appearance services, against a law applying, or that applied, in the State, the Commonwealth, another State or a foreign country.

### **36 Suitability of premises at which higher risk personal appearance services are to be provided**

In deciding whether premises at which higher risk personal appearance services are to be provided are suitable for providing the services, the local government may have regard to all the following matters—

- (a) for fixed premises—

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<sup>5</sup> *Health Regulation 1996*, part 15 (Skin penetration)

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- (i) whether a certificate of classification under the *Building Act 1975* is in force for the premises; and
- (ii) whether the premises comply with the Queensland Development Code, part 15;
- (b) for mobile premises, whether the premises would comply with the Queensland Development Code, part 15 to the extent the part could reasonably apply to mobile premises if mobile premises were a place of business under that part;
- (c) whether cleaning and waste disposal equipment in the premises will enable safe infection control practices;
- (d) if equipment used in providing the higher risk personal appearance services is to be sterilised in the premises, whether the sterilising equipment will enable safe infection control practices;
- (e) if equipment used in providing the higher risk personal appearance services is not to be sterilised in the premises, whether appropriate arrangements have been made to have the equipment sterilised at another place.

### **37 Inquiries into application for licence**

- (1) Before deciding the application, the local government—
  - (a) may make inquiries to decide the suitability of—
    - (i) the applicant to hold a licence; and
    - (ii) the premises for providing higher risk personal appearance services; and
  - (b) may, by notice given to the applicant, require the applicant to give the local government within the reasonable time of at least 40 days stated in the notice, further information or a document the local government reasonably requires to decide the application.
- (2) The applicant is taken to have withdrawn the application if, within the stated time, the applicant does not comply with a requirement under subsection (1)(b).

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- (3) A notice under subsection (1)(b) must be given to the applicant within 40 days after the local government receives the application.
- (4) The information or document under subsection (1)(b) must, if the notice requires, be verified by a statutory declaration.

### **38 Decision on application for licence**

- (1) If the local government decides to grant the application, the local government must—
  - (a) issue the licence to the applicant; and
  - (b) advise the applicant where a copy of the infection control guidelines may be obtained.
- (2) If the local government decides to impose conditions on the licence, the local government must immediately give the applicant an information notice for the decision.
- (3) If the local government decides to refuse to grant the application, the local government must immediately give the applicant an information notice for the decision.

### **39 Failure to decide application for licence**

- (1) Subject to subsections (2) and (3), if the local government fails to decide the application within 40 days after its receipt, the failure is taken to be a decision by the local government to refuse to grant the application.
- (2) Subsection (3) applies if—
  - (a) a person has made an application for a licence; and
  - (b) the local government has under section 37(1)(b),<sup>6</sup> required the applicant to give the local government further information or a document.
- (3) The local government is taken to have refused to grant the application if the local government does not decide the

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<sup>6</sup> Section 37 (Inquiries into application for licence)

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application within 40 days after the local government receives the further information or document.

- (4) If the application is refused under this section, the applicant is entitled to be given an information notice by the local government for the decision.

#### **40 Term of licence**

- (1) A licence becomes effective on the day of its issue or renewal and ends either—
  - (a) 3 years after that day; or
  - (b) on the earlier day stated in the licence.
- (2) The earlier day may be decided by the local government.

#### **41 Conditions of licence**

- (1) A licence is subject to the following conditions—
  - (a) the licensee must comply with this Act;
  - (b) the licensee must ensure that—
    - (i) the licensee's licence, or a copy of the licence, is displayed at each of the licensee's premises so that it is easily visible to a person as the person enters the premises; and
    - (ii) a copy of the infection control guidelines are kept at each premises at which the licensee carries on business; and
    - (iii) each of the licensee's fixed premises comply with the Queensland Development Code, part 15; and
    - (iv) each of the licensee's mobile premises comply with the Queensland Development Code, part 15 to the extent the part could reasonably apply to mobile premises if mobile premises were a place of business under that part; and
    - (v) the fixtures, fittings and equipment in the licensee's premises are maintained in good repair and operational order;

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*Example—*

Sterilising units must be regularly maintained.

- (c) other reasonable conditions the local government considers appropriate to give effect to this Act and that are stated in the licence.
- (2) Conditions may be imposed under subsection (1)(c)—
- (a) when a licence is issued, renewed, amended or transferred; or
  - (b) at another time if the local government considers this is necessary to minimise the infection risk associated with the provision of higher risk personal appearance services under the licensee's licence.
- (3) If the local government decides to impose conditions on the licence under subsection (2)(b), the local government must immediately give the licensee an information notice for the decision.

#### **42 Licensee must comply with licence conditions**

- (1) A licensee must not contravene a condition of the licence.
- Maximum penalty—200 penalty units.
- (2) The penalty under subsection (1) may be imposed whether or not the licence is suspended or cancelled because of the contravention.

#### **43 Form of licence**

- (1) A licence must be in the approved form and must state the following particulars—
- (a) the licensee's name and address for service of documents;
  - (b) for fixed premises, the address of the premises in the local government area of the local government that issues the licence;

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- (c) for mobile premises, a description of the premises that includes the registration number if the premises are a vehicle that is required to be registered;
  - (d) the day the licence becomes effective;
  - (e) the term of the licence, including the day the licence expires;
  - (f) the licence number;
  - (g) the licence conditions.
- (2) In this section—

*address for service* means a place where the licensee resides or carries on business.

## **Division 2                      Renewal of licences**

### **44            Applications for renewal of licence**

- (1) A licensee may apply to the local government that issued a licence for the renewal of the licence.
- (2) The application must be made at least 1 month before the licence ends.
- (3) The application must comply with section 58.
- (4) The local government must consider the application and renew, or refuse to renew, the licence.
- (5) In deciding whether to grant the application, the local government may have regard to—
  - (a) the matters to which the local government may have regard in deciding whether an applicant for a licence is a suitable person to hold the licence and whether the premises are suitable for providing higher risk personal appearance services;<sup>7</sup> and
  - (b) the results of inspections to monitor compliance with this Act during the current term of the licence.

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<sup>7</sup> Sections 35 and 36 state the matters.

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- (6) If the local government decides to refuse to renew the licence, the local government must immediately give the licensee an information notice for the decision.
- (7) If the local government decides to impose conditions on the licence, the local government must immediately give the licensee an information notice for the decision.
- (8) A licence may be renewed by—
  - (a) endorsing the existing licence; or
  - (b) cancelling the existing licence and issuing another licence.

#### **45 Inquiries into application for renewal of licence**

- (1) Before deciding the application, the local government may, by notice given to the licensee, require the licensee to give the local government, within a reasonable period of at least 40 days stated in the notice, further information or a document the local government reasonably requires to decide the application.
- (2) The licensee is taken to have withdrawn the application if, within the stated period, the licensee does not comply with the requirement.

#### **46 Licence taken to be in force while application for renewal is considered**

- (1) If an application is made under section 44, the licensee's licence is taken to continue in force from the day that it would, apart from this section, have ended until the application is decided under section 44 or taken to have been withdrawn under section 45(2).
- (2) However, if the application is refused, the licence continues in force until the information notice for the decision is given to the licensee.
- (3) Subsection (1) does not apply if the licence is earlier suspended or cancelled.

## **Division 3                      Amendment of licences**

### **47            Application for amendment of licence**

- (1) A licensee may apply to the local government that issued a licence for an amendment of the licence.
- (2) The application must comply with section 58.
- (3) The local government must consider the application and amend, or refuse to amend, the licence.
- (4) Without limiting subsection (1), the local government may amend a licence by changing the location of the premises, or adding additional premises, from which the licensee proposes to carry on business providing higher risk personal appearance services.
- (5) If the amendment relates to the premises covered by the licence, the local government may amend the licence only if the local government is satisfied on reasonable grounds that the premises comply with the requirements of this Act.
- (6) If the local government decides to refuse to amend the licence, the local government must immediately give the licensee an information notice for the decision.
- (7) If the local government decides to impose conditions on the amended licence, the local government must immediately give the licensee an information notice for the decision.
- (8) A licence may be amended by—
  - (a) endorsing the existing licence with details of the amendment; or
  - (b) cancelling the existing licence and issuing another licence containing the amendment.

### **48            Inquiries into application for amendment**

- (1) Before deciding the application, the local government may, by notice given to the licensee, require the licensee to give the local government, within a reasonable period of at least 40 days stated in the notice, further information or a document



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the local government reasonably requires to decide the application.

- (2) The licensee is taken to have withdrawn the application if, within the stated period, the licensee does not comply with the requirement.

## **Division 4            Transfer of licences**

### **49        Application for transfer of licence**

- (1) A licensee may apply to the local government that issued a licence for the transfer of the licence.
- (2) The application must comply with section 58.
- (3) The local government must consider the application and either grant or refuse to grant the application.
- (4) The local government may grant the application only if the local government is satisfied—
  - (a) the proposed transferee is a suitable person to hold a licence; and
  - (b) the premises at which the higher risk personal appearance services are to be provided are suitable for providing the services.
- (5) In deciding whether to grant the application, the local government may, in relation to the proposed transferee, have regard to the matters to which the local government may have regard in deciding whether a person is a suitable person to hold a licence and whether the premises are suitable for providing higher risk personal appearance services.<sup>8</sup>
- (6) If the local government decides to refuse to transfer the licence, the local government must immediately give the licensee an information notice for the decision.

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<sup>8</sup> Sections 35 and 36 state the matters.

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- (7) If the local government decides to impose conditions on the transferred licence, the local government must immediately give the transferee an information notice for the decision.
- (8) A licence may be transferred by—
  - (a) endorsing the existing licence with details of the transfer; or
  - (b) cancelling the existing licence and issuing another licence to the transferee.

## **50 Inquiries into application for transfer of licence**

- (1) Before deciding the application, the local government may, by notice given to the licensee, require the licensee to give the local government, within a reasonable period of at least 40 days stated in the notice, further information or a document the local government reasonably requires to decide the application.
- (2) The licensee is taken to have withdrawn the application if, within the stated period, the licensee does not comply with the requirement.

## **Division 5 Suspension or cancellation of licences**

### **51 Grounds for suspension or cancellation**

- (1) Each of the following is a ground for suspending or cancelling a licence—
  - (a) the licensee is not, or is no longer, a suitable person to hold the licence;
  - (b) the licensee has contravened a condition of the licence;
  - (c) the licence was issued because of a materially false or misleading representation or declaration.
- (2) For forming a belief that the ground mentioned in subsection (1)(a) exists, the local government may have regard to the matters to which the local government may have regard in

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deciding whether a proposed licensee is a suitable person to hold the licence.<sup>9</sup>

## 52 Show cause notice

- (1) This section applies if the local government that issued a licence believes a ground exists to suspend or cancel the licence, and—
  - (a) the licensee has not been given, and it is not intended to give the licensee, a remedial notice about a matter to which the ground relates; or
  - (b) the licensee has been given a remedial notice about a matter to which the ground relates and the licensee has failed, without a reasonable excuse, to comply with the notice.
- (2) The local government must give the licensee a notice under this section (a *show cause notice*).
- (3) The show cause notice must state the following—
  - (a) the action (the *proposed action*) the local government proposes taking under this division;
  - (b) the grounds for the proposed action;
  - (c) an outline of the facts and circumstances forming the basis for the grounds;
  - (d) if the proposed action is suspension of the licence—the proposed suspension period;
  - (e) an invitation to the licensee to show within a stated period (the *show cause period*) why the proposed action should not be taken.
- (4) The show cause period must be a period ending at least 21 days after the show cause notice is given to the licensee.

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9 Section 35 states the matters.

### **53 Representations about show cause notices**

- (1) The licensee may make written representations about the show cause notice to the local government in the show cause period.
- (2) The local government must consider all representations (the *accepted representations*) made under subsection (1).

### **54 Ending show cause process without further action**

- (1) This section applies if, after considering the accepted representations for the show cause notice, the local government no longer believes a ground exists to suspend or cancel the licence.
- (2) The local government must not take any further action about the show cause notice.
- (3) The local government must give the licensee a notice that no further action is to be taken about the show cause notice.

### **55 Suspension or cancellation**

- (1) This section applies if, after considering the accepted representations for the show cause notice, the local government—
  - (a) still believes a ground exists to suspend or cancel the licence; and
  - (b) believes suspension or cancellation of the licence is warranted.
- (2) This section also applies if there are no accepted representations for the show cause notice.
- (3) The local government may—
  - (a) if the proposed action stated in the show cause notice was to suspend the licence for a stated period—suspend the licence for not longer than the stated period; or
  - (b) if the proposed action stated in the show cause notice was to cancel the licence—either cancel the licence or suspend it for a period.

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- (4) The local government must immediately give an information notice for the decision to the licensee.
- (5) The decision takes effect on the later of the following days—
  - (a) the day the information notice is given to the licensee;
  - (b) the day stated in the information notice for that purpose.

## **56 Immediate suspension of licence**

- (1) The local government may suspend a licence immediately if the local government believes—
  - (a) a ground exists to suspend or cancel the licence; and
  - (b) it is necessary to suspend the licence immediately because there is an immediate and serious risk of infection to the licensee's clients.
- (2) The suspension—
  - (a) must be effected by an information notice given by the local government to the licensee about the decision to suspend the licensee's licence together with a show cause notice; and
  - (b) operates immediately the notices are given; and
  - (c) continues to operate until the earliest of the following happens—
    - (i) the local government cancels the remaining period of the suspension;
    - (ii) the show cause notice is finally dealt with;
    - (iii) 40 days have passed since the notices were given to the licensee.
- (3) Subsection (4) applies if—
  - (a) a suspension under this section stops because—
    - (i) the local government cancels the remaining period of the suspension; or
    - (ii) the show cause notice is finally dealt with by a decision being made not to cancel or suspend the licence; or

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- (iii) 40 days have passed since the notices mentioned in subsection (2)(a) were given to the licensee; and
- (b) the licensee has returned the licence to the local government under section 57.
- (4) The local government must, as soon as practicable, give the licence to the licensee.

**57 Return of cancelled or suspended licence to local government**

- (1) This section applies if the local government has cancelled or suspended a licence and given an information notice for the decision to the licensee.
- (2) The licensee must return the licence to the local government within 7 days after receiving the information notice, unless the licensee has a reasonable excuse.

Maximum penalty for subsection (2)—20 penalty units.

**Division 6 Other provisions about licences**

**58 Applications**

- (1) This section applies to the following applications—
  - (a) an application for a licence under section 30;
  - (b) an application for the renewal of a licence under section 44;
  - (c) an application for an amendment of a licence under section 47;
  - (d) an application for the transfer of a licence under section 49.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be signed by or for the applicant; and
  - (c) be accompanied by the fee for the application.

**59 Licence issued to more than 1 person**

If a licence is issued jointly to more than 1 person, a reference in this Act to the licensee is a reference to each of the persons.

**60 Surrender of licence**

- (1) A licensee may surrender the licence by notice given to the local government that issued the licence.
- (2) The licence must accompany the notice.
- (3) The surrender takes effect on the later of the following—
  - (a) the day the notice is given;
  - (b) the day specified in the notice.

**61 Application for replacement of licence**

- (1) A licensee may apply for replacement of the licensee's licence if the licence has been damaged, destroyed, lost or stolen.
- (2) The application must—
  - (a) be made to the local government that issued the licence; and
  - (b) include information about the circumstances in which the licence was damaged, destroyed, lost or stolen; and
  - (c) be accompanied by the fee for the application.

**62 Decision about application for replacement of licence**

- (1) The local government must consider the application and either grant, or refuse to grant, the application.
- (2) The local government must grant the application if the local government is satisfied the licence has been destroyed, lost or stolen, or damaged in a way to require its replacement.
- (3) If the local government decides to grant the application, the local government must, as soon as practicable, issue another licence to the applicant to replace the damaged, destroyed, lost or stolen licence.

- (4) If the local government decides to refuse to grant the application, the local government must immediately give the applicant an information notice for the decision.

**63 False or misleading statements**

A person must not, for an application made under this part, state anything the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

**64 False or misleading documents**

- (1) A person must not, for an application made under this part, give a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) tells the local government, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information to the local government.

**Part 5 Mobile higher risk personal appearance services**

**65 Notification of intention to provide services from mobile premises**

- (1) This section applies if a licensee intends to provide higher risk personal appearance services from mobile premises to which the licence relates in the local government area of a second local government.



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- (2) At least 7 days before the licensee provides the higher risk personal appearance services, the licensee must notify the second local government of the following—
- (a) the dates the licensee intends to provide higher risk personal appearance services in the second local government area;
  - (b) the places at which the higher risk personal appearance services are intended to be provided;
  - (c) the licensee's licence details;
  - (d) details of the infection control qualification of the operator who will provide the higher risk personal appearance services;
  - (e) other information reasonably required by the second local government to ensure the licensee and operator will take reasonable precautions and care to minimise the risk of infection in providing the higher risk personal appearance services.

Maximum penalty—50 penalty units.

- (3) However, notification under subsection (2) may be a period that is less than 7 days if the second local government agrees to the lesser period.
- (4) Notification under subsection (2) must be by—
- (a) phone; or
  - (b) letter, fax, email or other means of written communication.
- (5) If the licensee notifies the second local government by phone, the licensee must immediately confirm the details provided by letter, fax, email or other means of written communication.

Maximum penalty—10 penalty units.

**66 Obligations of licensee while in second local government area**

For the period the licensee provides higher risk personal appearance services from mobile premises in a second local

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government area the licensee has the obligations under the licensee's licence.

**67 Action that may be taken by second local government**

- (1) This section applies for the period the licensee provides higher risk personal appearance services from mobile premises in a second local government area.
- (2) The second local government has the same powers as the first local government would have had if the higher risk personal appearance services were being provided in the first local government area.
- (3) However, the second local government may not cancel, suspend, impose conditions on, or take any other action in relation to the licensee's licence.

**68 Notification to first local government**

- (1) This section applies if—
  - (a) a licensee or an operator employed or otherwise engaged by the licensee has provided higher risk personal appearance services from mobile premises in a second local government area; and
  - (b) the second local government considers that the licensee or operator has done or omitted to do something that, if done or omitted to be done in the first local government area, would be a contravention of the conditions of the licensee's licence.
- (2) The second local government may advise the first local government of the thing done or omitted to be done.

**69 Action that may be taken by first local government**

- (1) This section applies if the second local government has advised the first local government of a thing done or omitted to be done by the licensee or an operator employed or otherwise engaged by the licensee while in the second local government area.

- (2) The first local government may take action in relation to the thing done or omitted to be done by the licensee or operator as if the thing had been done or omitted to be done in the first local government area.

## **Part 6 Investigation and enforcement**

### **Division 1 Authorised persons**

#### **70 Appointment and qualifications**

- (1) A local government may appoint any of the following persons as authorised persons for the local government and its area—
- (a) employees of the local government;
  - (b) if another local government consents—employees of the other local government;
  - (c) other persons under contract to the local government.
- (2) However, a local government may appoint a person as an authorised person only if the local government is satisfied the person is qualified for appointment because the person has the necessary expertise or experience to be an authorised person.

#### **71 Powers of authorised person limited to local government area**

An authorised person may exercise a power under this Act only in relation to the local government and its area for which the person is appointed.

#### **72 Appointment conditions and limit on powers**

- (1) An authorised person holds office on any conditions stated in—
- (a) the authorised person's instrument of appointment; or

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- (b) a signed notice given to the authorised person.
- (2) The instrument of appointment or a signed notice given to the authorised person may limit the authorised person's powers under this Act.
- (3) In this section—  
*signed notice* means a notice signed by the local government.

### **73 Functions of authorised persons**

An authorised person has the following functions relating to the provision of personal appearance services—

- (a) to enforce this Act;
- (b) to monitor compliance with this Act by inspecting businesses providing personal appearance services;
- (c) to help achieve the purpose of this Act by providing advice and information on how the purpose may be achieved.

### **74 Issue of identity cards**

- (1) The local government must issue an identity card to each authorised person.
- (2) The identity card must—
  - (a) contain a copy of a recent photo of the authorised person; and
  - (b) contain a copy of the authorised person's signature; and
  - (c) identify the person as an authorised person under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

## 75 Production or display of identity card

- (1) In exercising a power under this Act in relation to a person, an authorised person must—
  - (a) produce the authorised person's identity card for the other person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the other person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the other person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an authorised person does not exercise a power in relation to a person only because the authorised person has entered a place as mentioned in section 79(1)(b) or (2).

## 76 When authorised person ceases to hold office

- (1) An authorised person ceases to hold office if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the authorised person ceases to hold office;
  - (c) the authorised person's resignation under section 77 takes effect.
- (2) Subsection (1) does not limit the ways an authorised person may cease to hold office.
- (3) In this section—

*condition of office* means a condition on which the authorised person holds office.

## 77 Resignation

An authorised person may resign by notice to the local government.

## **78 Return of identity card**

A person who ceases to be an authorised person must return the person's identity card to the local government within 21 days after ceasing to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

## **Division 2 Powers of authorised persons**

### **Subdivision 1 Entry of places**

#### **79 Power to enter places**

- (1) An authorised person may enter a place if—
  - (a) its occupier consents to the entry; or
  - (b) it is a public place and the entry is made when it is open to the public; or
  - (c) the entry is authorised by a warrant; or
  - (d) it is premises at which a business proprietor carries on business providing personal appearance services and is—
    - (i) open for carrying on business; or
    - (ii) otherwise open for entry.
- (2) For the purpose of asking the occupier of a place for consent to enter, an authorised person may, without the occupier's consent or a warrant—
  - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
  - (b) enter part of the place the authorised person reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.
- (3) For subsection (1)(d), premises does not include a part of the place where a person resides.

## **Subdivision 2 Procedure for entry**

### **80 Entry with consent**

- (1) This section applies if an authorised person intends to ask the occupier of a place to consent to the authorised person or another authorised person entering the place.
- (2) Before asking for the consent, the authorised person must tell the occupier—
  - (a) the purpose of the entry; and
  - (b) that the occupier is not required to consent.
- (3) If the consent is given, the authorised person may ask the occupier to sign an acknowledgment of the consent.
- (4) The acknowledgment must state—
  - (a) the occupier has been told—
    - (i) the purpose of the entry; and
    - (ii) that the occupier is not required to consent; and
  - (b) the purpose of the entry; and
  - (c) the occupier gives the authorised person consent to enter the place and exercise powers under this division; and
  - (d) the time and date the consent was given.
- (5) If the occupier signs an acknowledgment, the authorised person must immediately give a copy to the occupier.
- (6) If—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

## **81 Application for warrant**

- (1) An authorised person may apply to a magistrate for a warrant for a place.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

## **82 Issue of warrant**

- (1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against this Act; and
  - (b) the evidence is at the place, or may be at the place, within the next 7 days.
- (2) The warrant must state—
  - (a) that a stated authorised person may, with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry; and
    - (ii) exercise the authorised person's powers under this division; and
  - (b) the offence for which the warrant is sought; and
  - (c) the evidence that may be seized under the warrant; and
  - (d) the hours of the day or night when the place may be entered; and
  - (e) the date, within 14 days after the warrant's issue, the warrant ends.



### 83 Special warrants

- (1) An authorised person may apply for a warrant (a *special warrant*) by phone, fax, radio or another form of communication if the authorised person considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the authorised person's remote location.
- (2) Before applying for the special warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the special warrant before the application is sworn.
- (4) After issuing the special warrant, the magistrate must immediately fax a copy (*facsimile warrant*) to the authorised person if it is reasonably practicable to fax the copy.
- (5) If it is not reasonably practicable to fax a copy to the authorised person—
  - (a) the magistrate must tell the authorised person—
    - (i) what the terms of the warrant are; and
    - (ii) the date and time the warrant is issued; and
  - (b) the authorised person must complete a form of warrant (a *warrant form*) and write on it—
    - (i) the magistrate's name; and
    - (ii) the date and time the magistrate issued the special warrant; and
    - (iii) the terms of the special warrant.
- (6) The facsimile warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the other powers stated in the warrant issued.
- (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and

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- (b) if the authorised person completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the special warrant.
- (9) If—
  - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a special warrant; and
  - (b) the warrant is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a special warrant authorised the exercise of the power.

#### **84 Warrants—procedure before entry**

- (1) This section applies if an authorised person named in a warrant issued under this division for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the authorised person’s identity card or other document evidencing the authorised person’s appointment;
  - (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 83(6), a copy of the facsimile warrant or warrant form;
  - (c) tell the person the authorised person is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the authorised person immediate entry to the place without using force.
- (3) However, the authorised person need not comply with subsection (2) if the authorised person believes on reasonable

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grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

## **85 Stopping motor vehicle**

- (1) This section applies if an authorised person suspects on reasonable grounds, or is aware, that a thing in or on a motor vehicle may provide evidence of the commission of an offence against this Act.
- (2) For the purpose of exercising the powers of an authorised person under this division, an authorised person may—
  - (a) if the motor vehicle is moving—ask or signal the person in control of the motor vehicle to stop the motor vehicle; and
  - (b) whether or not the motor vehicle is moving—ask or signal the person in control of the motor vehicle to bring the motor vehicle to a convenient place within a reasonable distance to allow the authorised person to exercise the authorised person’s powers under this division.
- (3) When asking or signalling the person in control of a moving vehicle to stop the vehicle or bring it to a convenient place, the authorised person must clearly identify himself or herself as an authorised person exercising the authorised person’s powers under this Act.

*Examples—*

1. If the authorised person is in a moving motor vehicle, he or she may use a loud hailer to identify himself or herself as an authorised person exercising powers under this Act.
  2. If the authorised person is standing at the side of the road, he or she may use a sign to identify himself or herself as an authorised person exercising powers under this Act.
- (4) Despite section 75,<sup>10</sup> for the purpose of exercising a power under subsection (2)(a), the authorised person must—

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<sup>10</sup> Section 75 (Production or display of identity card)

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- (a) have with him or her the authorised person's identity card; and
  - (b) produce the identity card for the person's inspection immediately after the motor vehicle is stopped.
- (5) The person must comply with the authorised person's request or signal, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (6) It is a reasonable excuse for the person not to obey the request or signal if—
- (a) in a case to which subsection (3) applies, the authorised person has not complied with the subsection; or
  - (b) to immediately obey the request or signal would have endangered the person or someone else or caused loss or damage to property, and the person obeys the request or signal as soon as it is practicable to obey it.
- (7) If the motor vehicle is stopped, the authorised person may direct the person—
- (a) not to move the motor vehicle until the authorised person has exercised the authorised person's powers under this division; or
  - (b) to move the motor vehicle to, and keep it at, a stated reasonable place to allow the authorised person to exercise the authorised person's powers under this division.
- (8) When giving the direction, the authorised person must warn the person it is an offence not to comply with the direction, unless the person has a reasonable excuse.
- (9) The person must comply with the authorised person's direction, unless the person has a reasonable excuse.

Maximum penalty for subsection (9)—50 penalty units.

### **Subdivision 3 Powers after entry**

#### **86 General powers after entering places**

- (1) This section applies to an authorised person who enters a place.
- (2) However, if an authorised person enters a place to get the occupier's consent to enter a place, this section applies to the authorised person only if the consent is given or the entry is otherwise authorised.
- (3) For monitoring and enforcing compliance with this Act, the authorised person may—
  - (a) search any part of the place; or
  - (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or
  - (c) take a thing, or a sample of or from a thing, at the place for analysis or testing; or
  - (d) take an extract from, or copy, a document at the place; or
  - (e) take into or onto the place any persons, equipment and materials the authorised person reasonably requires for exercising a power under this division; or
  - (f) require the occupier of the place, or a person at the place, to give the authorised person reasonable help to exercise the authorised person's powers under paragraphs (a) to (e); or
  - (g) require the occupier of the place, or a person at the place, to give the authorised person information to help the authorised person find out whether this Act is being complied with.
- (4) When making a requirement mentioned in subsection (3)(f) or (g), the authorised person must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

### **87 Failure to help authorised person**

- (1) A person required to give reasonable help under section 86(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If a requirement under section 86(3)(f) relates to a document, it is a reasonable excuse for the person not to comply with the requirement that complying with the requirement might tend to incriminate the person.

### **88 Failure to give information**

- (1) A person of whom a requirement is made under section 86(3)(g) must comply with the requirement, unless the person has a reasonable excuse.<sup>11</sup>

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for the person to fail to comply with the requirement that complying with the requirement might tend to incriminate the person.

## **Subdivision 4 Power to seize evidence**

### **89 Seizing evidence at a place that may be entered without consent or warrant**

An authorised person who enters a place under this division without the consent of the occupier and without a warrant, may seize a thing at the place only if the authorised person reasonably believes the thing is evidence of an offence against this Act.

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<sup>11</sup> Also, a person must not state anything the person knows to be false or misleading in a material particular—see section 115 (False or misleading statements).

**90 Seizing evidence at a place that may only be entered with consent or warrant**

- (1) This section applies if—
  - (a) an authorised person is authorised to enter a place under this division only with the consent of the occupier or a warrant; and
  - (b) the authorised person enters the place after obtaining the necessary consent or warrant.
- (2) If the authorised person enters the place with the occupier's consent, the authorised person may seize a thing at the place only if—
  - (a) the authorised person reasonably believes the thing is evidence of an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.
- (3) If the authorised person enters the place with a warrant, the authorised person may seize the evidence for which the warrant was issued.
- (4) The authorised person also may seize anything else at the place if the authorised person reasonably believes—
  - (a) the thing is evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being—
    - (i) hidden, lost or destroyed; or
    - (ii) used to continue, or repeat, the offence.
- (5) Also, the authorised person may seize a thing at the place if the authorised person reasonably believes it has just been used in committing an offence against this Act.

**91 Securing seized things**

Having seized a thing, an authorised person may—

- (a) move the thing from the place where it was seized (the *place of seizure*); or

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- (b) leave the thing at the place of seizure, but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

1. Sealing a thing and marking it to show access to it is restricted.
2. Sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted.

## **92 Tampering with seized things**

- (1) If an authorised person restricts access to a seized thing, a person must not tamper with the thing, or something restricting access to the thing, without an authorised person's approval.

Maximum penalty—50 penalty units.

- (2) In this section—

*tamper* includes attempt to tamper.

## **93 Powers to support seizure**

- (1) To enable a thing to be seized, an authorised person may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a reasonable time.

- (2) The requirement—

- (a) must be made by notice; or
- (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice as soon as practicable.

- (3) A further requirement may be made under this section about the same thing if it is necessary and reasonable to make the further requirement.



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- (4) A person of whom the requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.
- Maximum penalty—50 penalty units.
- (5) Subject to section 114,<sup>12</sup> the cost of complying with subsection (4) must be borne by the person.

**94 Authorised person may require thing's return**

- (1) If an authorised person has required a person to take a thing to a stated place by a stated reasonable time under section 93 the authorised person may require the person to return the thing to the place from which it was taken.
- (2) A person of whom the requirement is made under subsection (1) must comply with the requirement, unless the person has a reasonable excuse.
- Maximum penalty—50 penalty units.
- (3) Subject to section 114, the cost of complying with subsection (2) must be borne by the person.

**95 Receipts for seized things**

- (1) As soon as practicable after an authorised person seizes a thing, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value.

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12 Section 114 (Compensation)

## **96 Forfeiture of seized things**

- (1) A seized thing is forfeited to the local government for whom the authorised person was acting if the authorised person who seized the thing—
  - (a) can not find its owner, after making reasonable inquiries; or
  - (b) can not return it to its owner, after making reasonable efforts.
- (2) In applying subsection (1)—
  - (a) subsection (1)(a) does not require the authorised person to make inquiries if it would be unreasonable to make inquiries to find the owner; and
  - (b) subsection (1)(b) does not require the authorised person to make efforts if it would be unreasonable to make efforts to return the thing to its owner.
- (3) Regard must be had to a thing's nature, condition and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.

## **97 Return of seized things**

- (1) If a thing has been seized but not forfeited, the authorised person must return it to its owner—
  - (a) at the end of 6 months; or
  - (b) if a proceeding for an offence involving the thing is started within 6 months, at the end of the proceeding and any appeal from the proceeding.
- (2) However, unless the thing has been forfeited, the authorised person must immediately return a thing seized as evidence to its owner if the authorised person stops being satisfied its continued retention as evidence is necessary.

## **98 Access to seized things**

- (1) Until a thing that has been seized is forfeited or returned, an authorised person must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

## **Subdivision 5 Power to obtain information**

### **99 Power to require name and address**

- (1) This section applies if—
  - (a) an authorised person finds a person committing an offence against this Act; or
  - (b) an authorised person finds a person in circumstances that lead, or has information that leads, the authorised person reasonably to suspect the person has just committed an offence against this Act.
- (2) The authorised person may require the person to state the person's name and residential address.
- (3) When making the requirement, the authorised person must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.
- (4) The authorised person may require the person to give the authorised person evidence of the correctness of the stated name or residential address if the authorised person reasonably suspects the stated name or address to be false.
- (5) A requirement under subsection (2) or (4) is a *personal details requirement*.

### **100 Failure to give name or address**

- (1) A person of whom a personal details requirement is made must comply with the requirement, unless the person has a reasonable excuse.

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Maximum penalty—50 penalty units.

- (2) A person does not commit an offence against subsection (1) if—
  - (a) the person was required to state the person's name and residential address by an authorised person who suspected the person had committed an offence against this Act; and
  - (b) the person is not proved to have committed the offence against this Act.

### **101 Power to require production of documents**

- (1) An authorised person may require a person to make available for inspection by an authorised person, or produce to the authorised person for inspection, at a reasonable time and place nominated by the authorised person—
  - (a) a document issued to the person under this Act; or
  - (b) a document required to be kept by the person under this Act.
- (2) The authorised person may keep the document to copy it.
- (3) If the authorised person copies the document, or an entry in the document, the authorised person may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.
- (4) The authorised person must return the document to the person as soon as practicable after copying it.
- (5) However, if a requirement (a *document certification requirement*) is made of a person under subsection (3), the authorised person may keep the document until the person complies with the requirement.
- (6) A requirement under subsection (1) is a *document production requirement*.

## **102 Failure to produce document**

- (1) A person of whom a document production requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is not a reasonable excuse for an individual not to comply with a document production requirement that complying with the requirement might tend to incriminate the individual.

## **103 Failure to certify copy of document**

A person of whom a document certification requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

## **104 Power to require information**

- (1) This section applies if an authorised person reasonably believes—

- (a) an offence against this Act has been committed; and
- (b) a person may be able to give information about the offence.

- (2) The authorised person may, by notice given to the person, require the person to give information about the offence to the authorised person at a stated reasonable time and place.

- (3) The person must comply with a requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (4) It is a reasonable excuse for an individual to fail to give information if giving the information might tend to incriminate the individual.

## **Division 3                    Monitoring compliance**

### **105    Inspections to monitor compliance**

- (1) Local governments may monitor compliance with this Act by having authorised persons inspect places of business in the local governments' areas.
- (2) Local governments may recover their monitoring costs by charging business proprietors reasonable fees for inspections carried out.
- (3) This division states the inspections for which local governments may charge fees.
- (4) Nothing in this division limits the number of inspections an authorised person may conduct at a place of business.

### **106    Inspection fees for businesses providing higher risk personal appearance services**

- (1) This section applies if a business proprietor carries on a business providing higher risk personal appearance services at the proprietor's premises.
- (2) Subsection (3) applies if the premises are fixed premises to which a licence relates.
- (3) The local government for an area in which the premises are located may charge the proprietor the following fees for inspections at the proprietor's premises—
  - (a) if the proprietor carries on business at 1 premises only—1 inspection fee in any 12 month period;
  - (b) if the proprietor carries on business at 2 or more premises—1 inspection fee for each premises in any 12 month period.
- (4) Subsection (5) applies if the premises are mobile premises to which a licence relates.
- (5) A local government for the area in which the higher risk personal appearance services are provided may charge the proprietor the following fees for inspections at the proprietor's premises—

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- (a) if the proprietor carries on business at 1 premises only—1 inspection fee in any 12 month period;
- (b) if the proprietor carries on business at 2 or more premises—1 inspection fee for each premises in any 12 month period.

*Example for subsection (5)—*

If a business proprietor provides higher risk personal appearance services from the same mobile premises in 2 local government areas, each of the local governments may charge a fee for inspecting the premises.

**107 Inspection fees if non-higher risk personal appearance services provided only at proprietor's fixed premises**

- (1) This section applies if a business proprietor carries on a business providing non-higher risk personal appearance services only at the proprietor's fixed premises.
- (2) The local government for the area in which the premises are located may charge the proprietor the following fees for inspections at the proprietor's premises—
  - (a) if the proprietor carries on business at 1 premises only—1 inspection fee in any 12 month period;
  - (b) if the proprietor carries on business at 2 or more premises—1 inspection fee for each premises in any 12 month period.

*Example for subsection (2)(b)—*

A business proprietor provides hairdressing services at 3 of the proprietor's fixed premises. Three inspection fees may be charged if each of the premises are inspected in a 12 month period.

**108 Inspection fees if non-higher risk personal appearance services provided only at places of business other than proprietor's fixed premises**

- (1) This section applies if a business proprietor provides non-higher risk personal appearance services only at places of business that are not the proprietor's fixed premises.

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- (2) A local government for an area in which any of the places of business are located may charge the proprietor 1 inspection fee in any 12 month period.
- (3) However, if a local government (the *first local government*) has charged a business proprietor an inspection fee under this section, another local government may not charge the proprietor an inspection fee under this section within 12 months of the fee being charged by the first local government.

**109 Inspection fees if non-higher risk personal appearance services provided both at proprietor's fixed premises and at places of business other than the proprietor's fixed premises**

- (1) This section applies if a business proprietor carries on a business providing non-higher risk personal appearance services at both—
  - (a) the proprietor's fixed premises; and
  - (b) places of business that are not the proprietor's fixed premises.
- (2) The proprietor may be charged only the inspection fees under section 107.<sup>13</sup>

*Example—*

A person carries on a hairdressing business from 2 fixed premises and also provides hairdressing services in clients' homes in 2 local government areas. The only fees that may be charged are for inspecting the fixed premises.

**110 Inspection fee after remedial notice**

- (1) Subsection (2) applies if an authorised person has given a remedial notice to a business proprietor.
- (2) The local government for whom the authorised person was acting may charge the business proprietor 1 inspection fee to check if the remedial notice has been complied with.

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<sup>13</sup> Section 107 (Inspection fees if non-higher risk personal appearance services provided only at proprietor's fixed premises)



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- (3) An inspection fee under this section is in addition to the inspection fees that may be charged under sections 106 to 109.

## 111 Remedial notice

- (1) This section applies if an authorised person reasonably believes—
- (a) a business proprietor, or an operator employed or otherwise engaged by the proprietor—
    - (i) is contravening a provision of this Act; or
    - (ii) has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated; and
  - (b) a matter relating to the contravention is capable of being remedied; and
  - (c) it is appropriate to give the business proprietor an opportunity to remedy the matter; and
  - (d) for a business proprietor who is a licensee, a local government has not given a show cause notice to the business proprietor under section 52 relating to the contravention.
- (2) The authorised person may give the business proprietor a notice (a **remedial notice**) requiring the business proprietor to remedy the contravention or have the contravention remedied.
- (3) The remedial notice must state the following—
- (a) that the authorised person reasonably believes the business proprietor or operator—
    - (i) is contravening a provision of this Act; or
    - (ii) has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated;
  - (b) the provision the authorised person believes is being, or has been, contravened (the **relevant provision**);
  - (c) briefly, how it is believed the relevant provision is being, or has been, contravened;

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- (d) that the business proprietor must remedy the contravention or have the contravention remedied within a stated reasonable time;
  - (e) that it is an offence to fail to comply with the remedial notice unless the business proprietor has a reasonable excuse.
- (4) The remedial notice may also state the steps that the authorised person reasonably believes are necessary to remedy the contravention, or avoid further contravention, of the relevant provision.
- (5) The business proprietor must comply with the remedial notice unless the business proprietor has a reasonable excuse.

Maximum penalty—

- (a) if a contravention of the relevant provision is an offence—the maximum penalty for contravening the relevant provision;
  - (b) otherwise—20 penalty units.
- (6) If it is an offence to contravene the relevant provision for which a remedial notice has been issued, the business proprietor can not be prosecuted for that offence unless the person fails to comply with the remedial notice and does not have a reasonable excuse for the noncompliance.
- (7) A local government may prosecute a business proprietor or operator for the contravention of a relevant provision without an authorised person first issuing a remedial notice for the contravention.

**112 Person may be prohibited from providing personal appearance service**

- (1) This section applies if a person is convicted of an offence against this Act.
- (2) The court sentencing the person for the offence may, on its own initiative or the application of the prosecutor, make an order under subsection (3) or (5).
- (3) The court may make an order, applying for a period decided by the court—

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- (a) prohibiting the person from providing, or carrying on or managing a business providing, a personal appearance service; or
  - (b) prohibiting the person from having a financial interest in a business providing a personal appearance service; or
  - (c) if the person is a corporation, prohibiting an executive officer of the corporation, who was in a position to influence the conduct of the corporation in relation to the offence, from managing a corporation that carries on a business providing a personal appearance service.
- (4) For subsection (3)(c), a person manages a corporation if the person is a director, or is in any way concerned in or takes part in the management, of the corporation.
- (5) Also, the court may make an order, applying for a period decided by the court—
- (a) prohibiting the person from entering into commercial arrangements with a person who provides, or carries on or manages a business providing, a personal appearance service; or
  - (b) if the person is a corporation, prohibiting an executive officer of the corporation, who was in a position to influence the conduct of the corporation in relation to the offence, from entering into commercial arrangements with a person who provides, or carries on or manages a business providing, a personal appearance service.
- (6) An order under subsection (3) or (5) may apply generally or be limited in its application by reference to specified conditions, exceptions or factors.
- (7) A reference in subsection (5) to a person entering into commercial arrangements includes the entering into commercial arrangements on behalf of another person.
- (8) A person must not contravene an order under subsection (3) or (5).

Maximum penalty for subsection (8)—500 penalty units.

## **Division 4                    General enforcement matters**

### **113    Notice of damage**

- (1) This section applies if—
  - (a) an authorised person damages property when exercising or purporting to exercise a power; or
  - (b) a person (the *other person*) acting under the direction or authority of an authorised person damages property.
- (2) The authorised person must immediately give notice of particulars of the damage to the person who appears to the authorised person to be the owner of the property.
- (3) If the authorised person believes the damage was caused by a latent defect in the property or circumstances beyond the authorised person's or other person's control, the authorised person may state the belief in the notice.
- (4) If, for any reason, it is impracticable to comply with subsection (2), the authorised person must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This section does not apply to damage the authorised person reasonably believes is trivial.
- (6) In this section—

*owner*, of property, includes the person in possession or control of it.

### **114    Compensation**

- (1) If a person incurs loss or expense because of the exercise or purported exercise of a power under any of the following subdivisions of division 2<sup>14</sup> by or for a local government, the person may claim compensation from the local government—
  - (a) subdivision 1 (Entry of places);
  - (b) subdivision 3 (Powers after entry);

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14    Division 2 (Powers of authorised persons)

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- (c) subdivision 4 (Power to seize evidence).
- (2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under the subdivision.
- (3) Compensation may be claimed and ordered to be paid in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an offence against this Act brought against the person claiming compensation.
- (4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

### **115 False or misleading statements**

A person must not state anything to an authorised person the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

### **116 False or misleading documents**

- (1) A person must not give an authorised person a document containing information the person knows is false or misleading in a material particular.  
Maximum penalty—50 penalty units.
- (2) Subsection (1) does not apply to a person if the person, when giving the document—
  - (a) tells the authorised person, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

### **117 Obstructing an authorised person**

- (1) A person must not obstruct an authorised person in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an authorised person and the authorised person decides to proceed with the exercise of the power, the authorised person must warn the person that—
- (a) it is an offence to obstruct the authorised person unless the person has a reasonable excuse; and
  - (b) the authorised person considers the person’s conduct an obstruction.
- (3) In this section—  
*obstruct* includes hinder and attempt to obstruct or hinder.

### **118 Impersonating authorised person**

A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

## **Part 7                      Reviews and appeals**

### **Division 1                      Internal review of decisions**

#### **119 Appeal process starts with internal review**

- (1) Subject to this division, a person who is given, or is entitled to be given, an information notice for a decision under part 4 (the *original decision*) may appeal against the decision under this part.
- (2) The appeal must be, in the first instance, by way of an application for internal review under section 120.

## **120 Application for review to be made to the local government**

The person may apply to the local government that gave, or should have given, the person the information notice for a review of the original decision.

## **121 Applying for review**

- (1) The application must be made within 28 days after—
  - (a) if the person is given an information notice for the decision—the day the person is given the information notice; or
  - (b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the decision.
- (2) The local government may, at any time, extend the time for applying for the review.
- (3) The application must be in writing and state fully the grounds of the application.

## **122 Review decision**

- (1) After reviewing the original decision, the local government must make a further decision (the *review decision*) to—
  - (a) confirm the original decision; or
  - (b) amend the original decision; or
  - (c) substitute another decision for the original decision.
- (2) The local government must immediately give the applicant notice of the review decision (the *review notice*).
- (3) If the review decision is not the decision sought by the applicant, the review notice must also state—
  - (a) the reasons for the review decision; and
  - (b) that the applicant may appeal against the review decision, within 28 days after the person is given the notice, to a Magistrates Court in the local government area of the local government that made the original decision; and

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- (c) how to appeal; and
  - (d) that the applicant may apply to the court for a stay of the review decision.
- (4) If the local government does not give the notice within 40 days after the application is made, the local government is taken to have made a review decision confirming the original decision on the 40th day after the application is made.
- (5) If the review decision confirms the original decision, for the purpose of an appeal to the court, the original decision is taken to be the review decision.
- (6) If the review decision amends the original decision, for the purpose of an appeal to the court, the original decision as amended is taken to be the review decision.

### **123 Stay of operation of decision**

- (1) If an application is made for a review of an original decision, the applicant may immediately apply for a stay of the decision to a Magistrates Court in the local government area of the local government that made the original decision.
- (2) The court may stay the decision to secure the effectiveness of the review and any later appeal to the court.
- (3) The stay—
- (a) may be given on conditions the court considers appropriate; and
  - (b) operates for the period fixed by the court; and
  - (c) may be revoked or amended by the court.
- (4) The period of the stay must not extend past the time when the local government makes a review decision about the original decision and any later period the court allows the applicant to enable the applicant to appeal against the review decision.
- (5) The application affects the decision, or carrying out of the decision, only if the decision is stayed.



## **Division 2                      Appeals**

### **124      Who may appeal**

A person who has applied for the review of an original decision under division 1 and is dissatisfied with the review decision may appeal to a Magistrates Court against the review decision.

### **125      Court to which appeal may be made**

The appeal may be made to a Magistrates Court in the local government area of the local government that made the original decision.

### **126      Starting appeal**

- (1) The appeal is started by—
  - (a) filing a notice of appeal with the court; and
  - (b) serving a copy of the notice on the local government.
- (2) The notice of appeal must be filed within 28 days after—
  - (a) if the person is given a review notice for the review decision—the day the person is given the notice; or
  - (b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the review decision.
- (3) The court may, at any time, extend the period for filing the notice of appeal.
- (4) The notice of appeal must state fully the grounds of the appeal.

### **127      Stay of operation of decision**

- (1) The court may grant a stay of the operation of the review decision to secure the effectiveness of the appeal.
- (2) The stay—

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- (a) may be given on conditions the court considers appropriate; and
  - (b) operates for the period fixed by the court; and
  - (c) may be revoked or amended by the court.
- (3) The period of the stay must not extend past the time when the court decides the appeal.
- (4) The appeal affects the decision, or carrying out of the decision, only if the decision is stayed.

### **128 Hearing procedures**

- (1) In deciding the appeal, the court—
- (a) has the same powers as the local government; and
  - (b) is not bound by the rules of evidence; and
  - (c) must comply with natural justice.
- (2) The appeal is by way of rehearing, unaffected by the review decision, on the material before the person who made the review decision and any further evidence allowed by the court.

### **129 Powers of court on appeal**

- (1) In deciding the appeal, the court may—
- (a) confirm the review decision; or
  - (b) amend the review decision; or
  - (c) substitute another decision for the review decision; or
  - (d) set aside the review decision and return the issue to the local government with the directions the court considers appropriate.
- (2) If the court amends the review decision or substitutes another decision for the review decision, the amended or substituted decision is, for this Act (other than this part) taken to be the local government's decision.

## **130 Appeals to District Court only on questions of law**

A person aggrieved by the court's decision may appeal to the District Court, but only on a question of law.

# **Part 8 Legal proceedings**

## **Division 1 Application**

### **131 Application of part**

This part applies to a proceeding under this Act.

## **Division 2 Evidence**

### **132 Appointments and authority**

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the chief executive's appointment;
- (b) a chief executive officer's appointment;
- (c) an authorised person's appointment;
- (d) the authority of the chief executive, a local government, a chief executive officer or an authorised person to do anything under this Act.

### **133 Signatures**

A signature purporting to be the signature of the chief executive, a chief executive officer or an authorised person is evidence of the signature it purports to be.

### **134 Evidentiary provisions**

- (1) A certificate purporting to be signed by the chief executive or a chief executive officer and stating any of the following matters is evidence of the matter—
  - (a) a stated document is one of the following things made, given, issued or kept under this Act—
    - (i) an appointment, approval or decision;
    - (ii) a notice or requirement;
    - (iii) a licence;
    - (iv) a record, or an extract from a record;
  - (b) a stated document is another document kept under this Act;
  - (c) a stated document is a copy of a thing mentioned in paragraph (a) or (b);
  - (d) on a stated day, or during a stated period, a stated person was or was not a licensee;
  - (e) on a stated day, or during a stated period, a licence—
    - (i) was or was not in force; or
    - (ii) was or was not subject to a stated condition;
  - (f) on a stated day, a licence was suspended or cancelled;
  - (g) on a stated day, or during a stated period, an appointment as an authorised person was, or was not, in force for a stated person;
  - (h) on a stated day, a stated person was given a stated notice under this Act;
  - (i) on a stated day, a stated requirement was made of a stated person;
  - (j) a stated amount is payable under this Act by a stated person and has not been paid.
- (2) In a complaint starting a proceeding, a statement that the matter of complaint came to the complainant's knowledge on a stated day is evidence of when the matter came to the complainant's knowledge.

## **Division 3                      Proceedings**

### **135      Summary offences**

- (1) A proceeding for an offence against this Act is to be taken in a summary way under the *Justices Act 1886*.
- (2) The proceeding must start—
  - (a) within 1 year after the commission of the offence; or
  - (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

### **136      Allegations of false or misleading information or document**

In any proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading document, it is enough for a charge to state that the information or document was, without specifying which, 'false or misleading'.

### **137      Recovery of costs of investigation**

- (1) This section applies if—
  - (a) a court convicts a person of an offence against this Act; and
  - (b) a local government applies to the court for an order against the person for the payment of the costs the local government has incurred in taking a thing or doing something else during the investigation of the offence; and
  - (c) the court finds the local government has reasonably incurred the costs.
- (2) The court may order the person to pay the local government an amount equal to the costs if it is satisfied it would be just to make the order in the circumstances of the particular case.

- (3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

### **138 Application for order for payment of costs under s 137**

- (1) An application to a court under section 137 is, and any order made by the court on the application is a judgment, in the court's civil jurisdiction.
- (2) Any issue on the application is to be decided on the balance of probabilities.

### **139 Forfeiture on conviction**

- (1) On conviction of a person for an offence against this Act, a court may order the forfeiture to a local government of—
- (a) anything used to commit the offence; or
  - (b) anything else the subject of the offence.
- (2) The court may make the order—
- (a) whether or not the thing has been seized; and
  - (b) if the thing has been seized, whether or not the thing has been returned to its owner.
- (3) The court may make any order to enforce the forfeiture it considers appropriate.
- (4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

### **140 Dealing with forfeited thing**

- (1) On the forfeiture of a thing to a local government, the thing becomes the local government's property and may be dealt with by the local government as the local government considers appropriate.
- (2) Without limiting subsection (1), the local government may destroy the thing.

### 141 Responsibility for acts or omissions of representative

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—

*representative* means—

  - (a) for a corporation—an executive officer, employee or agent of the corporation; or
  - (b) for an individual—an employee or agent of the individual.

*state of mind* of a person includes—

  - (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

### 142 Executive officers must ensure corporation complies with Act

- (1) The executive officers of a corporation must ensure the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits

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an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove—
  - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
  - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

### **143 Fines payable to local government**

- (1) This section applies if—
  - (a) a proceeding for an offence about a matter is taken by a local government; and
  - (b) a court imposes a fine for the offence.
- (2) The fine must be paid to the local government.

## **Part 9 Miscellaneous**

### **144 Service of documents**

- (1) If a document is required or permitted under this Act to be given to a person, the document may be given to the person by facsimile transmission directed and sent to—
  - (a) the last transmission number given to the giver of the document by the person as the facsimile transmission number for service of documents on the person; or



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- (b) the facsimile transmission number operated—
  - (i) at the address of the person last known to the giver of the document; or
  - (ii) if the person is a corporation, at the corporation's registered office under the Corporations Act.
- (2) A document given under subsection (1) is taken to have been given on the day the document is transmitted.
- (3) This section does not limit any other means of giving documents authorised or permitted by law including, for example, under the *Acts Interpretation Act 1954*, part 10.<sup>15</sup>

#### **145 Protecting officials from liability**

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to—
  - (a) if the official is the chief executive officer of a local government, an authorised person appointed by a local government or acting under the direction of an authorised person appointed by a local government—the local government; or
  - (b) if paragraph (a) does not apply—the State.
- (3) In this section—

*official* means—

  - (a) the Minister; or
  - (b) the chief executive; or
  - (c) a chief executive officer; or
  - (d) an authorised person; or
  - (e) a person acting under the direction of an authorised person.

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<sup>15</sup> *Acts Interpretation Act 1954*, part 10 (Service of documents)

### **146 Delegation by chief executive**

- (1) The chief executive may delegate the chief executive's powers under this Act to the following appropriately qualified persons—
  - (a) a public service employee in the department;
  - (b) a health service employee under the *Health Services Act 1991*.
- (2) In this section—

*appropriately qualified* includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

A person's classification level in the department.

### **147 Approval of forms**

A local government may approve forms for use under this Act.

### **148 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may—
  - (a) prescribe ways to minimise the risk of infection relating to personal appearance services; and
  - (b) set fees payable under this Act and the matters for which the fees are payable including fees for section 9(3)(b);<sup>16</sup> and
  - (c) impose a penalty of not more than 20 penalty units for a contravention of a provision of a regulation.

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<sup>16</sup> Section 9 (Local government to administer Act)

## **Part 10                      Transitional**

### **149      Definitions for pt 10**

In this part—

*commencement* means the commencement of this part.

*former regulation* means the *Health Regulation 1996* as in force before the commencement.

### **150      Pending applications for licences under pt 5 of the former regulation**

- (1) This section applies to each of the following applications made under part 5 of the former regulation pending immediately before the commencement—
  - (a) an application for a licence;
  - (b) an application for the renewal of a licence;
  - (c) an application for the transfer of a licence.
- (2) The application lapses and the fee paid by the applicant to a local government for the application must be refunded in full to the applicant by the local government.

### **151      Lapsing of licence held under pt 5 of former regulation**

- (1) This section applies if a person is the holder of a licence under part 5 of the former regulation immediately before the commencement.
- (2) On the commencement the licence lapses.

### **152      Action to cancel or suspend a licence under pt 5 of former regulation**

- (1) This section applies if a licence under part 5 of the former regulation lapses under section 151.
- (2) A notice under the former regulation to show cause why a notice should not be given cancelling or suspending the licence also lapses.

**153 Pending application for registration of an establishment under pt 15 of the former regulation**

- (1) This section applies to an application for registration of an establishment (*the premises*) made under part 15 of the former regulation.
- (2) The application is taken to be an application for a licence to carry on business providing higher risk personal appearance services from the premises made under the relevant section of this Act if—
  - (a) the application is pending immediately before the commencement; and
  - (b) the services to be provided at the premises are higher risk personal appearance services.
- (3) A local government—
  - (a) may assess the suitability of the applicant and the premises under this Act; and
  - (b) for that purpose may make inquiries and require further information or a document under section 37.
- (4) However, if a regulation states that section 36(a)(ii) does not apply to an application to which this section applies made before a stated date, section 36(a)(ii) does not apply to an application made before the stated date.
- (5) The stated date under subsection (4) must not be more than 1 year after the commencement.
- (6) If the services to be provided at the premises are not higher risk personal appearance services—
  - (a) the application lapses; and
  - (b) the fee paid by the applicant to a local government for the application must be refunded in full to the applicant by the local government.

**154 Pending application for renewal of registration of an establishment under pt 15 of the former regulation**

- (1) This section applies to an application for renewal of registration of an establishment (*the premises*) made under part 15 of the former regulation.
- (2) The application is taken to be an application for renewal of a licence to carry on business providing higher risk personal appearance services from the premises made under the relevant section of this Act if—
  - (a) the application is pending immediately before the commencement; and
  - (b) the services being provided at the premises are higher risk personal appearance services.
- (3) A local government—
  - (a) may assess the suitability of the applicant and the premises under this Act; and
  - (b) for that purpose may make inquiries and require further information or a document under section 45.
- (4) However, if a regulation states that section 36(a)(ii) does not apply to an application to which this section applies made before a stated date, section 36(a)(ii) does not apply to an application made before the stated date.
- (5) The stated date under subsection (4) must not be more than 1 year after the commencement.
- (6) If the services being provided at the premises are not higher risk personal appearance services—
  - (a) the application lapses; and
  - (b) the fee paid by the applicant to a local government for the application must be refunded in full to the applicant by the local government.

**155 When single licence may be issued for applications under pt 15 of the former regulation**

- (1) This section applies if a local government has received applications for registration or renewal of registration of 2 or

more establishments (*the premises*) to which sections 153(2) and 154(2) apply.

- (2) The local government may issue a single licence to cover all the premises.

**156 Effect of registration of an establishment providing higher risk personal appearance services under pt 15 of the former regulation**

- (1) This section applies if—
  - (a) a person is the proprietor of an establishment (*the premises*) registered under part 15 of the former regulation immediately before the commencement; and
  - (b) services being provided at the premises are higher risk personal appearance services.
- (2) On the commencement, the registration is taken to be a licence issued to the person to carry on business providing higher risk personal appearance services from the premises under this Act (a *continued licence*).
- (3) Subject to this part, a continued licence remains in force for the remainder of the period of the registration under the former regulation.
- (4) Subsection (2) applies to a registration under part 15 of the former regulation even if the registration was suspended at the commencement.
- (5) However, the suspension is taken to continue as a suspension of the continued licence.

**157 Application of this Act to a continued licence**

- (1) This Act applies to a continued licence for the remainder of the period of registration under the former regulation.
- (2) However, if a regulation states that section 41(1)(b)(iii) and (iv) does not apply to a continued licence until a stated date, section 41(1)(b)(iii) and (iv) does not apply to the licence until the date.

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- (3) The stated date under subsection (2) must not be more than 1 year after the commencement.
- (4) For a continued licence, for the remainder of the period of the registration under the former regulation, a local government may not charge an inspection fee under part 6, division 3 for inspecting the premises to which the licence relates.
- (5) Subsection (6) applies to an application for the renewal of a continued licence.
- (6) If a regulation states that section 36(a)(ii) does not apply to an application for renewal made before a stated date, section 36(a)(ii) does not apply to an application made before the stated date.
- (7) The stated date under subsection (6) must not be more than 1 year after the commencement.

**158 Lapsing of registration of establishment registered under pt 15 of the former regulation**

- (1) This section applies if—
  - (a) a person is the proprietor of an establishment (*the premises*) registered under part 15 of the former regulation immediately before the commencement; and
  - (b) services being provided at the premises are not higher risk personal appearance services.
- (2) The registration of the establishment lapses.

**159 Application of Act to certain licences relating to establishments previously registered**

- (1) This section applies if—
  - (a) a person is—
    - (i) the proprietor of an establishment (*the premises*)—
      - (A) registered under part 15 of the former regulation immediately before the commencement; or

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- (B) registered under part 15 of the former regulation before the commencement and for which an application for renewal is pending immediately before the commencement; or
  - (ii) an applicant for registration of an establishment (also *the premises*) made under part 15 of the former regulation pending immediately before the commencement; and
  - (b) services being provided, or to be provided, at the premises are higher risk personal appearance services; and
  - (c) a licence relating to the premises is subsequently issued under this Act.
- (2) This Act applies to the licence mentioned in subsection (1)(c).
  - (3) However, if a regulation states that for a licence issued before a stated date, section 41(1)(b)(iii) and (iv) does not apply to the licence until a stated date, section 41(1)(b)(iii) and (iv) does not apply to the licence until the date.
  - (4) The stated date under subsection (3) must not be more than 1 year after the commencement.

## 160 Offences

- (1) A proceeding for an offence against a provision of the former regulation may be started or continued, and the provisions of the former regulation, and other provisions of the *Health Act 1937*, that are necessary or convenient to be used in relation to the proceeding continue to apply, as if this Act had not commenced.
- (2) For subsection (1), the *Acts Interpretation Act 1954*, section 20<sup>17</sup> applies, but does not limit the subsection.

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17 *Acts Interpretation Act 1954*, section 20 (Saving of operation of repealed Act etc.)



## Schedule 2      Dictionary

### section 10

***accepted representations*** see section 53(2).

***approved form*** means a form approved by a local government under section 147.

***authorised person*** means a person appointed to be an authorised person for this Act.

***beauty therapy*** see section 11.

***body piercing*** see section 12.

***business proprietor*** means a person carrying on a business that provides personal appearance services.

***business transaction*** means a transaction in which a service is provided for payment or other consideration.

***chief executive officer*** means the chief executive officer of a local government.

***client*** means an individual to whom a personal appearance service is provided as part of a business transaction.

***commencement***, for part 10, see section 149.

***continued licence*** see section 156(2).

***conviction*** means a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

***document certification requirement*** see section 101(5).

***document production requirement*** see section 101(6).

***executive officer***, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

***facsimile warrant*** see section 83(4).

## Schedule 2 (continued)

***first local government***, in relation to the provision of higher risk personal appearance services by a licensee from mobile premises, means the local government that issued the licence to carry on the business.

***first local government area***, in relation to a first local government, means the local government area of the first local government.

***fixed premises***, for a business providing personal appearance services, means a building or other structure, or part of a building or other structure, that has a permanent address.

***former regulation***, for part 10, see section 149.

***hairdressing*** see section 13.

***health-care facility*** means a place where a health service is provided.

***health service*** means a service provided to an individual for the benefit of human health, including services stated in the *Health Quality and Complaints Commission Act 2006*, schedule 1, part 1 but excluding services stated in schedule 1, part 2 of that Act.

***higher risk personal appearance service*** see section 14.

***infection control guidelines*** see section 28(1).

***infection control qualification*** means a certificate issued by a registered training organisation to an individual stating that the individual has achieved an infection control competency standard prescribed under a regulation.

***infection risk*** see section 19(1)(a).

***information notice***, for a decision of a local government under part 4, is a written notice stating the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the person to whom the notice is given may have the decision reviewed within 28 days;

### Schedule 2 (continued)

- (d) how the person may have the decision reviewed;
- (e) if the decision is that a licence be cancelled or suspended—a direction to the person to return the licence to the local government within 7 days after receiving the notice.

**licence** means a licence in force under part 4.

**licensee** means the holder of a licence.

**mobile premises**, for a business providing personal appearance services, means premises that are a vehicle or are otherwise ordinarily moved from place to place.

**motor vehicle** means a vehicle propelled by a motor that forms part of the vehicle, and includes a trailer or caravan attached to the vehicle.

**non-higher risk personal appearance service** see section 15.

**notice**, other than a notice that is subordinate legislation, means signed written notice.

**operator** means an individual who personally provides personal appearance services to a client.

**original decision** see section 119(1).

**personal appearance service** see section 16.

**personal details requirement** see section 99(5).

**place** includes premises and vacant land.

**place of business** means a place where a personal appearance service is provided.

**premises**, other than for part 10, includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) land where a building or other structure is situated; and
- (d) a vehicle.

**Queensland Development Code** see the *Standard Building Regulation 1993*, section 6A.

Schedule 2 (continued)

**registered training organisation** means a registered training organisation under the *Vocational Education, Training and Employment Act 2000* or under similar legislation of another State.

**remedial notice** see section 111(2).

**review decision** see section 122(1).

**review notice** see section 122(2).

**second local government** in relation to the provision of higher risk personal appearance services by a licensee from mobile premises, means a local government other than the local government that issued the licence to carry on the business.

**second local government area**, in relation to a second local government, means the local government area of the second local government.

**show cause notice** see section 52(2).

**show cause period** see section 52(3)(e).

**skin penetration** see section 17.

**spent conviction** means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

**tattooing** see section 18.

**vehicle** includes a caravan or trailer or another type of transport that moves on wheels.

## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 July 2006. Future amendments of the Public Health (Infection Control for Personal Appearance Services) Act 2003 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

*Public Health (Infection Control for Personal  
Appearance Services) Act 2003*

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### 3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
1	none	1 July 2004	
1A	none	1 July 2005	
1B	—	2 July 2005	prov exp 1 July 2005
1C	2006 Act No. 25	1 July 2006	

### 5 Tables in earlier reprints

Name of table	Reprint No.
Corrected minor errors	1

## **6 List of legislation**

### **Public Health (Infection Control for Personal Appearance Services) Act 2003 No. 81**

date of assent 6 November 2003

ss 1–2 commenced on date of assent

ss 24–25 commenced 1 July 2005 (automatic commencement under AIA s 15DA(2)  
(2003 SL No. 349 s 2))

remaining provisions commenced 1 July 2004 (2003 SL No. 351)

amending legislation—

### **Health Quality and Complaints Commission Act 2006 No. 25 ss 1–2(1), 241 schs 3–4**

date of assent 29 May 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2006 (see s 2(1))

## **7 List of annotations**

### **Transitional regulation-making power**

**s 161** exp 1 July 2005 (see s 161(3))

### **PART 11—AMENDMENT OF ACT AND REGULATIONS**

**pt 11 (s 162)** om R1 (see RA ss 40 and 7(1)(k))

### **SCHEDULE 1—AMENDMENTS OF ACT AND REGULATIONS**

om R1 (see RA s 40)

### **SCHEDULE 2—DICTIONARY**

def “**health service**” amd 2006 No. 25 s 241 sch 3

def “**registered training organisation**” amd 2006 No. 25 s 241 sch 4