

Health (Protection) Amendment Bill

Government Bill

As reported from the Health Committee

Commentary

Recommendation

The Health Committee has examined the Health (Protection) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The Health (Protection) Amendment Bill seeks to amend the Health Act 1956 in order to protect the public from infectious diseases and to lessen the harm of artificial UV tanning. The bill would

- increase the range of infectious diseases that are notifiable
- improve the management of individuals with infectious diseases whose behaviour puts other people at risk of contracting a disease by providing new management options including directions issued by a medical officer of health, court orders, urgent health risk orders, and interventions
- strengthen legislative provisions for contact tracing of people who may have an infectious disease, or may have been exposed to one
- introduce a ban on the provision of commercial artificial UV tanning services to people under 18 years old.

This commentary covers the major amendments that we recommend; it does not discuss minor or technical amendments.

Infectious diseases

Disclosure of health information

We recommend amending the bill to insert new clause 4B and new sections 92QA, 92ZM, and 92ZZ(2) in clause 7. This would ensure that information collected under

new Part 3A inserted by clause 7, including under a direction or order or during contact tracing, would only be used or disclosed as authorised under a provision of the Health Act, or another Act. We believe these amendments would encourage individuals to provide private information without fear that it would be revealed inappropriately. The provision of timely, accurate, and important information helps prevent the spread of diseases.

Identifying information

We recommend amending subsection (3C)(a) in clause 5, to allow the sex, date of birth, and national health index number of a person with a notifiable disease to be disclosed. This would involve removing the sex, date of birth, and national health index number from the identifying information which under subsection (3A) in clause 5 cannot be disclosed. This would give a medical officer of health access to valuable information that would assist with assessments of risk factors, disease surveillance, and contact tracing to prevent the further spread of infection.

Principles

The bill sets out a number of principles to be taken into account by people and courts involved in the management of infectious diseases.

We recommend amending clause 7 to insert new section 92AB which would emphasise that the paramount aim of the principles is to protect public health. We also recommend amending clause 7 to insert new section 92A(3): this would clarify that the principles do not apply to an individual with an infectious disease, or suspected of having an infectious disease who has been asked to undertake their own contact tracing under new section 92ZW(2). We also recommend that clause 7 be amended to insert new section 92A(2), which states that the principles are not listed in any order of importance, and we recommend the following amendments to the principles:

- that section 92D in the bill as introduced be replaced by new section 92AC, which would emphasise the need to respect and recognise the dignity of individuals who have contracted an infectious disease, and take into account any known special circumstances or vulnerabilities that an individual may have.
- that section 92B be amended to require people or courts involved in the management of an infectious disease to take into account any efforts made by individuals to prevent the spread of the disease, and to include the principle that individuals and communities should be encouraged to take part in public health decisions affecting them; we consider that these amendments would enhance voluntary compliance.
- that new section 92EA be inserted, which would provide that any measures applied to an individual under new Part 3A must be proportionate to the public health risk and must not be taken in an arbitrary manner.

Directions and orders

We recommend amending sections 92G(8), 92H(8), and 92J(4) in clause 7 so that a medical officer of health would only be required to send a copy of a direction given under the section to the Director-General upon request; this would prevent unnecessary administration. We also recommend amending clause 7 to insert new section 92JA which would allow for the Director-General to require reports from medical officers of health about the directions they give under new Part 3A (inserted by clause 7).

We recommend amending clause 7 to insert new sections 92G(9), 92H(9), and 92I(9). This would make it clear that a person who is required to provide information following directions from a medical officer of health must do so despite anything in the Privacy Act 1993, that the person must be informed that the information is being collected in order to manage an infectious disease, and that this does not limit the person's right to access or disclose information about themselves. We also recommend amending clause 7 to insert new sections 92QA and 92ZM, which would provide that any information collected under a direction or an order may only be used to manage infectious diseases, and that this does not limit the person's right to access or disclose information about themselves.

We recommend amending clause 7 to insert new sections 92K(3) and 92(K)(4) which would provide that if a direction or notice (this does not include an urgent public health order or a court order) cannot be given to an individual in person alternative steps must be taken urgently to contact the person. We also recommend amending 92K(2) to clarify that when a direction or notice is to be served on an individual under 16 years old, or lacking in legal capacity, it must be served on the parent, guardian, or other person in charge of that individual.

We recommend amending clause 7 to insert new section 92L(3)(d) which would provide for a direction to cease to have effect once it has been complied with. This would bring it into alignment with section 92ZB(6) which provides for a medical examination order to cease when an examination has been completed, and it has been established whether an individual has an infectious disease.

We also recommend amending section 92N(1) in clause 7; this would require that an extension of a direction must be made at a reasonable time before the expiry of the original direction, to ensure that the finite time for directions provided in section 92L is not undermined.

We recommend amending clause 7, section 92Q(1) to clarify that an individual may appeal to the District Court against a direction or any part of a direction, a variation of the direction, or an extension of a direction. We also recommend amending clause 7 to insert new section 92Q(4) which would clarify that a person may appeal against a court's determination in accordance with section 72 of the District Courts Act 1947.

Compliance with directions and orders

We recommend amending clause 7 to insert new sections 92RA and 92ZQA which would make it an offence for a parent, guardian, or person in charge of an individual

aged under 16, or a person in charge of an individual lacking in legal capacity, to obstruct compliance with directions and orders. We acknowledge that voluntary compliance is preferable, but recognise that there have been cases in the past where parents have refused to have their child tested for an infectious disease.

We further recommend amending clause 7 to insert new section 92RB. This would establish that a parent, guardian, or person in charge of an individual aged under 16, or a person in charge of an individual lacking in legal capacity, would be required to take reasonable steps to ensure the individual is attended by a doctor to facilitate diagnosis and treatment, and to minimise the disease transmission risk.

These amendments would acknowledge the seriousness of an infectious disease not being contained or managed because compliance is being obstructed or a duty of care is not being followed.

Isolation

Clause 7 of the bill as introduced would provide for orders requiring the isolation of people likely to spread infectious diseases. We therefore recommend clause 7 be amended to include new section 6A, which would repeal section 79 of the Act, which deals with isolation orders.

Public health surveillance

We recommend amending section 92U(1)(e) in clause 7 which would clarify that public health surveillance could be undertaken with the aid of electronic communication devices. This would reflect the use of mobile phones, email, video links, or other electronic communication devices to monitor and supervise a person with an infectious disease.

Duration of a public health order

We also recommend inserting new sections 92W(3)(d) and 92W(4)(b). This would provide that a public health order made under sections 92T or 92U respectively would cease to have effect on the earlier of a number of days; this would include following the cancellation of an order by a District Court Registrar, having been satisfied that a medical officer of health has certified it is no longer necessary to manage the public health risk posed by the individual. We believe this amendment would ensure that an order does not remain in force any longer than necessary.

We also recommend amending clause 7 by inserting 92ZA(2) which would clarify that if a District Court has determined an application for a public health order before the close of the 72-hour period of an urgent health order, the urgent public health order would cease to have effect on the court's determination of an application.

Relationship between directions and health orders

We recommend amending clause 7 by inserting new section 92Y(2A) which would clarify that a public health order does not in itself cancel a direction that a person should undergo a medical examination. We also recommend inserting new section 92Y(2B) which would prevent a direction being imposed while a public health order

is in force. These amendments would clarify the relationship between directions and public health orders.

Order for contacts

We recommend amending clause 7 to insert new section 92ZD(4) which would provide that a Registrar must cancel an order for contacts of an individual who has, or may have, an infectious disease, after a medical officer of health has certified that there is no longer a public health risk. This amendment would also clarify that the order would no longer have effect once cancelled.

Appeals

We recommend amending clause 7 to insert new section 92ZN(2A) which would provide that a person may make an appeal to the High Court about the District Court's decision on an order, part of an order, a variation of an order, or an extension of an order.

We recommend amending clause 7 to add new sections 92ZE(5), 92ZN(7), and 92ZO(4), which would require appeals to the courts mentioned in these sections to be heard as soon as possible. We recognise that affected people would want to have matters dealt with quickly and this would avoid the need to set a restrictive statutory time-frame.

Participation in proceedings

We recommend amending section 92ZF in clause 7, which would state that parties, or their lawyers, have the right to be heard, present evidence, and cross examine witnesses in District Court proceedings. This would further strengthen affected people's ability to participate in processes relating to the management of infectious diseases. We also recommend amending section 92ZG in clause 7 which would provide that the District Court may appoint a lawyer to act for an individual lacking in legal capacity.

We also recommend amending clause 7 to insert new section 92ZF(2A) which would provide that the Judge may restrict or prohibit the public availability of any part of the court record and judgement.

Cancellation or variance of orders

We recommend amending clause 7 by inserting new section 92ZK(2) which would provide for medical officers of health to apply to the District Court to vary orders. We also recommend amending sections 92ZM and 92ZL regarding medical officers of health and individuals agreeing on variations to an order. We recommend removing 92ZM of the bill as introduced because it would lead to an erosion of judicial orders by giving variance powers to a medical officer of health that would be more appropriately dealt with by the court. Our suggested amendments would address this concern because section 92ZL would require an application to the court to vary an order, and would allow the court to deal with an application without the parties being required to appear.

Contact tracing

We recommend amending sections 92ZR, 92ZS, 92ZU, and 92ZV in clause 7, to allow contact tracing if an individual has not been diagnosed but is suspected of having a serious infectious disease. This is necessary when dealing with diseases like measles and meningococcal disease, which are transmitted easily and have potentially serious consequences. In such cases a contact tracer would need to believe that the public health risk justifies contact tracing.

We also recommend amending clause 8 so that it would allow regulations to be made to manage a person suspected of having an infectious disease.

Contact tracers

We recommend amending section 92ZT in clause 7, which would stipulate that a person nominated to undertake contact tracing by a district health board or medical officer of health must be suitably qualified in health or community work. We consider that the addition of the nomination process means that contact tracers would not need to delegate their powers, and therefore we recommend amending clause 7 to remove sections 92ZZA and 92ZZB.

We also recommend amending the bill as introduced to insert new clause 4A. This would allow a medical officer of health to perform the functions, or exercise the powers, of their role in relation to contact tracing in their district or any other health district. We believe this would strengthen an individual's privacy by preventing the unnecessary duplication of private or sensitive details amongst medical officers of health.

Providing information about contacts

We recommend amending clause 7 to insert new section 92ZV(5), which would enable a contact tracer to require a parent, guardian, person in charge of, or legal representative of an individual to provide information about the individual's contacts. This would be useful in cases when an individual is under 16 years of age, lacks legal capacity, or has died. We also recommend inserting new section 92ZY(2)(d) which would require an event organiser to provide details of attendees if necessary to prevent the spread of an infectious disease. This would enable the provision of important information that would help contain the spread of an infectious disease.

We recommend amending clause 7 to insert new section 92ZY(4), which provides that, despite anything in the Privacy Act 1993, the person required to provide information must do so, the person must be informed that the information is being collected to manage an infectious disease, and the person's right to access or disclose information about themselves is not limited.

Regulation-making authority

We recommend that clause 8 of the bill be amended to insert new subclause (3) to authorise the prescribed form and content of notifications, and new subclause (4)(ra) which would provide authority for regulations to be made requiring specified identi-

fying information to be restricted. This recommended amendment would address the concern raised by the Regulations Review Committee.

Sexually transmitted infections

We recommend amending clause 10 of the bill as introduced to allow for the inclusion of chlamydia, soft chancre, venereal granuloma and venereal warts in the Act's list of "other infectious diseases". The inclusion of chlamydia is of particular note because it is the most common sexually transmitted infection in New Zealand. Although soft chancre, venereal granuloma, and venereal warts are already listed as venereal diseases in section 2 of the Act; their inclusion, with chlamydia, in Schedule 1 would not mean that the diseases would be notifiable, but, with the provisions in clause 7, would provide powers to effectively manage outbreak situations. We also recommend revoking the Venereal Diseases Regulations 1982 (SR 1982/215), and repealing sections 88 to 92 of the Act, by inserting clauses 12C and 6B, respectively. This would prevent inconsistencies.

Artificial UV tanning services

Infringement process

We recommend amending clause 13 to include new sections 115, 116, 116A and 116B, and new subclauses (4)(rb) and (4)(rc) in clause 8 which would provide an infringement process to deal with breaches of the ban on providing artificial UV tanning services to persons aged under 18. We consider that an infringement process would deal efficiently with offences and prevent expensive and time-consuming criminal prosecutions. We expect that prosecution would follow repeated, deliberate, or blatant contraventions of the ban.

We also recommend amending clause 13, new section 115, which would clarify that an infringement offence means an offence against section 114 or any regulations made under section 119(d) of the Act in relation to artificial UV tanning services.

Other considerations

We note that there is a lot of concern regarding the link between skin cancer and the use of sunbeds. We carefully considered extending the proposed ban to completely prohibit the commercial use of artificial UV tanning services, which many submitters suggested. However, we are satisfied that the bill as introduced would protect the vulnerable under-18 age group and allow adults to make informed decisions about sunbed use in an environment of improved operator compliance. Other legislation, including the Smoke-free Environments Act 1990 and the Sale and Supply of Alcohol Act 2012, also recognise 18 as an age at which people are capable of making their own choices.

New Zealand Labour Party, New Zealand First Party, and Green Party of Aotearoa New Zealand minority view

Committee members of Labour, New Zealand First, and the Green Party believe that this amendment bill does not go far enough in restricting the use of artificial UV tanning services for cosmetic purposes. The majority of unique submitters felt that the bill should completely prohibit the commercial use of sunbeds for cosmetic purposes as they are not safe and offer no health benefits. Scientific data presented to the committee indicated that sunbeds emit a higher concentration of UV radiation than the sun. The World Health Organisation classified sunbeds as a carcinogenic in 2009 and estimates that sunbed use before the age of 35 increases the risk of melanoma by 75 percent. On average, 325 New Zealanders will die from melanoma every year. New Zealanders should not be put at risk of dying from cancer for a service that offers no health benefits.

We are very disappointed that an initial recommendation from the committee requiring the Director-General to review the operation of the age-related ban and infringement process on artificial UV tanning services three years after its commencement has not been inserted into the bill.

Labour will be introducing a supplementary order paper that will ban the use of artificial UV tanning services that will not commence until three years after the Act has received Royal assent to give commercial operators time to phase out their services.

Appendix

Committee process

The Health (Protection) Amendment Bill was referred to the committee on 6 November 2014. The closing date for submissions was 13 February 2015. We received and considered 71 submissions from interested groups and individuals. We heard 22 submissions.

We received advice from the Ministry of Health. The Regulations Review Committee reported to the committee on the powers contained in clause 8.

Committee membership

Simon O'Connor (Chairperson)

Jacqui Dean

Kevin Hague

Hon Annette King

Barbara Kuriger

Dr Shane Reti

Scott Simpson

Barbara Stewart

Louisa Wall

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Dr Jonathan Coleman

Health (Protection) Amendment Bill

Government Bill

Contents

	Page
1 Title	4
2 Commencement	5
3 Principal Act	5

Part 1 Infectious diseases

Notification

4	Section 2 amended (Interpretation)	5
<u>4A</u>	<u>Section 7A amended (Medical officers of health and other officers)</u>	<u>6</u>
<u>4B</u>	<u>Section 22C amended (Disclosure of health information)</u>	<u>6</u>
5	Section 74 amended (Medical practitioners to give notice of cases of notifiable disease)	6
6	Section 74AA amended (Medical laboratories to give notice of cases of notifiable disease)	7

Management of infectious diseases

<u>6A</u>	<u>Section 79 repealed (Isolation of persons likely to spread infectious disease)</u>	<u>7</u>
<u>6B</u>	<u>Sections 88 to 92 and cross-heading above section 88 repealed</u>	<u>7</u>
7	New Part 3A inserted	7

Part 3A Management of infectious diseases

Subpart 1—Overarching principles

92A	Principles to be taken into account	7
<u>92AB</u>	<u>Paramount consideration</u>	<u>8</u>
<u>92AC</u>	<u>Respect for individuals</u>	<u>8</u>

Health (Protection) Amendment Bill

92B	Voluntary compliance	8
92C	Least restrictive alternative	8
92D	Respect for individuals	9
92E	Individual to be informed	9
92EA	<u>Principle of proportionality</u>	9
92EB	<u>Least restrictive alternative</u>	9
92F	Measures to apply no longer than necessary	9
Subpart 2—Directions		
92G	Medical officer of health may give directions to individual posing public health risk	9
92H	Medical officer of health may give directions to contacts of individuals posing public health risk	11
92I	Direction for medical examination	13
92J	Direction to close educational institutions	15
92JA	<u>Director-General may require copies of directions given under this Part</u>	15
<i>General provisions concerning directions and notices</i>		
92K	Written directions and notices to be served on individual	15
92L	Duration of directions	16
92M	Medical officer of health must review directions	16
92N	Directions may be extended	16
92O	Repeated directions may be given	17
92P	Directions may be varied or rescinded	17
92Q	Appeal against directions	17
92QA	<u>Confidentiality</u>	17
<i>Compliance with directions</i>		
92R	Offence for failing to comply with directions	17
92RA	<u>Offence to obstruct compliance with directions</u>	17
92RB	<u>Duty of care relating to individuals under 16 years and persons lacking in legal capacity</u>	18
92S	Force not permissible	18
Subpart 3—Orders		
<i>Public health orders</i>		
92T	District Court may make public health order	18
92U	Public health order may impose certain requirements on individual	18
92V	Matters that District Court may take into account in assessing public health risk	20
92W	Duration of public health order	20
92X	Public health order may be extended	21
92Y	Relationship between directions and public health orders	21

Health (Protection) Amendment Bill

	<i>Urgent public health orders</i>	
92Z	Medical officer of health may make urgent public health order	21
92ZA	Duration of urgent public health order	22
	<i>Medical examination orders and orders concerning contacts</i>	
92ZB	Medical examination orders	22
92ZC	District Court may make public health order contingent on examinations establishing infectious disease	23
92ZD	Order for contacts	23
	<i>Proceedings</i>	
92ZE	Proceedings under this Part in District Court to be heard by Family Court Judges, if practicable	24
92ZF	Proceedings under this Part not open to public	25
92ZG	District Court may appoint lawyers to act for individuals under 16 years	25
	<i>General provisions concerning orders</i>	
92ZH	Application for order	25
92ZI	Prior consultation with individual and individual's family or whānau	25
92ZJ	Case conferences	26
92ZK	Medical officer of health must review orders	26
92ZL	District Court may cancel or vary orders	26
92ZM	Medical officer of health and individual may agree on variation	27
<u>92ZM</u>	<u>Confidentiality</u>	<u>27</u>
	Subpart 4—Appeals and enforcement	
92ZN	Appeals to High Court	27
92ZO	Appeals to Court of Appeal	28
92ZP	Enforcement of order by medical officer of health	28
92ZQ	Offence not to comply with order	29
<u>92ZQA</u>	<u>Offence to obstruct compliance with order</u>	<u>29</u>
	Subpart 5—Contact tracing	
92ZR	Purpose of contact tracing	29
92ZS	What contact tracing involves	29
92ZT	Who may be contact tracer	30
92ZU	Appropriateness of contact tracing	30
92ZV	Duty of individual with infectious disease to provide information about contacts	30
92ZW	Consideration as to whether contact tracing can be undertaken by individual	31

	92ZX	When contact tracer may undertake contact tracing	32
	92ZY	Contact tracer may require certain persons to provide information	32
	92ZZ	Duty of confidentiality	32
	92ZZA	Contact tracer may delegate functions, duties, or powers	33
	92ZZB	Status of delegations	33
	92ZZC	Offence to fail to comply with direction to provide required information about contacts	33
8		Section 117 amended (Regulations as to public health)	34
9		Section 125 amended (Medical examination of children)	34
10		Schedule 1 amended	34
		<i>Consequential repeal and revocations</i>	
11		Repeal of Tuberculosis Act 1948	35
12		Revocation of Tuberculosis Regulations 1951	35
<u>12A</u>		<u>Food Hygiene Regulations 1974 amended</u>	<u>35</u>
<u>12B</u>		<u>Health (Infectious and Notifiable Diseases) Regulations 1966 amended</u>	<u>35</u>
<u>12C</u>		<u>Revocation of Venereal Diseases Regulations 1982</u>	<u>35</u>
<u>12D</u>		<u>District Courts Rules 2014 amended</u>	<u>36</u>
<u>12E</u>		<u>Social Security (Long-term Residential Care) Regulations 2005 amended</u>	<u>36</u>
		Part 2	
		Artificial UV tanning services	
13		New Part 5 inserted	36
		Part 5	
		Artificial UV tanning services	
		<i>Preliminary provision</i>	
	113	Interpretation	36
		<i>Ban on provision of services to persons under 18 years</i>	
	114	Ban on providing artificial UV tanning services to persons under 18 years	36
		<i>Infringement offences</i>	
	<u>115</u>	<u>Infringement offences</u>	<u>37</u>
	<u>116</u>	<u>Commission of infringement offences</u>	<u>37</u>
	<u>116A</u>	<u>Infringement notices</u>	<u>37</u>
	<u>116B</u>	<u>Payment of infringement fees</u>	<u>38</u>

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Health (Protection) Amendment Act **2014**.

2 Commencement

This Act comes into force 6 months after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Health Act 1956 (the **principal Act**).

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Part 1 Infectious diseases

Notification

4 Section 2 amended (Interpretation)

- (1) In section 2(1), definition of **communicable disease**, delete “tuberculosis, venereal disease,”. 10

- (2) In section 2(1), definition of **contact**, delete “within a period not exceeding the prescribed period of incubation of that disease”.

- (3) In section 2(1), replace the definition of **premises** with:

premises includes ~~a~~any commercial premises, private premises, vehicle, ship, or aircraft 15

- (4) In section 2(1), insert in their appropriate alphabetical order:

educational institution—

- (a) means any place where people gather for the purpose of education or training; and 20

- (b) includes an early childhood education and care centre within the meaning of section 310(1) of the Education Act 1989

health provider means a person or an organisation that provides, or arranges the provision of, personal health services or public health services

medical examination means the physical examination or testing of a person for the purpose of determining whether the person has or is likely to have an infectious disease, and includes— 25

- (a) the taking of a sample of tissue, blood, urine, or other bodily material for medical testing; and

- (b) any diagnostic tests required to detect the presence of, or immunity to, an infectious disease in a person 30

medical examination order means an order made under **section 92ZB**

public health order means an order made under **section 92T**

public health risk means a substantial risk of serious harm that 1 or more individuals who have, or may have, an infectious disease pose to the health or safe- 35

	ty of 1 or more other persons because of the infectious disease, having regard to—	
	(a) the nature of the infectious disease, including, without limitation, the transmissibility and mode of transmission of the infectious disease; and	
	(b) the relevant circumstances of the particular case	5
(4A)	<u>In section 2(1), repeal the definition of venereal disease.</u>	
(5)	After section 2(3), insert:	
(4)	In this Act, a reference to an individual who has an infectious disease includes an individual who harbours <u>is infected or colonised by, or is a carrier of, an organism capable of causing the disease, even if the individual does not exhibit any of the symptoms of the disease.</u>	10
4A	<u>Section 7A amended (Medical officers of health and other officers)</u>	
	After section 7A(7), insert:	
(8)	<u>A medical officer of health for any health district may perform or exercise in that or any other health district any of the functions, duties, or powers of a medical officer of health that relate to contact tracing.</u>	15
4B	<u>Section 22C amended (Disclosure of health information)</u>	
	After section 22C(3), insert:	
(4)	<u>Information provided or obtained under Part 3A may not be used or disclosed by anyone except as authorised or required under a provision of this Act or another Act.</u>	20
5	<u>Section 74 amended (Medical practitioners to give notice of cases of notifiable disease)</u>	
(1AA)	<u>In section 74(1)(a), replace “except where the disease is specified in section B” with “if the disease is specified in section A”.</u>	25
(1)	After section 74(3), insert:	
(3A)	A medical practitioner who gives notice of a notifiable disease under subsection (1) or (3) must not disclose identifying information of the patient or deceased person if the disease is specified in section C of Part 1 of Schedule 1.	
(3B)	Despite subsection (3A) , a medical officer of health may require a medical practitioner to disclose identifying information of the patient or deceased person if disclosure of the identifying information is necessary to respond effectively to a public health risk.	30
(3C)	In this section and section 74AA, identifying information means information that enables a person to be identified, including—	35
	(a) that person’s—	
	(i) name:	

- (ii) sex:
 - (iii) ~~date of birth:~~
 - (iv) address:
 - (v) place of work or education:
 - (vi) ~~national health index number:~~
- (b) any other information required by regulations made under this Act.

6 Section 74AA amended (Medical laboratories to give notice of cases of notifiable disease)

After section 74AA(2), insert:

- (2A) A person in charge of a medical laboratory who gives notice of a notifiable disease under subsection (2) must not disclose identifying information of a person who is, or has been, or may be or may have been, infected with a disease specified in **section C** of Part 1 of Schedule 1.
- (2B) Despite **subsection (2A)**, a medical officer of health may require a person in charge of a medical laboratory to disclose identifying information of the person who is, or has been, or may be or may have been, infected with a disease if disclosure of the identifying information is necessary to respond effectively to a public health risk.

Management of infectious diseases

6A Section 79 repealed (Isolation of persons likely to spread infectious disease)

Repeal section 79.

6B Sections 88 to 92 and cross-heading above section 88 repealed

Repeal sections 88 to 92 and the cross-heading above section 88 (which relate to venereal diseases).

7 New Part 3A inserted

Before Part 4, insert:

- Part 3A**
- Management of infectious diseases**
- Subpart 1—Overarching principles
- 92A Principles to be taken into account**
- (1) The principles set out in **sections 92B–92AC to 92F** are to be taken into account by every person and every court performing a function under this Part.

- (2) Nothing in **sections 92AC to 92F** is to be taken as indicating that the principles in those sections are set out in any order of importance.
- (3) To avoid doubt, an individual undertaking contact tracing in response to a request under **section 92ZW(2)** is not performing a function under this Part.

92AB Paramount consideration

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The paramount consideration in the application of the principles in **sections 92AC to 92F** is the protection of public health.

92AC Respect for individuals

- (1) An individual must be treated with respect for the dignity of the individual when any functions, duties, or powers are exercised or performed in relation to him or her under this Part.
- (2) The person exercising or performing the functions, duties, or powers must take into account any known special circumstances or vulnerabilities of the individual, to the extent that the protection of public health permits this to be done.

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92B Voluntary compliance

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- (1) If an individual poses a public health risk, and that risk can be prevented or minimised by the individual's voluntary compliance with certain measures, the individual must be given the opportunity to voluntarily comply with those measures before measures under this Part are applied to the individual.
- (2) A person or court exercising or performing any functions, duties, or powers under this Part must take into account whether the individual has had an opportunity to minimise the risk of transmitting the infectious disease, and whether he or she has done so, or the extent to which he or she has done so, particularly in response to—
- (a) any directions given to the individual:
- (b) any request or instruction from a medical practitioner, medical officer of health, or health protection officer.

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

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92C Least restrictive alternative

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

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92D Respect for individuals

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

92E Individual to be informed

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~~A person exercising a power over or performing any functions, duties, or powers in relation to an individual under this Part must, so far as is practicable in the circumstances, promptly inform the individual, in a way that the individual is most likely to understand, about—~~

- ~~(a) the nature of the power that is being exercised and its functions, duties, or powers being exercised or performed and their implications for the individual;~~ 10
- ~~(b) any steps planned to be taken in respect of the individual;~~
- ~~(c) any right of the individual to appeal against the exercise of the power or performance of the functions, duties, or powers and to apply for judicial review.~~ 15

92EA Principle of proportionality

~~Measures applied to an individual under this Part must—~~

- ~~(a) be proportionate to the public health risk sought to be prevented, minimised, or managed; and~~ 20
- ~~(b) not be made or taken in an arbitrary manner.~~

92EB Least restrictive alternative

~~In any case where this Part enables alternative measures to be applied to an individual, preference must be given to the least restrictive measure that, in the judgment of the person or court concerned, will achieve the objective of minimising the public health risk posed by the individual.~~ 25

92F Measures to apply no longer than necessary

~~Measures applied to an individual under this Part must not be applied longer than is necessary to prevent or minimise the public health risk that the individual poses.~~ 30

Subpart 2—Directions**92G Medical officer of health may give directions to individual posing public health risk**

- (1) This section applies if a medical officer of health believes on reasonable grounds that an individual poses a public health risk. 35

- (2) The medical officer of health may give the individual any direction or directions listed in **subsection (4)** that the medical officer of health thinks are necessary to prevent or minimise the public health risk posed by the individual.
- (3) If the disease that the individual is believed to have is not a notifiable infectious disease ~~or other notifiable condition~~, every direction given to the individual must have the prior approval of the Director-General. 5
- (4) The medical officer of health may direct the individual to—
- (a) participate in any of the following that are conducted by a health provider:
 - (i) counselling: 10
 - (ii) education:
 - (iii) other activities related to the infectious disease:
 - (b) refrain from carrying out specified activities (for example, undertaking employment, using public transport, or travelling within and outside New Zealand) either absolutely or unless stated conditions are observed: 15
 - (c) refrain from going to specified places either absolutely or unless stated conditions are observed:
 - (d) refrain from associating with specified persons or specified classes of persons:
 - (e) take specified actions to prevent or minimise the public health risk posed by the individual: 20
 - (f) stay, at all times or at specified times, at a specified place of residence, subject to specified conditions:
 - (g) accept supervision by a named person or a person for the time being holding a named office, including, without limitation,— 25
 - (i) attending meetings arranged by that person; and
 - (ii) providing that person with information on any action, occurrence, or plan that is relevant to the public health risk posed by the individual:
 - (h) comply with instructions to prevent the spread of the infectious disease. 30
- (5) In no case may a direction require an individual to submit to compulsory treatment.
- (6) **Subsection (7)** applies if a direction requires an individual to refrain from carrying out a specified activity either absolutely or unless stated conditions are observed and a medical officer of health believes on reasonable grounds that the persons responsible for the activity need to be informed in order to prevent or minimise the public health risk posed by the individual. 35

- (7) The medical officer of health may contact any person who occupies a position of responsibility in relation to the activity and tell that person about 1 or more of the following matters:
- (a) the direction:
 - (b) the public health risk posed by the individual's engagement in the activity: 5
 - (c) ways of minimising that public health risk.
- (8) ~~The medical officer of health must send to the Director-General a copy of every direction given under this section.~~
- (8) If the Director-General so requires, the medical officer of health must send him or her a copy of all or any of the directions given by the medical officer of health under this section. 10
- (9) Despite anything in the Privacy Act 1993, if a person requires another person to provide information under this section,—
- (a) the person required to provide the information must comply with the requirement and be advised that the information must be provided for the effective management of infectious diseases; and 15
 - (b) nothing in this section limits the right of an individual to access or disclose information about him or her under that Act or any other Act.
- 92H Medical officer of health may give directions to contacts of individuals posing public health risk** 20
- (1) This section applies if a medical officer of health believes on reasonable grounds that—
- (a) an individual has been in contact with a person who has, or may have, an infectious disease; and 25
 - (b) if the disease has been transmitted to the individual, the individual poses, or is likely to pose, a public health risk.
- (2) The medical officer of health may give the individual any 1 or more directions listed in **subsection (4)** that the medical officer of health thinks are necessary to prevent or minimise the public health risk posed by the individual. 30
- (3) ~~If the disease that the individual is believed to have is not a notifiable infectious disease or other notifiable condition,~~ every direction given to the individual must have the prior approval of the Director-General.
- (4) The medical officer of health may direct the individual to—
- (a) participate in any of the following that are conducted by a health provider: 35
 - (i) counselling:
 - (ii) education:
 - (iii) other activities related to the infectious disease:

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	(a) <u>the person required to provide the information must comply with the requirement and be advised that the information must be provided for the effective management of infectious diseases; and</u> (b) <u>nothing in this section limits the right of an individual to access or disclose information about him or her under that Act or any other Act.</u>	5
92I	Direction for medical examination	
(1)	This section applies if a medical officer of health believes on reasonable grounds that—	
	(a) an individual may have an infectious disease (for example, because the individual has been in contact with a person who has an infectious disease); and	10
	(b) the individual's medical practitioner or a medical officer of health has requested the individual to undergo, within a specified period, a medical examination to establish whether the individual has the infectious disease; and	15
	(c) the individual has not undergone that examination within that period; and	
	(d) if the individual has the infectious disease, the individual poses a public health risk.	
(2)	The medical officer of health may direct the individual to undergo 1 or more medical examinations and may specify the places where those examinations are to be conducted and the health providers who are to conduct them.	20
(3)	The medical officer of health may also direct the individual, until those examinations are completed, to—	
	(a) participate in any of the following that are conducted by a health provider:	25
	(i) counselling:	
	(ii) education:	
	(iii) other activities related to the infectious disease:	
	(b) refrain from carrying out specified activities (for example, undertaking employment, using public transport, or travelling within and outside New Zealand) either absolutely or unless stated conditions are observed:	30
	(c) refrain from going to specified places either absolutely or unless stated conditions are observed:	
	(d) refrain from associating with specified persons or specified classes of persons:	35
	(e) take specified actions to prevent or minimise the public health risk posed by the individual:	

- (f) stay, at all times or at specified times, at a specified place of residence, subject to specified conditions:
- (g) accept supervision by a named person or a person for the time being holding a named office, including, without limitation,—
 - (i) attending meetings arranged by that person; and 5
 - (ii) providing that person with information on any action, occurrence, or plan that is relevant to the public health risk posed by the individual:
- (h) comply with instructions to prevent the spread of the infectious disease.
- (4) In no case may a direction require an individual to submit to compulsory treatment. 10
- (5) **Subsection (6)** applies if a direction requires an individual to refrain from carrying out a specified activity either absolutely or unless stated conditions are observed and a medical officer of health believes on reasonable grounds that the persons responsible for the activity need to be informed in order to prevent or minimise the public health risk posed by the individual. 15
- (6) The medical officer of health may contact any person who occupies a position of responsibility in relation to the activity and tell that person about 1 or more of the following matters:
 - (a) the direction: 20
 - (b) the public health risk posed by the individual's engagement in the activity:
 - (c) ways of minimising that public health risk.
- (7) Any medical examination an individual is directed to undergo must be—
 - (a) in accordance with current best practice in diagnosing the presence of, or immunity to, the infectious disease; and 25
 - (b) the least invasive type of examination that is necessary to establish whether the individual has, or is immune to, the infectious disease.
- (8) The medical officer of health must send to the Director-General a copy of every direction given under this section. 30
- (9) Despite anything in the Privacy Act 1993, if a person requires another person to provide information under this section,—
 - (a) the person required to provide the information must comply with the requirement and be advised that the information must be provided for the effective management of infectious diseases; and 35
 - (b) nothing in this section limits the right of an individual to access or disclose information about him or her under that Act or any other Act.

92J Direction to close educational institutions

- (1) This section applies if a medical officer of health believes on reasonable grounds that—
- (a) 1 or more persons attending an educational institution have, or may have, an infectious disease; and 5
 - (b) there is a substantial risk that the infectious disease will be transmitted to other persons attending the educational institution; and
 - (c) the risk of the infectious disease being transmitted to other persons attending the educational institution cannot be adequately managed solely by giving directions to the individual with the infectious disease. 10
- (2) The medical officer of health may give a direction to the person in charge of the educational institution to—
- (a) direct persons attending the educational institution to ~~remain home~~ stay away from its property until further notice;
 - (b) close part of the educational institution: 15
 - (c) close the entire educational institution.
- (3) The medical officer of health must not give a direction under **subsection (2)** without first consulting the person in charge of the educational institution.
- (4) ~~The medical officer of health must send to the Director-General a copy of every direction given under this section.~~ 20
- (4) If the Director-General so requires, the medical officer of health must send him or her a copy of all or any of the directions given by the medical officer of health under this section.

92JA Director-General may require copies of directions given under this Part

The Director-General may from time to time require a medical officer of health to provide him or her with a report on any directions given by the medical officer of health under this Part. 25

*General provisions concerning directions and notices***92K Written directions and notices to be served on individual**

- (1) A direction or notice under this Part must be in writing and must be served on the individual to whom it is given. 30
- (2) If the person to whom the direction or notice relates is ~~a minor under the age of 16 years~~ or ~~otherwise lacks legal capacity~~, a medical officer of health ~~or a health protection officer~~ must serve the direction or notice on the parent, guardian, or other person ~~having the care in charge~~ of the person to whom the direction or notice relates. 35

- (3) However, if it is not reasonably practicable in the circumstances to serve the direction or notice on the individual in person, alternative steps must be taken to bring the direction to the attention of the individual as soon as possible.
- (4) In this section, **notice** does not include an urgent public health order or a court order. 5
- 92L Duration of directions**
- (1) When giving a direction under this Part, a medical officer of health must specify the period for which the direction is to remain in effect.
- (2) A direction given by the medical officer of health must not remain in effect for more than 6 months, unless the direction is extended under **section 92N**. 10
- (3) A direction ceases to have effect at the close of the earliest of the following days:
- (a) the last day of the period stated in the direction or in the extension of the direction.
- (b) the day (if any) on which the medical officer of health rescinds the direction under **section 92P**: 15
- (c) the day (if any) on which the direction is cancelled on appeal under **section 92Q**:
- (d) the day (if any) on which the medical examinations required by a direction under **section 92I(2)** have been completed. 20
- 92M Medical officer of health must review directions**
- A medical officer of health must—
- (a) regularly review each direction that is in effect in the health district or districts for which the officer is responsible; and
- (b) consider whether the direction is still required; and 25
- (c) rescind the direction under **section 92P** if he or she is satisfied that the individual no longer poses a public health risk; and
- (d) if directed by the Director-General to do so, advise the Director-General why the direction needs to continue in effect.
- 92N Directions may be extended** 30
- (1) A medical officer of health may at ~~any time~~ a reasonable time before the expiry of a direction, by notice to the individual concerned, extend ~~the~~ a direction for a period of not more than 6 months if he or she is satisfied that the conditions for giving the direction continue to be satisfied.
- (2) The medical officer of health may extend the direction on 1 or more occasions. 35

92O Repeated directions may be given

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

92P Directions may be varied or rescinded

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

92Q Appeal against directions

- (1) An individual who is required to comply with a direction may appeal to the District Court against the direction, or any part of the direction, to the District Court.

(a) the direction, or any part of the direction;

(b) a variation of the direction;

(c) an extension of the direction.

- (2) On the appeal, the District Court may confirm, vary, or cancel the direction, variation, or extension.

- (3) The filing of the appeal does not affect the direction, variation, or extension unless the District Court otherwise orders.

- (4) A party to an appeal under this section may appeal against the court's determination of the appeal in accordance with section 72 of the District Courts Act 1947.

92QA Confidentiality

Despite anything in the Privacy Act 1993, information provided or obtained under a direction under this Part may not be used or disclosed by anyone except for the effective management of infectious diseases, but nothing in this section limits the right of an individual to access or disclose information about him or her under that Act or any other Act.

*Compliance with directions***92R Offence for failing to comply with directions**

An individual commits an offence and is liable on conviction to a fine not exceeding \$2,000 who, without reasonable excuse, fails to comply with a direction given by a medical officer of health under this Part.

92RA Offence to obstruct compliance with directions

- (1) This section applies to—

(a) a parent, guardian, or person in charge of an individual aged under 16 years; and

(b) a person in charge of an individual who is lacking in legal capacity.

(2) A person to whom this section applies commits an offence who intentionally obstructs that other individual's compliance with a direction given by a medical officer of health under this Part.

(3) A person who commits an offence against **subsection (2)** is liable on conviction to a fine not exceeding \$2,000.

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92RB Duty of care relating to individuals under 16 years and persons lacking in legal capacity

(1) This section applies to—

(a) a parent, guardian, or person in charge of an individual aged under 16 years; and

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(b) a person in charge of an individual who is lacking in legal capacity.

(2) If the individual aged under 16 years or lacking in legal capacity is suffering from any infectious disease, the person to whom this section applies must take reasonable steps and care to—

(a) ensure that the individual is professionally attended by a medical practitioner, and facilitate diagnosis and treatment; and

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(b) prevent or minimise the risk of transmission of the disease by the individual.

(3) Nothing in this section limits or affects the operation of any provisions of the Protection of Personal and Property Rights Act 1988 or any other Act that are applicable to a person or individual referred to in **subsection (1)**.

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92S Force not permissible

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

Subpart 3—Orders

Public health orders

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92T District Court may make public health order

On an application by a medical officer of health, the District Court may make a public health order in respect of an individual if the court is satisfied that the individual poses a public health risk.

92U Public health order may impose certain requirements on individual

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(1) The District Court may, in making a public health order, impose on an individual any 1 or more of the following requirements the court thinks are necessary to prevent or minimise the public health risk posed by the individual:

(a) to be detained, at all times or at specified times, in a hospital or other suitable place or in specified parts of the hospital or place:

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- (b) to stay, at all times or at specified times, at a specified place of residence:
- (c) to refrain from carrying out specified activities (for example, undertaking employment, using public transport, or travelling within and outside New Zealand) either absolutely or unless stated conditions are observed: 5
- (d) to be supervised by a named person or by a person for the time being holding a named office, including, without limitation,—
 - (i) attending meetings arranged by that person; and
 - (ii) providing that person with information on any action, occurrence, or plan that is relevant to the public health risk posed by the individual: 10
- (e) after the views of the individual have been taken into account, to be subject to public health surveillance, with or without the aid of electronic communication devices, by a named person or by a person for the time being holding a named office or by a named organisation: 15
- (f) to be treated for the infectious disease by a specified health provider:
- (g) to participate in any of the following that are conducted by a health provider:
 - (i) counselling:
 - (ii) education: 20
 - (iii) other activities related to the infectious disease:
- (h) to refrain from going to specified places either absolutely or unless stated conditions are observed:
- (i) to refrain from associating with specified persons or specified classes of persons: 25
- (j) to take specified actions to prevent or minimise the public health risk posed by the individual.
- (2) Before the court imposes a requirement of the kind described in **subsection (1)(f)**, the court must be satisfied that, short of detaining the individual indefinitely, treating him or her is the only effective means of managing the public health risk posed by the individual. 30
- (3) If an order requires an individual to be detained in a hospital or other place operated by a district health board, the district health board must permit the individual to be detained in the hospital or place.
- (4) The court may impose any requirement specified in **subsection (1)** subject to any conditions or restrictions that the court considers appropriate. 35

92V Matters that District Court may take into account in assessing public health risk

In assessing, for the purposes of an application for a public health order, whether an individual poses a public health risk, the District Court may, without limitation, take into account—

- (a) the infectious disease that the individual has or may have:
- (b) if the individual has had an opportunity to minimise the risk of communicating the infectious disease, whether he or she has done so, or the extent to which he or she has done so, and, in particular,—
 - (i) if directions have been given to the individual, whether the individual has complied with, or the extent to which the individual has complied with, those directions: 10
 - (ii) if a medical practitioner, medical officer of health, person acting under the direction of a medical officer of health, or health protection officer has requested the individual to take steps to prevent or minimise the risk, whether the individual has responded to those requests or the extent to which the individual has responded to those requests. 15

92W Duration of public health order

- (1) When making a public health order under **section 92T**, the District Court must specify the period for which the order is to remain in effect. 20
- (2) A public health order must not remain in effect for more than 6 months, unless the order is extended under **section 92X**.
- (3) A public health order ceases to have effect at the close of the earliest of the following days: 25
 - (a) the last day of the period stated in the order or in the extension of the order or, if no period is stated in the order, the day that is 6 months after the date on which the order is made:
 - (b) ~~at~~the day (if any) on which the court cancels the order under **section 92ZL**: 30
 - (c) ~~at~~the day (if any) on which the order is cancelled on appeal under **section 92ZN or 92ZO**:
 - (d) the day (if any) on which the Registrar cancels the order after being satisfied that the medical officer of health has certified that the order is no longer necessary to manage the public health risk posed by the individual. 35
- (4) A requirement imposed by a public health order under **section 92U** ceases to have effect at the close of the earlier of the following days:
 - (a) the day on which the order ceases to have effect:

(b) ~~the day (if any) on which the medical officer of health notifies the individual that the requirement is no longer necessary to manage the public health risk posed by the individual.~~

(b) the day (if any) on which the Registrar cancels the order after being satisfied that the medical officer of health has certified that the requirement is no longer necessary to manage the public health risk posed by the individual.

92X Public health order may be extended

(1) ~~The District Court may, at any time, on the application of a medical officer of health, extend a public health order made under **section 92T** for a period of not more than 6 months if the court—~~

(a) ~~is satisfied that the court continues to have jurisdiction to make a public health order in respect of the individual concerned; and~~

(b) ~~considers that extending the public health order is necessary to remove or minimise a public health risk.~~

(1) The District Court may, at a reasonable time before the expiry of a public health order made under **section 92T**, on the application of a medical officer of health, extend the order for a period of not more than 6 months if the court considers that extending the public health order is necessary to remove or minimise a public health risk.

(2) The court may extend the public health order on 1 or more occasions.

92Y Relationship between directions and public health orders

(1) The District Court may make a public health order that corresponds to, or differs from, any direction previously given.

(2) Any direction previously given to an individual ceases to have effect when a public health order is made in respect of that individual.

(2A) However, the making of a public health order in respect of an individual does not of itself cancel a direction for a medical examination under **section 92I** or a medical examination order under **section 92ZB** in respect of the individual.

(2B) A medical officer of health may not give a direction under this Part to an individual while a public health order made in respect of that individual is in force.

(3) However, nothing in this section or in any other provision of this Part requires a prior direction before a public health order may be made.

Urgent public health orders

92Z Medical officer of health may make urgent public health order

(1) This section applies if a medical officer of health believes on reasonable grounds that—

(a) an individual poses a public health risk; and

(b) the medical officer of health cannot adequately manage the public health risk by giving the individual a direction; and (c) to address the risk, the medical officer of health needs to take urgent action; and (d) it is not practicable to wait for the District Court to determine an application for a public health order.	5
(2) The medical officer of health may sign and give, or authorise another person to give, the individual an urgent public health order that requires the individual to be detained at specified premises or specified parts of premises, subject to any stated conditions.	10
(3) If the infectious disease that the individual is believed to have is not a notifiable disease, the urgent public health order must not be given to the individual without the prior approval of the Director-General.	
(4) The medical officer of health must write on the order the date and time it is given to the individual.	15
(5) The medical officer of health must send to the Director-General a copy of the urgent public health order.	
92ZA Duration of urgent public health order	
(1) An urgent public health order has effect for 72 hours from the time that it is given to an individual.	20
(2) <u>However, if the District Court determines an application for a public health order in respect of the individual before the close of the 72-hour period, the urgent public health order ceases to have effect on the court's determination of the application.</u>	
<i>Medical examination orders and orders concerning contacts</i>	
92ZB Medical examination orders	
(1) The District Court may, on the application of a medical officer of health, make a medical examination order in respect of an individual if the court is satisfied that—	
(a) the individual may have an infectious disease (for example, because the individual is, or has been, in contact with a person who has the infectious disease); and	30
(b) the individual's medical practitioner or a medical officer of health has asked the individual to undergo, within a specified period, a medical examination to establish whether the individual has the infectious disease; and	35
(c) the individual has not undergone that examination within that period; and	

- (d) ~~if the individual has the infectious disease,~~ the individual poses a public health risk.
- (2) The medical examination order must direct the individual to undergo whatever medical examinations the medical officer of health considers necessary to establish whether the individual has the infectious disease. 5
- (3) The medical examination order may also impose on the individual, until those examinations are completed, any 1 or more of the requirements stated in **section 92U(1)(b), (c), (d), (h), (i), and (j)** that the court thinks necessary to prevent or minimise the public health risk that the individual may pose.
- (4) The court may impose any requirement referred to in **subsection (3)** subject to any conditions or restrictions that the court thinks appropriate. 10
- (5) If the court makes a medical examination order under this section, any medical examination an individual is directed to undergo must be—
- (a) in accordance with current best practice in diagnosing the presence of, or immunity to, the infectious disease; and 15
- (b) the least invasive type of examination that is necessary to establish whether the individual has , or is immune to, the infectious disease.
- (6) The medical examination order ceases to have effect when the medical examination has been completed and it has been established whether the individual has the infectious disease. 20
- 92ZC District Court may make public health order contingent on examinations establishing infectious disease**
- (1) When the District Court makes a medical examination order in respect of an individual, the court may also make a public health order under **section 92T**.
- (2) The public health order— 25
- (a) must be made in accordance with **section 92T**, with the court entitled to assume that the individual has the infectious disease for which he or she is to be examined; and
- (b) takes effect in accordance with **subsection (3)**.
- (3) The public health order may provide that it takes effect only if a medical officer of health signs and dates a certificate that states that the individual has undergone the examinations in accordance with the medical examination order and that those examinations establish that the individual has the infectious disease for which he or she has been examined. 30
- (4) The order may be sealed only if the Registrar of the court has seen and filed the certificate described in **subsection (3)**. 35
- 92ZD Order for contacts**
- (1) The District Court may, on the application of a medical officer of health, make an order in respect of an individual if the court is satisfied that—

- (a) the individual has been in contact with a person who has, or may have, an infectious disease; and
- (b) if the infectious disease has been transmitted to the individual, the individual poses, or is likely to pose, a public health risk.
- (2) The order may impose on the individual any of the requirements stated in **section 92U(1)(b), (c), (d), (h), (i), and (j)** that the court thinks are necessary to prevent or minimise the public health risk that the individual may pose. 5
- (3) The court may impose any requirement referred to in **subsection (2)** subject to any conditions or restrictions that the court considers appropriate.
- (4) ~~The order ceases to have effect at the close of the day (if any) on which the medical officer of health notifies the individual that the order is no longer necessary because the individual no longer poses a public health risk.~~ 10
- (4) If the terms of the order provide that the order may be brought to an end if the medical officer of health certifies to a Registrar of the court that the order is no longer necessary to manage the public health risk posed by the individual and the Registrar is satisfied that the medical officer of health has given an appropriate certification,— 15
 - (a) the Registrar must cancel the order; and
 - (b) the order ceases to have effect on cancellation.
- (5) In determining, for the purposes of **subsection (4)**, that the individual no longer poses a public health risk, the medical officer of health must have regard to any known incubation period for the infectious disease. 20

Proceedings

- 92ZE Proceedings under this Part in District Court to be heard by Family Court Judges, if practicable** 25
- (1) The District Court has jurisdiction to hear and determine—
 - (a) appeals under this Part against directions given; and
 - (b) applications for orders made under this Part.
 - (2) Every proceeding referred to in **subsection (1)** must, if practicable having regard to the time required and to the availability of Judges and court staff and resources, be heard and determined by a Family Court Judge. 30
 - (3) Any District Court Judge may hear and determine a proceeding referred to in **subsection (1)** that cannot practicably be heard and determined by a Family Court Judge.
 - (4) The fact that a District Court Judge exercises jurisdiction under this section is conclusive evidence of the authority of the District Court Judge to do so. 35
 - (5) Appeals under this section should be heard as soon as practicable.

92ZF Proceedings under this Part not open to public

(1) Unless the Judge presiding at a hearing of a proceeding referred to in **section 92ZE(1)** otherwise directs, no person may be present during the hearing except the following:

- (a) the Judge: 5
- (b) officers of the court:
- (c) parties to the proceeding and their lawyers and any other person nominated by the individual who is the subject of the proceeding:
- (d) witnesses:
- (e) any other person whom the Judge permits to be present. 10

(1A) The parties or their lawyers on their behalf have the right to be heard, present evidence, and cross-examine witnesses in the proceeding.

(2) A witness must leave the courtroom if asked to do so by the Judge.

(2A) The Judge may, by order, restrict or prohibit the public availability of all or any part of the court record and judgment. 15

(3) This section does not limit any other power of the court to hear proceedings in private or to exclude any person from the court.

Compare: 1992 No 46 s 24

92ZG District Court may appoint lawyers to act for individuals under 16 years

Whenever an individual aged under 16 years or lacking in legal capacity is the subject of an application for an order under this Part, the District Court that hears the application may appoint a lawyer to act for the individual. 20

*General provisions concerning orders***92ZH Application for order**

(1) A medical officer of health may apply to the District Court for an order under this Part in respect of an individual who the medical officer of health believes, on reasonable grounds, poses a public health risk. 25

(2) If the infectious disease that the individual is believed to have is not a notifiable disease, the application must not be made without the prior approval of the Director-General. 30

(3) The medical officer of health must send to the Director-General a copy of the application.

92ZI Prior consultation with individual and individual's family or whānau

(1) If a medical officer of health is considering applying to the District Court for an order under this Part, the medical officer of health must, whenever practicable, consult the individual and may, at the officer's discretion, consult the individual's family or whānau. 35

(2) The purpose of consultation under **subsection (1)** is to enable the medical officer of health—

- (a) to ascertain if the need for an order can be avoided by voluntary compliance by the individual and, if the individual agrees, by any assistance on the part of the family or whānau; and
- (b) to ascertain, if an order is required, the extent to which the terms of the order and the way it is implemented can take into account the needs and wishes of the individual without prejudicing the protection of public health.

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92ZJ Case conferences

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The consultation under **section 92ZI** may, at the discretion of the medical officer of health, take the form of a case conference, which may be conducted by telephone or video link.

92ZK Medical officer of health must review orders

(1) A medical officer of health must—

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- (a) regularly review each order that is in effect in the health district or districts for which the officer is responsible; and
- (b) consider whether the order is still required; and
- (c) apply to the District Court to cancel the order under **section 92ZL** if he or she is satisfied that the order is no longer required; and
- (d) if directed by the Director-General to do so, advise the Director-General why the order needs to continue in effect.

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(2) A medical officer of health may apply to the District Court for variation of an order under **section 92ZL(2)**.

(3) If, following a review, a medical officer of health wishes to apply for an extension of the duration of an order, the application must be made under **section 92X**.

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92ZL District Court may cancel or vary orders

(1) The District Court may, on the application of a medical officer of health or of the individual concerned, cancel an order made under this Part if the court is satisfied that the order is no longer required.

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(2) The court may, on the application of a medical officer of health or of the individual concerned, vary the terms of an order by making a determination that the court is otherwise authorised to make under this Part and that the court considers desirable in the circumstances.

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(3) If the medical officer of health applies to the court to cancel an order, the order is suspended, and the individual subject to the order ceases to be required to comply with the terms of the order until the court has determined the application to cancel the order.

- (4) The medical officer of health must send to the Director-General a copy of every application under this section.
- (5) The court may deal with an application under this section on the papers if the parties agree.

92ZM Medical officer of health and individual may agree on variation

- (1) This section applies if—
- (a) an order (other than an urgent public health order) under this Part is in effect; and
 - (b) a medical officer of health is satisfied that the public health risk posed by the individual who is the subject of the order can be met by a less restrictive measure than that provided for by the order.
- (2) The medical officer of health and the individual may agree in writing that the individual may comply with the order by accepting, and complying with, the less restrictive measure.
- (3) An agreement under **subsection (2)** has effect according to its tenor as long as the individual complies with the agreement.
- (4) If the medical officer of health believes on reasonable grounds that the individual has breached the agreement in a material respect, the medical officer of health may, by written notice to the individual, cancel the agreement, and the order then has effect in its original form.
- (5) The power conferred by **subsection (2)** is subject to any directions, conditions, or limitations concerning the power given or imposed by the District Court.
- (6) The medical officer of health must send to the Director-General a copy of every agreement made under **subsection (2)**.

92ZM Confidentiality

Despite anything in the Privacy Act 1993, information provided or obtained under an order under this Part may not be used or disclosed by anyone except for the effective management of infectious diseases, but nothing in this section limits the right of an individual to access or disclose information about him or her under that Act or any other Act.

Subpart 4—Appeals and enforcement

92ZN Appeals to High Court

- (1) A medical officer of health and an individual in respect of whom an order has been made under this Part (other than an urgent public health order made under **section 92Z**) may each appeal to the High Court against the decision of the District Court.

- (2) The medical officer of health may appeal against the dismissal of an application under this Part or against the District Court's refusal to make an order, or impose a requirement, sought in the application.
- (2A) The individual may appeal against—
- (a) the order, or any part of the order: 5
 - (b) a variation of the order:
 - (c) an extension of the order.
- (3) Subject to **subsection (4)**, the High Court Rules and sections 74 to 78 of the District Courts Act 1947, with all necessary modifications, apply to an appeal under **subsection (1)** as if it were an appeal under section 72 of that Act. 10
- (4) On the without notice application of the appellant, the District Court may order that the appellant is not required under section 74(1) of the District Courts Act 1947 to give the Registrar of the High Court security for costs.
- (5) Subject to **section 92ZO**, the decision of the High Court on an appeal to that court under this section is final. 15
- (6) The medical officer of health must send to the Director-General a copy of every notice of appeal under this section.
- (7) Appeals under this section should be heard as soon as practicable.
- 92ZO Appeals to Court of Appeal**
- (1) A party to any appeal under **section 92ZN** may, with the leave of the Court of Appeal, appeal to the Court of Appeal against any determination of the High Court on a question of law arising in that appeal. 20
- (2) On an appeal to the Court of Appeal under this section, the Court of Appeal has the same power to adjudicate on the proceedings as the High Court had.
- (3) The decision of the Court of Appeal on an appeal to that court under this section, and on an application to it under this section for leave to appeal, is final. 25
- (4) Appeals under this section should be heard as soon as practicable.
- 92ZP Enforcement of order by medical officer of health**
- (1) A medical officer of health may require an individual to comply with an order made under this Part that imposes requirements on the individual, and in doing so may be assisted by any number of assistants (who may be or include constables) and use any force that is reasonable in the circumstances. 30
- (2) However, in no case may force be used to require an individual to accept medical treatment.
- (3) The medical officer of health must promptly advise the Director-General of any force used for the purpose of requiring an individual to comply with an order. 35

92ZQ Offence not to comply with order

- (1) An individual commits an offence who, without reasonable excuse, intentionally fails to comply with an order made under this Part that is binding on the individual.
- (2) An individual who commits an offence against this section is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding \$2,000. 5
- (3) The District Court may, instead of imposing a sentence, make an order under one or both of **sections 92T and or-92ZB**.
- (4) This section does not limit the power of the District Court to punish the failure or refusal to comply with an order made by a court as a contempt of court. 10

92ZQA Offence to obstruct compliance with order

- (1) This section applies to—
 - (a) a parent, guardian, or person in charge of an individual aged under 16 years; and 15
 - (b) a person in charge of an individual who is lacking in legal capacity.
- (2) A person to whom this section applies commits an offence who intentionally obstructs that other individual's compliance with an order made under this Part.
- (3) A person who commits an offence against **subsection (2)** is liable on conviction to a fine not exceeding \$2,000. 20

Subpart 5—Contact tracing

92ZR Purpose of contact tracing

The purpose of contact tracing is to obtain information about the contacts of persons with infectious diseases or suspected of having infectious diseases in order to— 25

- (a) identify the source of the infectious disease or suspected infectious disease;
- (b) make the contacts aware that they too may be infected, thereby encouraging them to seek testing and treatment if necessary;
- (c) limit the transmission of the infectious disease or suspected infectious disease. 30

92ZS What contact tracing involves

Contact tracing, in respect of an individual with an infectious disease or suspected of having an infectious disease, involves—

- (a) ascertaining the identity of each of the individual's contacts; and 35
- (b) ~~talking to~~ communicating with each contact, so far as this is practicable and appropriate; and

- (c) ascertaining the circumstances in which the infectious disease or suspected infectious disease may have been transmitted to or by the contact; and
- (d) providing information and advice to the contact about the risks that the contact faces because of his or her exposure to the infectious disease or suspected infectious disease, including, where appropriate, advice about—
 - (i) medical examinations for the infectious disease or suspected infectious disease; and
 - (ii) the risk that the contact may have transmitted the infectious disease or suspected infectious disease to others; and
 - (iii) the risk that the contact may pose to others; and
 - (iv) appropriate exclusion, treatment, and prophylaxis; and
- (e) obtaining information about the contacts of that contact, including information required under **section 92ZV** in relation to those other contacts.

92ZT Who may be contact tracer

- (1) For the purposes of this Part, in any case involving proposed or actual contact tracing in respect of an individual, the **contact tracer** may be a—
 - (a) medical officer of health;
 - (b) health protection officer;
 - (c) ~~suitably qualified person~~ person suitably qualified in health or community work who is nominated to undertake contact tracing by a district health board or medical officer of health.
- (2) To avoid doubt, nothing in this Part makes it unlawful to undertake contact tracing otherwise than under this Part.

92ZU Appropriateness of contact tracing

- (1) The contact tracer may form the view that contact tracing in respect of an individual with an infectious disease or suspected of having an infectious disease should be undertaken if the contact tracer considers that the purpose of contact tracing is likely to be achieved by doing so.
- (2) If the contact tracer is a medical officer of health, he or she may take into account any recommendation made by the individual's medical practitioner.

92ZV Duty of individual with infectious disease to provide information about contacts

- (1) If the contact tracer has, under **section 92ZU**, formed the view that contact tracing in respect of an individual with an infectious disease or suspected of having an infectious disease should be undertaken, the contact tracer may ~~direct~~ require the individual to give the contact tracer information about the cir-

- cumstances in which the infectious disease may have been transmitted to, or by, the individual.
- (2) Before ~~directing~~requiring an individual under **subsection (1)**, the contact tracer must inform the individual of the reasons for the ~~direction~~requirement.
- (3) An individual with an infectious disease or suspected of having an infectious disease must, if ~~directed~~required by the contact tracer, provide information about—
- (a) those people with whom he or she is, and has been, in contact:
 - (b) the circumstances in which he or she believes he or she contracted, or may have transmitted, the infectious disease.
- (4) For the purposes of **subsection (3)**, the information the individual with an infectious disease or suspected of having an infectious disease may be required to provide about each person with whom he or she has been in contact includes—
- (a) the name of each contact:
 - (b) the age of each contact:
 - (c) the sex of each contact:
 - (d) the address and other contact details of each contact:
 - (e) any other information required by regulations made under this Act.
- (5) If the individual is under 16 years of age, or lacks legal capacity, or the individual is deceased, the contact tracer may require that the applicable one of the following persons provide the information:
- (a) the parent, guardian, or person in charge of the individual who is under 16 years of age:
 - (b) the person in charge of the individual who lacks legal capacity:
 - (c) the individual's legal representative.
- 92ZW Consideration as to whether contact tracing can be undertaken by individual**
- (1) Before requiring information from an individual under **section 92ZV**, the contact tracer must consider whether the information is necessary, taking into account—
- (a) the seriousness of the public health risk posed by the individual; and
 - (b) the ability and willingness of the individual to undertake the contact tracing.
- (2) If the contact tracer considers that it would be appropriate for the individual to undertake the contact tracing, the contact tracer must ask the individual to undertake the contact tracing, to the extent of the individual's ability, and to report back to the contact tracer by a time specified by the contact tracer.

92ZX When contact tracer may undertake contact tracing

- (1) This section applies whenever a contact tracer requires an individual to provide information under **section 92ZV** and one of the following applies:
 - (a) the contact tracer does not consider that it would be possible or appropriate for the individual to undertake the contact tracing; or
 - (b) the contact tracer has asked the individual to undertake the contact tracing, and the contact tracer is not satisfied that the contact tracing has been undertaken or that it has been undertaken adequately.
- (2) If this section applies, the contact tracer ~~or his or her delegate~~ may undertake the contact tracing.
- (3) The contact tracer must, wherever practicable, inform the individual of the course of action taken under **subsection (2)**.

92ZY Contact tracer may require certain persons to provide information

- (1) For the purpose of identifying the contacts of an individual who has been given a direction under **section 92ZV**, a contact tracer may approach a person specified in **subsection (2)** and require that person to provide the contact tracer with the names and addresses of the contacts of the individual that are known to the person.
- (2) The persons are—
 - (a) the employer of the individual;
 - (b) an educational institution attended by the individual;
 - (c) any business or other organisation that the individual has dealt with;
 - (d) an event co-ordinator or other person likely to have a list of persons attending an event.
- (3) A person referred to in **subsection (2)** must provide information in response to a request made under **subsection (1)** despite anything in the Privacy Act 1993.
- (4) Despite anything in the Privacy Act 1993, if a person requires another person to provide information under this section,—
 - (a) the person required to provide the information must comply with the requirement and be advised that the information must be provided for the effective management of infectious diseases; and
 - (b) nothing in this section limits the right of an individual to access or disclose information about him or her under that Act or any other Act.

92ZZ Duty of confidentiality

- (1) A contact tracer who approaches a contact under this Part or approaches a person under **section 92ZY** must not, as far as practicable, disclose to the contact or that other person the identity of the individual who may have—

(a) transmitted the infectious disease to the contact; or (b) exposed the contact to the risk of contracting the infectious disease. (2) <u>Despite anything in the Privacy Act 1993, information provided or obtained by a contact tracer under this Part may not be used or disclosed by anyone except for the effective management of infectious diseases, but nothing in this section limits the right of an individual to access or disclose information about him or her under that Act or any other Act.</u>	5
92ZZA Contact tracer may delegate functions, duties, or powers	
(1) A contact tracer may delegate any of his or her functions, duties, or powers under this Part, except this power of delegation, to a person who is suitably qualified to exercise those powers or perform those duties and functions.	10
(2) The contact tracer must make the delegation in writing and sign it.	
(3) A delegation under this section may be subject to any conditions stated in the delegation.	
(4) The contact tracer is not prevented from exercising or carrying out, or affected in his or her exercising or carrying out of, any of the delegated functions, duties, or powers.	15
(5) The delegate may carry out the functions and duties, and exercise the powers, in the same manner and with the same effect as if they had been conferred on the delegate directly by this Act.	20
(6) Every person purporting to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.	
92ZZB Status of delegations	
(1) A delegation made under section 92ZZA continues in force according to its tenor until it is revoked.	25
(2) A delegation made by a medical officer of health who has ceased to hold office continues to have effect as if made by the medical officer of health's successor.	
(3) The maker of the delegation, or the successor to the maker, may revoke the delegation at any time by written notice to the delegate.	30
92ZZC Offence to fail to comply with direction to provide required information about contacts	
(1) A person commits an offence who, having been required to provide information under section 92ZV or 92ZY,— (a) without reasonable excuse, fails to give the required information; or (b) intentionally omits any part of that information or gives any information that the person knows to be false.	35

- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$2,000.

8 Section 117 amended (Regulations as to public health)

- (1) After section 117(1)(d), insert:
- (da) the management of persons with, or suspecting of having, infectious diseases, including persons subject to an urgent public health order or a court order under **Part 3A**, and their contacts, including the power of a medical officer of health to give directions and the power of the District Court to make public health orders: 5
- (2) After section 117(1)(h), insert: 10
- (ha) the identification of, and communication with, contacts of persons with, or suspected of having, infectious diseases:
- (3) In section 117(1)(r), before “the notifications”, insert “prescribing the form and content of”.
- (4) After section 117(1)(r), insert: 15
- (ra) prescribing identifying information for the purpose of section 74(3C)(b):
- (rb) prescribing, for the purposes of **section 115**, the infringement fee or infringement fees payable in respect of an infringement offence, which,—
- (i) in the case of an individual, may not exceed \$1,000:
- (ii) in the case of a body corporate, may not exceed \$5,000: 20
- (rc) prescribing, for the purposes of **section 116A** (and for the purposes of the procedure in section 21 of the Summary Proceedings Act 1957 as modified and applied by **section 116A**), the form of infringement notices and reminder notices for infringement offences, and any other particulars to be contained in infringement notices and reminder notices: 25

9 Section 125 amended (Medical examination of children)

- (1) In section 125(1), replace the definition of **child care centre** with:
- early childhood education and care centre** has the same meaning as in section 310(1) of the Education Act 1989
- (2) In section 125(1), definition of **private school**, replace “a child care centre” 30 with “an early childhood education and care centre”.
- (3) In section 125(2), replace “child care centre” with “early childhood education and care centre”.

10 Schedule 1 amended

- (1) In Schedule 1, Part 1, section B, repeal the item relating to Acquired Immuno- 35 deficiency Syndrome.
- (2) In Schedule 1, Part 1, section B, insert in its appropriate alphabetical order:

	Tuberculosis	
(3)	In Schedule 1, Part 1, after section B, insert:	
	Section C—Infectious diseases notifiable to medical officer of health without identifying information of patient or deceased person	5
(4)	In Schedule 1, Part 1, after the new section C <u>cross-heading</u> , insert:	
	Acquired Immunodeficiency Syndrome	
	Gonorrhoeal infection	
	Human Immunodeficiency Virus (HIV) infection	
	Syphilis	10
(5)	In Schedule 1, Part 2, repeal the items relating to—	
	(a) Gonorrhoeal infection; and	
	(b) Syphilis; and	
	(c) Venereal granuloma.	
(6)	In Schedule 1, Part 2, insert in their appropriate alphabetical order:	15
	<u>Chlamydia</u>	
	<u>Soft chancre</u>	
	<u>Venereal granuloma (<i>Lymphogranuloma venereum</i> or <i>granuloma inguinale</i>)</u>	
	<u>Venereal warts</u>	
	<i>Consequential repeal and revocations</i>	20
11	Repeal of Tuberculosis Act 1948	
	The Tuberculosis Act 1948 (1948 No 36) is repealed.	
12	Revocation of Tuberculosis Regulations 1951	
	The Tuberculosis Regulations 1951 (SR 1951/290) are revoked.	
12A	Food Hygiene Regulations 1974 amended	25
	<u>Regulation 19(10) of the Food Hygiene Regulations 1974 (SR 1974/169) is revoked.</u>	
12B	Health (Infectious and Notifiable Diseases) Regulations 1966 amended	
	<u>Regulation 3 of the Health (Infectious and Notifiable Diseases) Regulations 1966 (SR 1966/87) is revoked.</u>	30
12C	Revocation of Venereal Diseases Regulations 1982	
	<u>The Venereal Diseases Regulations 1982 (SR 1982/215) are revoked.</u>	

12D District Courts Rules 2014 amended

- (1) In rule 20.13(1)(o) of the District Courts Rules 2014 (LI 2014/179), replace “section 126” with “**Part 3A** and section 126”.
- (2) Rule 20.13(1)(x) of those rules is revoked.

12E Social Security (Long-term Residential Care) Regulations 2005 amended

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In regulation 5(h) of the Social Security (Long-term Residential Care) Regulations 2005 (SR 2005/183), replace paragraph (h) with:

- (h) is residing in a hospital or other place of residence as a result of the making of a direction or an order under **section 92G(4)(f), 92H(4)(f), 92I(3)(f), 92U(1)(a) or (b), or 92ZD(2)** of the Health Act 1956; or

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Part 2**Artificial UV tanning services****13 New Part 5 inserted**

After section 112ZP, insert:

Part 5

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Artificial UV tanning services*Preliminary provision***113 Interpretation**

In this Part, unless the context otherwise requires,—

approved evidence of age document has the same meaning as in section 5(1) of the Sale and Supply of Alcohol Act 2012

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artificial UV tanning services means the provision, for payment or other consideration, of ultraviolet (UV) radiation via sunbeds, sunlamps, or any other device that emits UV radiation.

Ban on provision of services to persons under 18 years

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114 Ban on providing artificial UV tanning services to persons under 18 years

- (1) This section applies to owners and operators of premises providing artificial UV tanning services.
- (2) The owner or operator must not provide artificial UV tanning services to a person under the age of 18 years.
- (3) A person who contravenes **subsection (2)** commits an offence and is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$2,000:

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- (b) in the case of a body corporate, to a fine not exceeding \$10,000.
- (4) **Subsection (2)** does not apply to a person who provides artificial UV tanning services to a person under the age of 18 years at a hospital if a medical practitioner prescribed the services for the purpose of medical treatment.
- (5) It is a defence to a charge under **subsection (2)** if the defendant proves that,—
- (a) before or at the time the artificial UV tanning services were provided, there was produced to the defendant a document purporting to be an approved evidence of age document; and
- (b) the defendant believed on reasonable grounds that the document—
- (i) was in fact an approved evidence of age document; and
- (ii) related to the person to whom the artificial UV tanning services were provided; and
- (iii) indicated that the person to whom artificial UV tanning services were provided was aged 18 years or over.

Infringement offences

115 Infringement offences

In this section and **sections 116 to 116B**,—

infringement fee, in relation to an infringement offence, means an amount prescribed for the purposes of this section in regulations made under section 117(1)(rb)

infringement offence means an offence against **section 114** or any regulations made under section 119(d) in relation to artificial UV tanning services.

116 Commission of infringement offences

A person who is alleged to have committed an infringement offence may either—

- (a) be proceeded against for the alleged offence by filing a charging document under section 14 of the Criminal Procedure Act 2011; or
- (b) be served with an infringement notice as provided for in **section 116A**.

116A Infringement notices

- (1) If a person authorised to issue infringement notices under this section observes a person committing an infringement offence, or he or she has reasonable cause to believe that such an offence is being or has been committed by that person, an infringement notice in respect of that offence may be served on that person.
- (2) Any person authorised to issue infringement notices under this section (not necessarily the person who issued the notice) may deliver the infringement notice (or a copy of it) to the person alleged to have committed an infringement

	<u>offence personally or by post addressed to that person's last known place of residence or business.</u>	
(3)	<u>An infringement notice (or a copy of it) sent to a person under subsection (2) is to be treated as having been served on that person when it was posted.</u>	
(4)	<u>Every infringement notice must be in the prescribed form and must contain the following particulars:</u>	5
(a)	<u>such details of the alleged infringement offence as are sufficient fairly to inform a person of the time, place, and nature of the alleged offence; and</u>	
(b)	<u>the amount of the infringement fee; and</u>	
(c)	<u>the address of the place at which the infringement fee may be paid; and</u>	10
(d)	<u>the time within which the infringement fee must be paid; and</u>	
(e)	<u>a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and</u>	
(f)	<u>a statement that the person served with the notice has a right to request a hearing; and</u>	15
(g)	<u>a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing; and</u>	
(h)	<u>any other particulars that may be prescribed.</u>	
(5)	<u>If an infringement notice has been issued under this section, the procedure under section 21 of the Summary Proceedings Act 1957 may be used in respect of the offence to which the infringement notice relates and, in that case, the provisions of that section apply with the necessary modifications.</u>	20
(6)	<u>For the purposes of this section, the following persons are authorised to issue infringement notices under this section:</u>	
(a)	<u>any environmental health officer;</u>	25
(b)	<u>any person, whether or not an employee of the Ministry or a local authority, who is authorised in writing by the Director-General to issue infringement notices under this section.</u>	
116B Payment of infringement fees		
(1)	<u>Infringement fees for infringement notices issued on behalf of the Ministry are payable to the Ministry.</u>	30
(2)	<u>Infringement fees for infringement notices issued on behalf of a local authority are payable to the local authority.</u>	

Health (Protection) Amendment Bill

Legislative history

31 July 2014
6 November 2014

Introduction (Bill 234–1)
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