

Public Health Act 2004

COOK ISLANDS

PUBLIC HEALTH ACT 2004

2004, No. 13

Examined and certified by:

Clerk of the Parliament

In the name and on behalf of Her Majesty Queen Elizabeth the Second I hereby assent to this Act this 14th day of June 2004

LAURENCE MURRAY GREIG

Chief Justice of the Cook Islands
Exercising the functions and powers
of the Queen's Representative
pursuant to Article 7(1) of the
Constitution of the Cook Islands

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2004, No. 13

An Act to amend and consolidate the law relating to public health

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short title and commencement - (1) This Act may be cited as the Public Health Act 2004.

(2) This Act comes into force on the day after the date on which it receives the Royal assent, except for **sections 36, 64, and 70 to 75**.

(3) **Section 36** comes into force on the day that is 3 months after the date on which this Act receives the Royal assent.

(4) **Sections 64 and 70 to 75** come into force on a date to be appointed by the Queen's Representative by Order in Executive Council.

2. Object of Act - The object of this Act is to protect and safeguard the health of people in the Cook Islands.

PART 1 **PRELIMINARY**

3. Interpretation - (1) In this Act, unless the context otherwise requires, -

"Accommodation house" -

(a) Means any resort, hotel, motel, guesthouse, hostel, lodging house, boarding house, backpackers', or other place used to accommodate people in return for payment; and

(b) Includes any accommodation unit or rental house, unless rented or hired out for the time being for a period of more than 30 days; and

(c) Includes any other place declared by the Queen's Representative by Order in Executive Council to be an accommodation house for the purposes of this Act;

"Activity" includes the following:

(a) An omission;

(b) A series of related acts or related omissions;

(c) A trade, business, manufacture, or undertaking;

(d) Causing a state, or permitting a state to continue, in any place;

"Aerodrome" -

(a) Means any defined area of land or water intended or designed to be used either wholly or partly for the landing, departure, and surface movement of aircraft; and

(b) Includes any buildings, installations, and equipment on or adjacent to any such area used in connection with the aerodrome or its administration;

"Aircraft" means any machine that can derive support in the atmosphere from the reactions of the air;

"Animal" means any member of the animal kingdom, except human beings;

"Approved", in relation to any person or thing referred to in a provision of this Act, means a person or thing approved by the Secretary for the purposes of the provision;

"Building" -

(a) Means -

(i) Any building as defined in section 3 of the Building Controls and Standards Act 1991;
or

(ii) Any mobile home, caravan, houseboat, or other conveyance with a capacity to house people; and

(b) Includes a part of any building or conveyance specified in paragraph (a);

"Building health standard" has the meaning given to it by **section 13**;

"Carry out", in relation to any activity comprising an omission, includes making the omission;

"Cemetery" means any place set apart for the burial of human remains;

"Child" means any person who has not attained the age of 15 years;

"Closing order" means a standard closing order or an imminent danger closing order;

"Commission of inquiry" means -

(a) Any Commission of Inquiry appointed under the Commissions of Inquiry Act 1966;

or

(b) Any tribunal or other body having, by or pursuant to any enactment, any of the powers of such a commission;

"Controlled area" means any area declared to be a controlled area under **section 108**;

"Controlling occupier", in relation to any building or other place, means the following:

(a) A person acting or apparently acting in the general management or control of the place;

(b) A person in physical occupation of the place;

(c) A person entitled to occupy the place;

"Conveyance" means any vessel, aircraft, vehicle, or other means of transportation;

"Coroner" means a coroner appointed under the Coroners Act 1979-80;

"Court" means the High Court of the Cook Islands;

"Cremation" means the reduction of human remains to ashes by burning;

"Crematorium" means things used for effecting cremation, and includes any building in which such things are fixed;

"Dangerous agent" -

(a) Means any organism or other entity that a medical office-holder certifies, by notice in writing given to the Secretary, to be a cause or likely cause of a dangerous condition; and

(b) Includes any organism or other entity for the time being declared by the Queen's Representative by Order in Executive Council to be an agent of a dangerous condition;

"Dangerous condition" -

(a) Means any condition that a medical office-holder certifies, by notice in writing given to the Secretary, -

(i) To be transmissible; and

(ii) For the time being to be an imminent danger to the health of people in the Cook Islands; and

(b) Includes any condition for the time being specified to be a dangerous condition in **Part 1 of Schedule 2**;

"Dangerous vector" -

(a) Means any organism or other entity that a medical office-holder certifies, by notice in writing given to the Secretary, to be a vector or likely vector of a dangerous condition;

and

(b) Includes any organism or other entity for the time being declared by the Queen's Representative by Order in Executive Council to be a vector of a dangerous condition;

"Declaration of controlled area" means a declaration of a controlled area made under **section 108**;

"Declaration of restricted place" means a declaration of a restricted place made under **section 107**;

"Demolition order" means an order made under **section 94(4)(a)**;

"Director", subject to **sections 10, 115, and 147** means the person who is appointed Medical Director under **section 8(1)(b)**;

"Dwelling house", subject to **section 97(3)**, -

(a) Means a building that is used or intended to be used principally as a residence; but

(b) Excludes a building that is or is part of an accommodation house;

"Emergency regulation" means any regulation made under **section 123**;

"Employee" means any person employed under an agreement to do any work for hire or reward;

"Enactment" has the meaning given to it by Article 1(1) of the Constitution of the Cook Islands;

"Erected", in relation to a building, has a meaning corresponding to the meaning given to the expression "erection of a building" in section 3 of the Building Controls and Standards Act 1991;

"Foreshore" means that strip of land, extending along and abutting the mean high water mark of the sea, that is -

(a) In the case of an island other than Rarotonga, of a width specified in a bylaw made by the relevant Island Council and promulgated from time to time by the Queen's Representative by Order in Executive Council;

(b) In the case of Rarotonga, and any other island for which a bylaw has not been made under paragraph (a), 30 metres wide;

"Functionary", subject to **sections 10 and 115**, means -

(a) The Secretary, the Port Health Officer, the Director, a health inspector, or a member of the Police; or

(b) A medical practitioner administering a vaccination to a child under **section 74(4) or 75(6)**;

"Guest", in relation to an accommodation house, means any person who pays for the privilege of staying in the accommodation house;

"Hazardous waste" -

(a) Means any waste that is likely to be a health hazard if released into any waterway; and

(b) Includes the following:

(i) Animal waste, medical waste, or sewage;

(ii) Sludge, other by products, or other waste from devices, facilities, plants, or other systems that treat water, sewage, or pollution (for example, septic tanks, other sewage treatment facilities, water treatment plants, or sewage treatment plants);

(iii) Any other waste declared by the Queen's Representative by Order in Executive Council to be hazardous waste for the purposes of this Act;

"Health" means human health;

"Health hazard", in relation to any place, activity, or thing, means a place, activity, or thing (as the case may be) that has or is likely to have an adverse effect on the health of any person;

"Health inspector", subject to **sections 9, 115, and 147** means a person who is appointed a health inspector under **section 7**;

"Health regulatory provision" means the following:

(a) Any provision in **Parts 3 to 8**;

(b) Any condition in a permit, authorisation, or exemption issued or given under any of those Parts;

(c) **Section 108(5)**;

"Imminent danger closing order" means an order issued under **section 92**;

"Infected", in relation to any person and any condition, means that the person -

(a) Has the condition; or

(b) Harbours or carries an agent of the condition; or

(c) For any other reason, can potentially transmit the condition to another person;

"Master", in relation to any vessel, means a person in charge or command of the vessel;

"Medical detainee" means a person detained under **section 106**;

"Medical office-holder" means the Director or Port Health Officer;

"Medical practitioner" means a person registered or deemed to be registered as a medical practitioner under the Medical and Dental Practices Act 1976;

"Minister" means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for health;

"Normal use" in relation to a building, means the use to which the building is normally put; for the avoidance of doubt, a building may have more than one normal use;

"Notifiable condition" means any condition for the time being specified in **Part 1 or 2 of Schedule 2**;

"Occupier", in relation to any building or other place includes the following:

(a) An owner of the place;

(b) A person acting or apparently acting in the general management or control of the place on behalf of the owner;

(c) A person in physical occupation of the place;

(d) A person entitled to occupy the place;

(e) A person receiving income in respect of the place whether on his or her own account or as agent of or trustee for any other person;

"Offensive trade" means any trade, business, manufacture, or undertaking for the time being specified in **Schedule 1**;

"Offensive trade permit" means a permit issued under **section 52**;

"Office-holder" means the following:

(a) The Secretary;

(b) The Port Health Officer;

(c) The Director;

"Parent", in relation to any child, -

(a) Means the person who has legal custody of the child or who is otherwise generally responsible for the welfare of that child;

(b) Includes (as the case may require) the father, mother, or both, of that child;

"Part" means a numbered part of this Act, and includes any regulations made under the part;

"Person-in-charge", -

(a) In relation to any vessel, means the master; and

(b) In relation to any aircraft, means the pilot responsible for the operation and safety of the aircraft;

"Place" includes the following:

(a) Any conveyance;

(b) Any building or other structure;

(c) Any land;

(d) Any body of water;d

"Place of inspection" means a place that the Secretary from time to time declares, by public notification, to be a place of inspection for the purposes of this Act;

"Port Health Officer", subject to **sections 10, 115, and 147**, means the person appointed port health officer under **section 8(1)(a)**;

"Potable", in relation to water, means water that complies with -

(a) A standard prescribed by regulations; or

(b) In the absence of such a standard, the standards for Microbiological Compliance (effective immediately before the commencement of this Act) set out in the document published by the Ministry of Health of New Zealand entitled *Drinking-Water Standards for New Zealand 2000*;

"Pratique" means pratique granted to a vessel or aircraft under **section 66**;

"Prescribed form", in relation to a provision of this Act, -

(a) Means a form prescribed in regulations; or

(b) Where a form is not so prescribed, a form approved and publicly notified by the Secretary for the purposes of the provision;

"Principal" has the meaning given to it by section 2 of the Education Act 1986-87;

"Proprietor" -

(a) In relation to any place or thing, except a reticulated supply -

(i) Means the owner of the place or thing; and

(ii) Includes any person acting or apparently acting in the general management or control of the place or thing;

(b) In relation to a reticulated supply, -

(i) Means the person responsible for providing the supply; and

(ii) Where the water is treated before being distributed to more than one building through a network of pipes, includes the proprietor of the device, facility, plant, or other system used for such treatment;

"Public place" -

(a) Means a place that, at any material time, is open to or is being used by the public, whether free or on payment of a charge, and whether any occupier of the place is lawfully entitled to exclude or eject any person from that place; and

(b) Includes any road or footway; and

(c) Includes any conveyance carrying or available to carry passengers for reward; and

(d) Includes any other place for the time being declared by the Queen's Representative by Order in Executive Council to be a public place for the purposes of this Act;

"Public swimming place" means any public place used for swimming, bathing, wading, paddling, or any other activity where water comes into contact with the human body;

"Public swimming pool" means any swimming pool that is -

(a) A public place; or

(b) Used in connection with a school, hospital, accommodation house, trade, business, manufacture, or undertaking; or

(c) A pool to which persons may have access by reason of their membership in a club or other organisation or as employees of a business; or

(d) For the time being declared by the Queen's Representative by Order in Executive Council to be a public swimming pool for the purposes of this Act;

"Publicly notify", in relation to any declaration, form, notice, or resolution, means to publish the declaration, form, notice, or resolution in the form of a notice in the *Cook Islands Gazette*, and as soon as practicable afterwards to -

(a) Publish a copy of the *Gazette* notice in one or more Cook Islands newspapers; and

(b) Make such other notification as considered appropriate, having regard to the contents of the declaration, form, notice, or resolution and the persons likely to have an interest in it; -

and "public notification" has a corresponding meaning;

"Receptacle" includes a drum, bin, bag, box, sack, or any other thing in which things may be placed;

"Registrar" -

(a) Means the Registrar of the Court; and

(b) Subject to the Judicature Act 1980-81, includes the Deputy Registrar of the Court;

"Regulated vector" -

(a) Means -

(i) Any mosquito; or

(ii) Any dangerous vector; or

(ii) Any other animal for the time being declared by the Queen's Representative by Order in Executive Council to be a regulated vector for the purposes of this Act; and

(b) Includes a reproductive cell or developmental stage of any thing referred to in paragraph (a);

"Regulations", in relation to any provision in this Act, means regulations (if any) made under this Act for the purposes of the provision;

"Responsible occupier" -

(a) In relation to a place that is or is part of an accommodation house, means the proprietor of the accommodation house; and

(b) In relation to any other place that is a health hazard within the meaning of **section 90** -

(i) Means any occupier of the place whom the Secretary reasonably regards as responsible for causing, remedying, or both, the health hazard concerned; and

(ii) Includes, but is not limited to, any occupier of the place who may be liable for causing the health hazard, or may be compelled to remedy that hazard, or both, under any enactment, civil law (for example under a lease) or equity;

"Restricted place" means any place declared to be a restricted place under **section 107**;

"Reticulated supply" means any supply of water that -

(a) Is provided to more than one building through a network of pipes; and

(b) Is used for human consumption;

"Risk control procedures", in relation to any activity or use, means procedures (including operations, processes, devices, facilities, plants, and other systems) that eliminate or adequately mitigate health hazards arising from the activity or use;

"Risk premises" means any place that is -

(a) A building; or

(b) A public place; or

(c) Located within a distance specified by the Queen's Representative by Order in Executive Council of a building or public place, or (in the absence of such specification) 50 metres of a building or public place;

"School" has the meaning given to it by section 2 of the Education Act 1986-87;

"Secretary", subject to **sections 10** and **115**, means the Secretary of Health appointed under the Ministry of Health Act 1995-96;

"Sewage" -

(a) Means waterborne human waste; and

(b) Includes human faeces and urine; and

(c) Includes waste from kitchens, showers, baths, laundries;

"Standard closing order" means an order issued under **section 91(1)(b)**;

"State", in relation to any place, includes a state arising from the following:

(a) The design, construction, structure, condition, or location of the place;

(b) A lack of facilities or amenities for or on the place;

"Surface water" includes rainwater and other naturally occurring water;

"Swimming pool" -

(a) Means any excavation or structure containing water and used for swimming, bathing, wading, paddling, or any other activity where water comes into contact with the human body; and

(b) Includes a bathing or wading pool or spa;

"Take all precautions", in relation to any provision in **Part 11**, means -

(a) To take all measures prescribed in regulations for the purpose of the provision; or

(b) In the absence of such regulations, to take all precautions which are reasonable in the circumstances;

"Thing" includes the following:

(a) Any animal;

(b) Any building;

(c) Any conveyance;

(d) Any liquid, gas, or other substance;

"This Act" includes any regulations made under it;

"Toilet" includes any water closet, earth closet, chemical toilet, or other sanitary convenience;

"Transmissible notifiable condition" means any condition for the time being specified in **Part 1 of Schedule 2**;

"Transmit", in relation to any condition, includes indirectly spreading the condition, for example where a vector carries the condition (or an organism or other entity that causes the condition) to another person; and

"transmission" has a corresponding meaning;

"Treat", in relation to water, sewage, or pollution, includes filtering; and "treated" and "treatment" have corresponding meanings;

"Undertaking" includes any work carried out of such type, volume, or frequency that it could potentially become a health hazard, regardless whether or not the work is carried out for profit or reward;

"Used for human consumption", in relation to water, includes use or likely use of the water for -

- (a) Drinking; or
- (b) Food preparation; or
- (c) The cleansing of articles used in the preparation or consumption of food;

"User", in relation to any building, means a person who is or is likely to be -

- (a) Visiting, attending, frequenting, or physically occupying the building; or
- (b) Working, staying, living, or conveyed in or on the building; or
- (c) Otherwise present in or on the building at any time;

"Vaccination order" means a Court order made under **section 75** to present a child for vaccination;

"Vaccination requirement", in respect of a child, means a requirement in **subsection (1) of section 71**, subject to **subsection (3)** of that **section**, for the child to be administered a vaccination prescribed by regulations; and

"Vaccine preventable condition" means any condition for the time being specified in **Schedule 3**;

"Vessel" has the meaning given to it by section 2 of the Shipping Act 1998;

"Waste" includes the following:

- (a) Garbage, refuse, or litter;
- (b) Hazardous waste;
- (c) Wastewater;
- (d) Building and demolition waste;
- (e) Other discarded or superfluous things from open fires, incinerators, or industrial, commercial, mining, agricultural, community, or other activities;
- (f) Any other thing declared by the Queen's Representative by Order in Executive Council to be waste for the purposes of this Act;

"Wastewater" -

- (a) Means dissolved or suspended waterborne waste; and
- (b) Includes sewage;

"Waterway" -

- (a) Means -
 - (i) The sea; or
 - (ii) Any river, stream, spring, lake, pond, or naturally occurring well; or
 - (iii) Groundwater; and
- (b) Includes the following:
 - (i) The foreshore;
 - (ii) The bed (including dry bed) of any body of water referred to in subparagraph (ii) of paragraph (a);
 - (iii) The strip of land 5 metres wide extending along and abutting the landward margin of such a bed;

(2) For the avoidance of doubt, a syndrome that has not for the time being been attributed to a particular disease may, under this Act, be certified or specified to be a dangerous condition, notifiable condition, transmissible notifiable condition, or vaccine preventable condition, as the case may require.

4. Activities and uses characterised by type, frequency, volume - For the purposes of this Act, -

(a) An activity is characterised by its type, frequency, volume, and likely effects on health; and whether one activity is the same as another must be determined by reference to these characteristics; and

(b) A use is characterised by its type, frequency, volume, and likely effects on health; and whether one use is the same as another must be determined by reference to these characteristics.

5. Act binds Crown - This Act binds the Crown.

6. Construction of Parts - (1) Unless otherwise specified in a provision of this Act, nothing in one Part limits another Part of this Act.

(2) **Parts 3 to 7** are subject to **section 56**.

PART 2 ADMINISTRATION

7. Appointment of health inspectors - (1) The Secretary may from time to time, under the Ministry of Health Act 1995-96, appoint health inspectors to administer and enforce the provisions of this Act.

(2) No person may be appointed as a health inspector unless the person has appropriate experience, technical competence, and qualifications relevant to the area of responsibilities proposed to be allocated to that person.

(3) A person who is appointed as a health inspector may be authorised on the person's appointment to exercise all of the powers conferred on inspectors under this Act, or only such of those powers as are specified in that person's instrument of appointment or subsequently by written notice.

8. Appointment of Port Health Officer, Director - (1) The Secretary may from time to time, under the Ministry of Health Act 1995-96, appoint -

(a) A medical practitioner to be the Port Health Officer; and

(b) A medical practitioner to be the Medical Director.

(2) For the avoidance of doubt, the same person may be appointed as Port Health Officer and Medical Director.

9. Secretary, Port Health Officer, Director may exercise inspectors' powers - (1) An office-holder may exercise any power conferred on a health inspector by this Act in the same manner and with the same effect as if the power had been conferred on the office-holder directly by this Act.

(2) Unless the context otherwise requires, where any person exercises a power under authority of subsection (1), every provision of this Act applying to a health inspector in respect of the exercise of the power applies, with any necessary modifications, to the person as if he or she were a health inspector.

10. Delegations by Secretary Port Health Officer, Director - (1) An office-holder may from time to time by written instrument delegate to any person all or any of the functions or powers of the office-holder under this Act, but -

(a) No office-holder may delegate -

(i) The power of delegation conferred by this section; or

(ii) Any power held by virtue of **section 9**; and

(b) Neither the Port Health Officer nor Director may delegate a function or power except with the written permission of the Secretary;

(2) A delegation -

(a) May be made subject to such restrictions and conditions as the office-holder thinks fit; and

(b) May be made to a person or to a specified class of persons; and

(c) May be made either generally or in relation to a particular case; and

(d) May be revoked in writing by the office-holder; and

(e) Does not prevent the exercise or performance by the office-holder of the function or power delegated.

(3) Except as provided in the instrument of delegation, a person to whom a function or power is delegated may exercise or perform the function or power in the same manner and with the same effect as if it had been conferred on the person directly by this Act and not by delegation.

(4) Unless the context otherwise requires, every provision of this Act applying to an office-holder in respect of the exercise or performance of a function or power applies, with any necessary modifications, to any person exercising or performing the function or power under a delegation made by the office-holder, as if the person were that office-holder.

(5) Every person purporting to act under a delegation is presumed to be acting in accordance with its terms in the absence of proof to the contrary.

(6) A delegation continues in force according to its tenor unless and until revoked; for example, if an office-holder who makes a delegation ceases to hold office, the delegation continues in force as if made by the successor in office of the office-holder.

(7) This section has effect in place of section 8 of the Ministry of Health Act 1995-96 in relation to any delegation of a function or power conferred on the Secretary by this Act.

11. Secretary's lawful instructions to be followed - A functionary exercising or performing a function, power, or duty under this Act must comply with any lawful direction or instruction given by the Secretary in relation to the exercise or performance of the function, power, or duty.

PART 3 **BUILDINGS**

12. Purpose of Part 3 - The purpose of this Part is to regulate the standard of buildings and their facilities and amenities in order to safeguard the health of building users and other people.

13. Building health standards - (1) For the purposes of this Act, the following are building standards:

- (a) An adequate and convenient supply of water for human consumption;
- (b) An adequate and convenient supply of water for sanitary purposes;
- (c) Adequate and convenient means (including suitable appliances) for storage and disposal of waste;
- (d) Adequate and convenient toilets;
- (e) Adequate drainage for safe and efficient removal and disposal of surface water and wastewater;
- (f) Adequate lighting, space, and ventilation.

(2) A building meets a building health standard if the building has or is provided with the facilities or amenities specified in the standard (whether in the building itself or sufficiently close and sufficiently accessible for users of the building).

(3) Whether or not a building meets a building health standard must be determined by reference to the use of the building.

(4) For the purposes of subsection (1), -

(a) "Adequate" and "convenient" means adequate, or (as the case may be) convenient, to safeguard the health of -

(i) The users of the building; and

(ii) Other people who may be affected; and

(b) Whether something is adequate must be determined having regard to quality and suitability, as well as quantity.

(5) Regulations may prescribe standards to apply instead of, or in addition to, any of paragraphs (a) to (f) of subsection (1), and such standards have effect accordingly.

14. Allowing buildings to be used as dwelling houses - (1) Unless a building meets the requirements of subsection (2), no person may -

(a) Sell, let, or sublet, the building for use as a dwelling house; or

(b) Permit the building to be used as a dwelling house.

(2) Subsection (1) refers to the following requirements:

(a) The building must meet every building health standard in relation to use as a dwelling house; and

(b) The building must be fit for human habitation.

15. Buildings to comply with building health standards in relation to normal use - (1) The proprietor of a building must ensure that the building meets every building health standard in relation to its normal use.

(2) Without limiting subsection (1), no proprietor of an accommodation house may use a building that is or is part of the accommodation house, for the accommodation of guests unless the building is fit for human habitation.

16. Use of buildings for other than normal use - No person may cause or permit any building to be used at any time other than for its normal use, unless:

(a) At the relevant time, the building complies with every building health standard in relation to that non-normal use; or

(b) That use is in accordance with a non-normal use permit issued by the Secretary under **section 17**.

17. Non-normal use permits - (1) Any person may apply to the Secretary for a non-normal use permit.

(2) Subject to regulations and subsection (3), the Secretary may issue any applicant a

permit on receipt of an application in an approved form accompanied by the fee (if any) prescribed by regulations.

(3) No permit may be issued under this section unless the Secretary is satisfied that the non-normal use specified in the permit will be carried out in accordance with risk control procedures; for this purpose the Secretary may specify any condition considered necessary or desirable on the permit.

(4) A person to whom a permit is issued must ensure that no condition on the permit is breached.

(5) A permit is valid for the period of time specified on the permit, not exceeding one year, and the Secretary may from time to time renew the permit on payment of the fee (if any) prescribed by regulations.

PART 4 **WATER**

18. Purpose of Part 4 - The purpose of this Part is to ensure the safety and safe use of -

- (a) Water in reticulated supplies; and
- (b) Water in public swimming pools and public swimming places.

19. Reticulated water in accommodation houses - (1) This section applies to any accommodation house that has or is provided with a reticulated supply, unless the proprietor of the accommodation house is able to demonstrate that the water in the reticulated supply is potable.

(2) The proprietor of an accommodation house to which this section applies must ensure that a notice in the prescribed form is put up in the accommodation house concerning:

- (a) The water in the reticulated supply; and
- (b) Any alternative water supplied for drinking at the accommodation house.

(3) The proprietor must cause the notice to be clearly brought to the attention of each guest of the accommodation house before, or as soon as practicable after, the guest begins his or her stay at the accommodation house.

20. Water in public swimming pools - (1) The proprietor of a public swimming pool must ensure that the quality of water in the pool -

- (a) Meets standards prescribed by regulations; or
- (b) In the absence of such standards, is not likely to be injurious to health.

(2) For the purposes of subsection (1)(b), water that has a cloudy or discoloured appearance or harbours algae visible to the unaided eye is presumed to be likely to be injurious to health unless the contrary is proved.

21. Sampling and analysis of water - (1) A health inspector may at any time take a sample of water for analysis from -

- (a) Any reticulated supply; or
- (b) Any public swimming pool; or
- (c) Any public swimming place.

(2) The health inspector must send the sample to an approved analyst for analysis.

(3) On receiving the results of the analysis, the health inspector must immediately forward them to the Secretary.

22. Notification and disclosure of results - (1) On receiving the results of the analysis, the Secretary must immediately give written notice of these to the proprietor of the supply, swimming pool, or public swimming place from which the sample was taken.

(2) The Secretary must make those results available to the public within 30 days of issuing the notice under subsection (1), and must widely publicise the availability of those results.

23. Public health warnings - (1) If, for any reason (whether or not arising from actions taken under this Part), the Secretary believes that water in a reticulated supply, public swimming pool, or public swimming place is a health hazard for the people using or likely to use the water, the Secretary must promptly issue a warning or notice to those people.

(2) A warning or notice may be issued in any manner or form that the Secretary considers appropriate, and may contain advice on precautions to be taken when using the water.

(3) Before issuing the warning or notice, the Secretary must, to the extent that is practical in the circumstances, consult the proprietor of the supply, swimming pool, or public swimming place concerned.

(4) Where it is reasonable to assume that a warning or notice affects guests of an accommodation house, the proprietor of the accommodation house must cause the warning or notice to be brought to the attention of those guests as soon as practicable.

24 Further regulation of water - The queen's Representative may from time to time by Order in Executive Council make regulations, not inconsistent with this Act, for all or any of the following purposes:

- (a) Requiring the proprietor of any reticulated supply to monitor the quality of water in the supply, keep specified records, and make those records available to specified persons;
- (b) Requiring the proprietor of any public swimming pool to monitor the quality of water in the pool, keep specified records, and make those records available to specified persons;
- (c) Regulating the taking and analysis of samples for the purposes of **section 21**;
- (d) Otherwise regulating the storage, collection, treatment, supply, or monitoring of, or other dealings with -
 - (i) Water in a reticulated supply; or
 - (ii) Water in public swimming pools.

PART 5
MOSQUITOES AND OTHER REGULATED VECTORS

25. Purpose of Part 5 - The purpose of this part is to -

- (a) Regulate risk premises in order to eliminate the breeding-places and resting-places of mosquitoes; and
- (b) provide for regulations to be made relating to mosquitoes and other regulated vectors.

26. Risk premises to be free of mosquito breeding-places and resting places - The controlling occupier of risk premises must keep those premises free of the following:

- (a) Any thing that collects or is likely to collect stagnant water;
- (b) Any stagnant water that is or is likely to become a breeding-place for mosquitoes;
- (c) Any thing that is or is likely to become a resting-place for mosquitoes.

27. Risk premises to be free of bottles, seashells, etc - The controlling occupier of risk premises must keep those premises free of the following:

- (a) Any bottle, seashell, coconut shell, tin, crockery, earthenware, or a part of any of these, in which stagnant water may collect;
- (b) Any mass of foliage, or rotting vegetation, that may become a resting-place for mosquitoes.

28. Drainage and trees to be maintained - The controlling occupier of risk premises must do the following:

- (a) Keep those premises drained and free of any hollow in the ground in which stagnant water may collect;
- (b) Maintain and keep in good repair and free of obstruction every eave, gutter, and down-pipe, on those premises;

(c) Keep every tree on those premises freely lopped, treated, or otherwise dealt with so as to prevent it from becoming a resting-place for mosquitoes.

29. Things capable of holding water to be kept free of stagnant water - Any person who leaves on any risk premises a barrel, drum, boat, vessel, canoe or any other thing capable of holding water (including any thing referred to in **section 27(a)**) must keep the thing free of stagnant water.

30. Storage of water - (1) No person may store on any risk premises water in any cistern, tank, barrel, or other thing unless every opening to the thing is covered with mosquito-proof material (for example, wire gauze or mosquito netting).

(2) In subsection (1), "opening" excludes an opening from which water is being drawn, at the time the water is drawn.

31. Water with larvae regarded as stagnant water - For the purposes of this Part, water in which any mosquito larva is present must be regarded as stagnant water.

32. Effect of sections 27 to 30 - Nothing in **sections 27 to 30** limits the generality of **section 26**.

33. Exemption for taro patches sprayed with approved substance - Nothing in **sections 26 to 30** applies to water in or around a taro patch, where the water is for the time being coated or treated with a substance approved by the Secretary.

34. Further regulation of regulated vectors - The Queen's Representative may from time to time by Order in Executive Council make regulations, not inconsistent with this Act, for all or any of the following purposes:

- (a) Prohibiting or regulating specified activities by any person where those activities will promote the breeding or resting of a regulated vector in any place;
- (b) Prohibiting or regulating specified uses of things that may promote the spread or survival of a regulated vector;
- (c) Prohibiting or regulating the movement of things that may contain or harbour the regulated vector or otherwise pose a risk of spreading it;
- (d) Requiring any occupier of a place to take specified actions to control or eradicate, on that place, the breeding-places or resting-places of a regulated vector.
- (e) Requiring any occupier of a place to take specified actions to control or eradicate a regulated vector on that place;
- (f) Requiring any person to take specified actions to enable a health inspector to determine or monitor the presence or distribution of a regulated vector;
- (g) Requiring the destruction of things in circumstances where the things may contain or harbour the regulated vector, or otherwise pose a risk of spreading it;
- (h) Prohibiting or regulating specified methods that may be used in the management of a regulated vector.

PART 6
WASTE

35. Purpose of Part 6 - The purpose of this Part is to ensure that waste is safely stored, collected, treated, removed, transported, disposed of, and otherwise dealt with.

36. Responsibilities of receptacle proprietors - (1) Subject to subsection (9), this section applies to any receptacle in which waste is placed for regular collection.

(2) The proprietor of a receptacle to which this section applies must ensure that the requirements of subsections (2) to (8) are met in respect of the receptacle.

(3) The receptacle must -

- (a) Comply with regulations; or
- (b) In the absence of such regulations, be made of metal or plastic, and be of a design and construction that is adequate to protect the interior from rain, and from ingress or egress of rats, flies, and other vermin.

(4) The receptacle must be kept -

- (a) As clean as practicable; and
- (b) In good order and condition; and
- (c) Covered at all times, except when placing waste in it or emptying it; and
- (d) Secured or located so that no dogs or other animals can gain access to its contents.

(5) The receptacle must not be in a public place, except -

- (a) When placed there to allow the collection of waste from the receptacle; and
- (b) During the period beginning 24 hours before, and ending 24 hours after, the usual time that waste is collected from the receptacle.

(6) If the receptacle is placed in a public place for the purpose of waste collection, and it is not emptied within 24 hours of the usual time of waste collection, the receptacle must immediately be removed from the public place.

(7) If, at any time, the contents of the receptacle are scattered or otherwise fall out of the receptacle, those contents must as soon as practicable be cleared up and be -

- (a) Replaced in the receptacle; or
- (b) Otherwise disposed of in a lawful manner.

(8) If there is any reason to believe that waste has not been collected for more than 8 days from the site where the receptacle is usually placed for the purposes of waste collection, a health inspector must be notified as soon as practicable.

(9) The requirements in subsections (5) and (6) do not apply to a receptacle approved by the Secretary to be placed in a public place for use by the general public (for example, a litterbin).

37. Responsibilities of building occupiers - (1) This section applies to any person who -

- (a) Is in physical occupation of a building; and
- (b) Makes use of any receptacle to which **section 36** applies to dispose of waste generated in or around the building.

(2) A person to whom this section applies must ensure that no waste generated in or around the building is placed in the receptacle in breach of any of subsections (3) to (6).

(3) No broken glass, sharp object, or other item that may cause physical injury may be placed in the receptacle unless wrapped or secured in such a way as to make it unlikely to cause injury.

(4) No organic materials generated from gardens, agricultural sites, or other land (for example, tree branches or cuttings, leaves, grass, or straw) may be placed in the receptacle.

(5) No hazardous waste may be placed in the receptacle except -

- (a) In accordance with regulations; or
- (b) In the absence of such regulations, secured in an impermeable and non-biodegradable container that eliminates any health hazard arising from the waste.

(6) Notwithstanding subsection (5), no hazardous waste may be placed in the receptacle if prohibited by regulations.

38. Plastic waste and tyres not to be burnt - (1) No person may burn any plastic waste or tyre, except in accordance with an authorisation issued under this section.

(2) Any person may apply to the Secretary for an authorisation on the grounds that the burning is part of an exercise that is necessary to meet the training requirements of firefighters.

(3) Subject to regulations and subsection (4), the Secretary may issue any applicant a written authorisation on receipt of an application in an approved form accompanied by

the fee (if any) prescribed by regulations.

(4) No authorisation may be issued under this section unless the Secretary is satisfied that the burning will be carried out in accordance with risk control procedures; for this purpose the Secretary may specify any condition considered necessary or desirable on the authorisation.

(5) A person to whom an authorisation is issued must ensure that no condition on the authorisation is breached.

(6) An authorisation is valid for the period of time specified on it, not exceeding one year, and the Secretary may from time to time renew the authorisation on payment of the fee (if any) prescribed by regulations.

39. Emptying and disposal of septic tank waste - (1) Every proprietor of a septic tank must ensure that waste from the tank is removed -

- (a) In accordance with regulations; or
- (b) In the absence of such regulations, as frequently as necessary to avoid overflow of the tank and in a manner that does not create any health hazard.

(2) Every person who disposes of waste from a septic tank must dispose of the waste -

- (a) In accordance with regulations; or
- (b) In the absence of such regulations, in a manner that does not create any health hazard, and on an approved place.

40. Disposal of waste on any dace - No person may cause or permit waste to be disposed of on any place except -

- (a) With the consent of the proprietor of the place; and
- (b) In a manner and at a site that does not create any health hazard.

41. Further regulation of waste - The Queen's Representative may from time to time by Order in Executive Council make regulations, not inconsistent with this Act, for all or any of the following purposes:

- (a) Requiring the proprietors of devices, facilities, plants, or systems that treat water, sewage, or pollution (for example, septic tanks, other sewage treatment facilities, water treatment plants, or sewage treatment plants) to operate, maintain and monitor them in a specified manner;
- (b) Regulating the removal and disposal of waste from such devices, facilities, plants, or systems;

(c) Otherwise regulating the storage, collection, treatment, removal, transportation, or disposal of or other dealings with waste.

PART 7
HUMAN REMAINS

42. Purpose of Part 7 - The purpose of this Part is to ensure that human remains are disposed of and otherwise dealt with promptly and safely.

43. Human remains received in the Cook Islands - (1) This section applies to any person who receives human remains in the Cook Islands for the purpose of burial or cremation (whether in the Cook Islands or elsewhere).

(2) A person to whom this section applies must cause the remains to be buried or cremated within 24 hours of receipt.

(3) Notwithstanding subsection (2), if the remains are to be buried or cremated anywhere other than the island where they are received, the person may instead ensure that the steps specified in subsection (4) are carried out in respect of those remains.

(4) Subsection (3) refers to the following steps:

(a) Embalm those remains, and encase them in a sealed and impervious container, within 24 hours of receipt;

(b) Keep those remains so embalmed and encased at all times while being held or transported in the Cook Islands pending burial or cremation;

(c) If burial or cremation is to take place in the Cook Islands, bury or cremate those remains within 48 hours of receipt;

(d) If burial or cremation is to take place outside the Cook Islands, transport those remains out of the Cook Islands within 48 hours of receipt.

(5) For the purposes of subsection (3), where remains are received elsewhere than on an island (for example, where they are received at sea), those remains are deemed to have been received on the island where they are first landed.

(6) In this section, "receipt" means receipt of the human remains in terms of subsection (1).

44. Human remains brought into the Cook Islands - (1) This section applies to any person who -

(a) Receives human remains outside the Cook Islands for the purpose of burial or cremation in the Cook Islands; and

(b) Brings the remains into the Cook Islands for that purpose.

(2) A person to whom this section applies must -

(a) Keep those remains embalmed, and encased in a sealed and impervious container, at all times while being held or transported in the Cook Islands pending burial or cremation; and

(b) Cause those remains to be buried or cremated within 48 hours of bringing them into the Cook Islands

45. Exemptions from sections 43 and 44 - (1) Any person may apply to the Secretary for an exemption from an obligation imposed by **section 43 or 44**.

(2) Subject to regulations and subsection (3), the Secretary may issue any applicant a written exemption on receipt of an application in an approved form accompanied by the fee (if any) prescribed by regulations.

(3) No exemption may be issued under this section unless the Secretary is satisfied that the human remains will be dealt with in accordance with risk control procedures; for this purpose the Secretary may specify any condition considered necessary or desirable on the exemption.

(4) An exemption must:

(a) Specify the obligation from which the applicant and other specified persons, or specified class of persons, are exempt; and

(b) Specify the alternative dealings (in lieu of compliance with the obligation) with the human remains approved by the Secretary; and

(c) Identify the human remains (by name of the deceased or other known details) in respect of which the exemption is to apply.

(5) A person to whom an exemption is issued must ensure that no condition on the exemption is breached.

(6) Notwithstanding **section 43 or 44** (as the case may require), a person acting in accordance with an exemption issued under this section need not comply with the obligation specified in the exemption.

46. Land burials - No person may bury any human remains on land except in a sealed and impervious crypt and in accordance with regulations.

47. Opening graves and removing human remains - (1) Notwithstanding the Coroners Act 1979-80, no person may open any grave, or remove human remains from any grave, except in accordance with a written authorisation issued under this section.

(2) Any person may apply to the Secretary for an authorisation.

(3) Subject to regulations and subsection (4), the Secretary may issue any applicant a written authorisation on receipt of an application in an approved form accompanied by the fee (if any) prescribed by regulations.

(4) No authorisation may be issued under this section unless the Secretary is satisfied that the opening of the grave or (as the case may be) removal of the remains will be carried out in accordance with risk control procedures; for this purpose the Secretary may specify any condition considered necessary or desirable on the authorisation.

(5) An authorisation must identify (by name of the deceased or other known details) the grave or human remains to which it applies.

(6) A person to whom an authorisation is issued must ensure that no condition on the authorisation is breached.

48. Further regulation of human remains - The Queen's Representative may from time to time by Order in Executive Council make regulations, not inconsistent with this Act, for all or any of the following purposes:

- (a) Regulating the embalming and encasing of human remains and other means of preparing human remains for burial or cremation;
- (b) Regulating the cremation of human remains;
- (c) Regulating public access to cemeteries and crematoria;
- (d) Prohibiting or regulating the burial of human remains at sea;
- (e) Otherwise regulating the storage, collection, treatment, removal, transportation, or other disposal (including burial or cremation) of or other dealings with human remains.

49. Effect of Part 7 - Except for **section 47**, this Part is subject to -

- (a) **Sections 85** and **86**, including any directions given by a medical officer-holder under either of those provisions; and
- (b) The Coroners Act 1979-80, including any directions given by a coroner under that Act.

PART 8 **OFFENSIVE TRADES AND NUISANCES**

50. Purpose of Part 8 - The purpose of this Part is -

- (a) To regulate activities that form part of any trade, business, manufacture, or undertaking, that carries inherent risks to health; and
- (b) To provide for offensive trade permits to authorise such activities; and

(c) To prohibit any unauthorised activity that is both a nuisance and a health hazard.

51. Activities part of offensive trades prohibited without permits - (1) No person may, in any place, carry out an activity that is or is part of an offensive trade, unless the activity is

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- (a) Specifically authorised to be carried out in the place by an offensive trade permit; and
- (b) Carried out in accordance with applicable conditions on the permit.

(2) Subsection (1) is subject to **section 146**.

52. Offensive trade permits - (1) Any person who is or intends to be carrying out any activity that is or is part of an offensive trade may apply to the Secretary for an offensive trade permit.

(2) Subject to regulations and subsection (3), the Secretary may issue any applicant a written permit for the offensive trade on receipt of an application in an approved form accompanied by the fee (if any) prescribed by regulations.

(3) No permit may be issued under this section unless the Secretary is satisfied that the activities authorised will be carried out in accordance with risk control procedures; for this purpose the Secretary may specify any condition considered necessary or desirable on the permit.

(4) A permit must -

- (a) Specify the offensive trade; and
- (b) Specify the type, frequency, and volume of each activity authorised as part of the offensive trade; and
- (c) Identify the buildings and other places where the activity is authorised to be carried out (unless those places are to be notified to the Secretary from time to time as a condition of the permit).

(5) A person to whom a permit is issued must ensure that no condition on the permit is breached.

(6) A permit is valid for the period of time specified on the permit, not exceeding one year, and the Secretary may from time to time renew the permit on payment of the fee (if any) prescribed by regulations.

(7) Any person refused a permit may appeal against the refusal to the Court under **Part 15**, on the grounds that the refusal is unreasonable.

(8) Any person issued a permit may appeal to the Court under **Part 15** against the inclusion in or omission from the permit, of anything, on the grounds that the inclusion or (as the case may be) omission is unreasonable.

53. Amendment of offensive trade permits - (1) The Secretary may from time to time; by written notice to the permit holder, amend an offensive trade permit -

- (a) At the request of the permit holder; or
- (b) To protect the health of persons who may be affected by the activities authorised by the permit.

(2) Before amending a permit under subsection (1)(b), the Secretary must consult the permit holder.

(3) Any permit holder whose permit is amended under subsection (1)(b) may appeal against the amendment to the Court under **Part 15**, on the grounds that the amendment is unreasonable.

54. Activities that are nuisances and health hazards prohibited - (1) No person may carry out any activity that is, or results in, a nuisance (as that term is commonly understood) that is also a health hazard.

(2) Without limiting the generality of subsection (1), the following persons must be regarded to be in breach of subsection (1):

(a) A person who causes or permits any place to be in a state that is offensive, unsanitary, or likely to be a health hazard, for example arising from -

- (i) Accumulations or deposits; or
- (ii) The keeping of animals; or
- (iii) The presence of carcasses or parts of carcasses; or
- (iv) Cesspools, pools, ditches, or similar hollows in the ground; or
- (v) The blockage or obstruction of eaves, gutters, down-pipes, vent-pipes, drains, watercourses, or other things through which water or air normally flows; or
- (vi) The presence of rats, flies, other vermin, or things that may be breeding-places or resting-places for such vermin; or
- (vii) Smells or leakages from a drain or toilet; or
- (viii) Roofs, gutters, drains, spouting, or down-pipes that cause dampness in a building; or

(ix) Overcrowding of a building;

(b) A person who carries out any trade, business, manufacture, or other undertaking in a manner that is unnecessarily offensive or is likely to be a health hazard, for example carrying it out in a building that is not equipped with a device, facility, plant, or other system that is adequate to carry off in a harmless and inoffensive manner any fumes, gases, vapours, dust, or impurities generated from the trade, business, manufacture, or other undertaking;

(c) A person who causes or permits gases, fumes, or odours to be released that are offensive or likely to be a health hazard, for example by reason of their quantity or nature;

(d) A person who causes or permits any hazardous waste to be directly or indirectly deposited or discharged, or to seep, into a waterway.

(3) This section is subject to **sections 55 and 56**.

55. Coming to a nuisance - (1) This section applies where -

(a) People who make use of a building consider an activity carried out in any place, or the results of such an activity, to be offensive; and

(b) The activity was carried out in or on the place before the building was erected or before it was so used by those people.

(2) Notwithstanding **section 54(2)**, where this section applies, the activity must not be regarded as a nuisance by reason only that it is offensive to those people.

56. Effect of offensive trade permits - (1) This section applies to any activity carried out in a place if the activity is -

(a) Specifically authorised to be carried out in the place by an offensive trade permit; and

(b) Carried out in accordance with applicable conditions on the permit.

(2) For the purposes of this Act, no person or Court may regard or treat an activity to which this section applies as a breach of -

(a) **Section 54(1)**; or

(b) Any provision in **Parts 3 to 7**.

57. Order in Executive Council may change list of offensive trades - The Queen's Representative may from time to time by Order in Executive Council made on the advice of the Minister, amend **Schedule 1** or repeal that schedule and substitute a new schedule.

PART 9 **QUARANTINE OF VESSELS AND AIRCRAFT**

58. Purpose of Part 9 - The purpose of this Part is to prevent dangerous conditions being introduced into or spread within the Cook Islands from vessels or aircraft.

59. Unnecessary delays to be minimised - Subject to the purpose of this Part, in

performing or exercising a function, power, or duty under this Part, the Port Health Officer must take into account the need to minimise unnecessary delays to the boarding and disembarkation of the crew, passengers, and cargo, of vessels and aircraft.

60. Vessels and aircraft in quarantine - (1) This section applies to any vessel or aircraft -

- (a) Entering the Cook Islands from any place outside the Cook Islands; or
- (b) Travelling from a restricted place or controlled area (regardless whether the declaration establishing the restricted place or controlled area had been made at the time of departure) to any place within the Cook Islands; or
- (c) Ordered by the Port Health Officer to be quarantined under subsection (3).

(2) For the purposes of this Part, a vessel or an aircraft to which this section applies is in quarantine at all times until pratique has been granted to her.

(3) The Port Health Officer may, by notifying the person-in-charge, order any vessel or aircraft to be quarantined if the Port Health Officer has reasonable grounds to suspect that

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- (a) Any person on board is infected with a dangerous condition; or
- (b) Any thing on board contains or harbours a dangerous agent or dangerous vector; or
- (c) There is otherwise on board any dangerous agent or dangerous vector.

61. Persons in quarantine - (1) While any vessel or aircraft is in quarantine, every person is in quarantine in respect of her who -

- (a) Is for the time being on board the vessel or aircraft; or
- (b) Was at any other time on board her while the vessel or aircraft was, on that occasion, in quarantine.

(2) Subsection (1) does not apply to any functionary who boards the vessel or aircraft in the exercise or performance of a function, power, or duty under this Act.

62. Vessels to fly quarantine signal - (1) The master of every vessel in quarantine must cause the international quarantine signal, or another signal approved by the Port Health Officer, to be hoisted at the mainmast head of the vessel before she comes within three nautical miles of any land at which she is about to call.

(2) The master of the vessel must ensure that the signal is kept so hoisted at all times while she is in quarantine and within three nautical miles of land.

63. Port Health Officer may order vessel or aircraft to be moved or not to land - (1) The Port Health Officer may, if he or she considers it necessary or desirable to achieve the

purpose of this Part, at any time direct the person-in-charge of any vessel or aircraft in quarantine -

- (a) To move her to a place specified by the Port Health Officer; or
- (b) Not to land her anywhere in the Cook Islands.

(2) Before exercising the power conferred by subsection (1)(a) in respect of any vessel or aircraft that is landed at a wharf, port, or aerodrome, the Port Health Officer must, to the extent practical in the circumstances, consult the person acting or apparently acting in the general management or control of the wharf, port, or aerodrome.

64. No landing except in place of inspection - No person-in-charge of any vessel or aircraft in quarantine may cause or permit her to be brought to land anywhere in the Cook Islands except -

- (a) At a place of inspection; or
- (b) As directed by the Port Health Officer under **section 63(1)(a)**.

65. Movement of persons and goods restricted - (1) Except in accordance with a written authorisation issued by the Port Health Officer, -

- (a) No person may disembark from any vessel or aircraft in quarantine; and
- (b) No person may -
 - (i) Board her; or
 - (ii) Remove any thing from her (other than personal belongings worn or carried by a person disembarking under an authorisation issued by the Port Health Officer); or
 - (iii) Move her from any place to which she has been brought to land (unless directed to do so under **section 63(1)(a)**).

(2) The person-in-charge of the vessel or aircraft must take all reasonable steps to ensure that no person acts in breach of subsection (1).

(3) Subject to regulations, the Port Health Officer may for the purposes of subsection (1) issue a written authorisation to any person (such authorisation relating to that person and any other specified person or class of persons) subject to any condition specified by the Port Health Officer (including, if considered desirable, the return of any person or thing to the vessel or aircraft by or at a specified date and time).

(4) The Port Health Officer may at any time by written notice to the person to whom an authorisation is issued amend or revoke an authorisation issued under subsection (3); and that person must as soon as practicable notify every other person likely to be affected.

(5) A person to whom an authorisation is issued must ensure that no condition on the

authorisation is breached.

(6) Subsection (1) does not apply to a functionary exercising or performing a function, power, or duty under this Act.

66. Granting or refusing pratique - (1) Subject to subsection (2), the Port Health Officer may grant pratique to any vessel or an aircraft by giving the person-in-charge a certificate of pratique in the approved form.

(2) Except with the written consent of the Secretary, pratique may not be granted to a vessel or an aircraft unless the Port Health Officer determines that -

- (a) No person in quarantine in respect of the vessel or aircraft is infected with a dangerous condition; and
- (b) Nothing on board the vessel or aircraft at any time while she is in quarantine contains or harbours a dangerous agent or dangerous vector; and
- (c) There is otherwise no dangerous agent or dangerous vector on board the vessel or aircraft.

67. Boarding and inspection before pratique granted - (1) While any vessel or aircraft is in quarantine, the Port Health Officer may at any time, for a purpose specified in subsection (2), do the following -

- (a) Board the vessel or aircraft; and
- (b) On so boarding, inspect the vessel or aircraft, and any person or thing onboard her.

(2) Subsection (1) refers to the following purposes:

- (a) Performing or exercising a function, power, or duty under this Act;
- (b) Ascertaining whether -
 - (i) A person in quarantine in respect of the vessel or aircraft is infected with a dangerous condition; or
 - (ii) A thing on board the vessel or aircraft at any time while in quarantine contains or harbours a dangerous agent or dangerous vector; or
 - (iii) There is otherwise any dangerous agent or dangerous vector on board the vessel or aircraft.

(3) The Port Health Officer -

- (a) Must produce evidence of his or her appointment to the position of Port Health Officer to any person appearing to be in charge of the vessel or aircraft boarded -
 - (i) On boarding (if such a person is then present); and
 - (ii) At any reasonable time thereafter, if asked to do so by the person; and

(b) If there is no person appearing to be in charge of the vessel or aircraft at any time between the time of boarding and the time the Port Health Officer disembarks from her, must, as soon as is practicable upon such disembarkation, give the person-in-charge of the vessel or aircraft written notice stating that the vessel or aircraft has been boarded, and specifying the following matters:

- (i) The time and date of boarding;
- (ii) The circumstances and purpose of boarding;
- (iii) The name, office or position, and employer of every person boarding.

68. Port Health Officer may direct persons in quarantine to make declarations and take other specified actions - The Port Health Officer may at any time, for a purpose specified in paragraph (a) or (b) of **section 67(2)**, direct any person who is in quarantine in respect of a vessel or aircraft to do the following:

- (a) Make a declaration in a specified manner;
- (b) Answer a question posed to the person;
- (c) Return to the vessel or aircraft;
- (d) Return to the vessel or aircraft any thing removed from her;
- (e) Take any other reasonable action specified by the Port Health Officer.

69. Quarantine register to be kept - (1) The Port Health Officer must ensure that a register is maintained for the purposes of this Part.

(2) The register must contain details of vessels and aircraft that are at any time in quarantine, including:

- (a) Their quarantine status; and
- (b) If and when they were granted pratique; and
- (c) Any authorisation issued by the Port Health Officer under **section 65**; and
- (d) Any other information prescribed by regulations, or (in the absence of such regulations) specified by the Secretary.

PART 10 **VACCINE PREVENTABLE CONDITIONS**

70. Purpose of Part 10 - The purpose of this Part is to ensure -

- (a) That children are appropriately vaccinated in order to eliminate where possible, or otherwise to minimise, the incidence of vaccine preventable conditions; and
- (b) That the Secretary is kept informed about the incidence of vaccine preventable conditions in schools, so that action can be taken under **Part 12** if appropriate.

71. Prescribed vaccinations compulsory - (1) The parent of every child must cause the child to be administered, in accordance with subsection (2), every vaccine for the time being prescribed by regulations against a vaccine preventable condition.

(2) A vaccine must be administered to the child in the manner and time, and at the age, specified by the regulations.

(3) Subsection (1) does not apply where -

- (a) At the time the child was of the age prescribed in the regulations for the vaccination, those regulations had not yet been made, or were not in force; or
- (b) The Secretary certifies in writing that he or she is satisfied that the child has received an equivalent vaccination; or
- (c) The Secretary issues the child with a written exemption from the vaccination requirement, for what the Secretary considers to be good medical reasons.

(4) Paragraph (a) of subsection (3) does not imply any authorisation under this Act for regulations to be made with retrospective effect.

(5) No person may be prosecuted for failing to comply with or contravening subsection (1) if, at the time the child was of the age prescribed in regulations for the vaccination, the child's ordinary place of residence was outside the Cook Islands.

72. Records of vaccinations - (1) A person who vaccinates a child must record details of the vaccination in -

- (a) The child's medical records; and
- (b) A document prescribed by regulations, or (in the absence of such regulations) the child's health and development book.

(2) When enrolling a child in any school, the parent of the child must present the principal of the school with the following information in the prescribed form:

- (a) The details of every vaccination administered (whether in the Cook Islands or elsewhere) to the child;
- (b) Any certificate or exemption of the type referred to in **section 71(3)(b)** and **(c)** respectively that is held in respect of that child.

(3) The principal must maintain a record of the vaccination status of the child in accordance with regulations and must notify the child's parent when the record is created or updated.

(4) The following persons may at any reasonable time inspect and obtain a copy of records made or maintained under subsection (1) or (3):

- (a) The child;
- (b) The child's parent;
- (c) An office-holder;
- (d) A health inspector.

73. Principals to notify Secretary of unvaccinated children - (1) If any principal of a school believes or suspects that a vaccination requirement has not been met in respect of a child enrolling at the school after this section comes into force, the principal must, immediately after enrolling the child, notify the Secretary in accordance with subsection (2).

(2) A notification under subsection (1) must be in the prescribed form and must be accompanied by any information presented to the principal under **section 72(2)** in respect of the child.

74. Secretary may issue vaccination request - (1) If the Secretary suspects that any vaccination requirement has not been met in respect of a child enrolled at any school (whether before or after **section 73** comes into force), the Secretary may by written notice issued to the child's parent request that parent to present evidence to satisfy the Secretary that-

- (a) The vaccination requirement has been met in respect of the child; or
- (b) The child is deserving of a certificate or an exemption of the type referred to in **section 71(3)(b)** and (c) respectively, in respect of the vaccination concerned.

(2) If the Secretary is not so satisfied at the expiration of 28 days after issuing the notice under subsection (1), he or she may request the child's parent to present the child for vaccination with the vaccine prescribed in regulations or an equivalent vaccination.

(3) A request under subsection (2) is made by written notice served on the parent specifying -

- (a) The place, date, and time (14 days or longer from the date the notice is served on the parent) where the child is to be presented; and
- (b) The type, dose, and other relevant details of the vaccine proposed to be administered.

(4) Where a child is presented pursuant to a request, the Secretary may cause a medical practitioner to administer the specified vaccination to the child.

75. Court may order vaccination - (1) If the parent of a child fails or refuses to comply

with a request made under **section 74(2)**, the Secretary may apply to the Court, subject to **Part 15**, for an order to direct that parent to present the child for the vaccination specified in the request.

(2) No Court may hear an application made under subsection (1) unless the Court is satisfied that-

- (a) Notice of the application has been served on the parent concerned at least 14 days before the hearing; or
- (b) It is impracticable in all the circumstances to give such notice or there are exceptional circumstances warranting the Court to hear the application.

(3) The following persons may attend the hearing and object to an application:

- (a) The parent concerned;
- (b) Any other person granted leave by the Court.

(4) On determining an application, the Court may make any order that it sees fit, including an order directing the parent concerned to present the child for the vaccination specified in the Secretary's request, or another vaccination specified by the Court.

(5) The Registrar must cause an order made under subsection (4) to be served on the parent concerned and any other person that the Court considers appropriate.

(6) Where a child is presented pursuant to a Court order made under this section, the Secretary may cause a medical practitioner to administer the vaccination specified in the Court order to the child.

76. Principals to notify Secretary of vaccine preventable conditions - If the principal of a school has any reason to believe or suspect that any child enrolled at the school (whether before or after **section 73** comes into force) is infected with a vaccine preventable condition, the principal must notify the Secretary in writing immediately.

77. Order in Executive Council may change list of vaccine preventable conditions - The Queen's Representative may from time to time by Order in Executive Council made on the advice of the Minister, amend **Schedule 3** or repeal that schedule and substitute a new schedule.

78. Regulations to prescribe vaccinations - The Queen's Representative may from time to time by Order in Executive Council make regulations, for the purposes of this Part, -

- (a) Prescribing a vaccine to be administered to children against a specified vaccine preventable condition; and

(b) Specifying the age at which, and the manner and time in which, the prescribed vaccine is to be administered to children for the purposes of complying with that section.

PART 11
NOTIFIABLE CONDITIONS AND DANGEROUS CONDITIONS

79. Purpose of Part 11 - The purpose of this Part is -

- (a) To enable the Director to monitor the incidence and spread of notifiable conditions; and
- (b) To minimise the adverse health effects of the occurrence of notifiable conditions, and in particular transmissible notifiable conditions; and
- (c) To minimise the adverse health effects of the occurrence of dangerous conditions.

80. Medical practitioners to report notifiable conditions and provide advice on transmissible notifiable conditions - (1) This section applies to any medical practitioner who, at any time after attending a person, forms an opinion that the person was infected with a notifiable condition at the time the medical practitioner attended that person.

(2) A medical practitioner to whom this section applies must as soon as practicable do the following:

- (a) Notify that person (unless that person is no longer alive);
- (b) Make a report to the Director in the prescribed form;
- (c) In the case of a transmissible notifiable condition (unless that person is no longer alive), -
 - (i) Advise that person on precautions to take to prevent transmission of the condition to others; and
 - (ii) Advise that person on precautions that others should take to avoid contracting the condition from that person; and
 - (iii) Advise that person of his or her obligations under **paragraph (b) of section 82**; and
 - (iv) Advise that person on the desirability of counseling (if appropriate), and if that person agrees, make arrangements for such counseling.

81. Medical practitioners to report deceased with notifiable conditions - Any medical practitioner who, at any time after examining human remains, forms an opinion that the person (whose remains it is) was infected with a notifiable condition at the time of death must make a report to the Director in the prescribed form.

82. Responsibilities of persons with transmissible notifiable conditions - Any person who believes or suspects that he or she is infected with a transmissible notifiable condition must -

- (a) As soon as practicable seek attention, and obtain the advice referred to in **paragraph (c) of section 80(2)**, from a medical practitioner; and
- (b) Immediately take all precautions to prevent transmission of the condition to others, including advising everyone who is or may be placed at risk of contracting the condition from him or her -
 - (i) Of the fact that the person believes or suspects himself or herself to be infected with the condition; and
 - (ii) On precautions to take to avoid contracting the condition.

83. Responsibilities of persons caring for those with transmissible notifiable conditions -

- (1) This section applies to any person responsible for the care of another person that the former believes or suspects to be infected with a transmissible notifiable condition.
- (2) A person to whom this section applies must, while the person believed or suspected to be infected is in his or her care, take all precautions -
 - (a) To avoid contracting the condition; and
 - (b) To prevent transmission of the condition to others.

84. Responsibilities of persons engaging in activities at risk of transmissible notifiable conditions - Any person engaging in an activity that the person knows or reasonably ought to know places him or her at risk of contracting a transmissible notifiable condition must, while engaged in the activity, take all precautions to avoid contracting the condition.

85. Post-mortem of person suspected of transmissible notifiable conditions or dangerous conditions - (1) This section applies to the remains of any deceased person if a medical office-holder believes on reasonable grounds that a post mortem examination needs to be conducted in respect of those remains in order to determine -

- (a) Whether the death of the person was caused by or otherwise related to a transmissible notifiable condition or dangerous condition; or
 - (b) Whether the person was infected with a transmissible notifiable condition or dangerous condition at the time of death.
- (2) The medical office-holder may direct a coroner to authorise, under section 10 of the Coroners Act 1979-80, a medical practitioner or Crown pathologist to perform a post mortem examination of remains to which this section applies.
 - (3) A coroner so directed must comply with the direction.
 - (4) The following persons are entitled to be present at the post-mortem examination, and must be notified by the coroner of the results of the post-mortem:

- (a) The medical office-holder;
- (b) Any person authorised in writing by the medical office-holder.

(5) This section has effect notwithstanding anything to the contrary in the Coroners Act 1979-80.

86. Special precautions with human remains suspected of transmissible notifiable conditions or dangerous conditions - (1) This section applies to the remains of any deceased person if the medical office-holder believes on reasonable grounds that -

- (a) The death of the person was caused by or otherwise related to a transmissible notifiable condition or dangerous condition; or
- (b) The person was infected with a transmissible notifiable condition or dangerous condition at the time of death.

(2) For the purpose of preventing the spread or transmission of the transmissible notifiable condition or dangerous condition, the medical office-holder may, after consulting a coroner, direct any person specified in subsection (3) to store, collect, treat, remove, transport, dispose of (for example, by burial or cremation) or otherwise deal with, any remains to which this section applies in a manner specified by the medical office-holder.

(3) Subsection (2) refers to the following persons:

- (a) Any person authorised to perform a post-mortem inspection by a coroner;
- (b) Any person who receives the remains for burial or cremation;
- (c) Any other person having custody of the remains for the time being.

(4) This section has effect notwithstanding anything to the contrary in the Coroners Act 1979-80.

87. Disclosures and statements Prohibited except in certain circumstances - (1) No person may disclose to anyone any information or make any statement as to whether or not a person is, was, may be, or may have been, infected with a transmissible notifiable condition, regardless whether -

- (a) The information or statement is true; or
- (b) The person is no longer alive.

(2) Notwithstanding subsection (1), a person may disclose information or make a statement if the disclosure or statement -

- (a) Is made by a functionary in the exercise or performance of a function, power, or duty under this Act; or
- (b) Is made to an office-holder;
- (c) Is specifically required or specifically authorised by any other enactment; or
- (d) Is necessary -
 - (i) To avoid prejudice to the maintenance of the law, including the prevention, detection, investigation, prosecution, and punishment of offences; or
 - (ii) For the enforcement of a law imposing a pecuniary penalty; or
 - (iii) For the conduct of proceedings before any Court or commission of inquiry (being proceedings that have been commenced or are reasonably in contemplation); or
- (e) Is made to or by, or authorised by, the person concerned; or

- (f) Is made in a form in which the person concerned is not identified and cannot reasonably be expected to be identified, even by people who know that person; or
- (g) Is necessary to prevent or lessen a serious and imminent danger to the life or health of the person concerned or another person; or
- (h) Is made, or authorised in writing, by an office-holder -
 - (i) After consultation with the person concerned; and
 - (ii) On the grounds that the office-holder considers the disclosure or statement necessary or desirable to protect the health of any person or class of persons.

(3) In this section, "the person concerned" means the person as to whom the disclosure or statement is made.

88. Effect on Coroners Act 1979-80 - Except as otherwise provided in **sections 85** and **86**, nothing in this Part limits the Coroners Act 1979-80.

89. Order in Executive Council may change list of notifiable conditions - The Queen's Representative may from time to time by Order in Executive Council made on the advice of the Minister, amend **Schedule 2** or repeal that schedule and substitute a new schedule.

PART 12 **ABATEMENT POWERS**

90. Abatement notices - (1) If the Secretary believes on reasonable grounds that any place is a health hazard, the Secretary may issue an abatement notice to the responsible occupier of the place requiring that person to -

- (a) Take all steps considered necessary or desirable by the Secretary to eliminate or adequately mitigate the hazard to health; and
- (b) Take those steps by or within a specified time.

(2) The steps may include -

- (a) Ceasing or preventing a specified activity; or
- (b) Doing specified work (for example, cleansing, destroying rats, flies, or other vermin, or refurbishing).

(3) The following places must be regarded to be a health hazard for the purpose of subsection (1):

- (a) Any place on or in relation to which a breach of any health regulatory provision has occurred;
- (b) Any place in which a thing exists, or an activity is carried out, that is or results in a health hazard;
- (c) Any school at which a child is enrolled who is infected with a vaccine preventable condition.

(4) Nothing in subsection (2) or (3) limits the generality of subsection (1).

(5) An abatement notice must -

- (a) Identify the place to which it relates; and
- (b) Include a statement of the Secretary's reasons for believing that the place is a health hazard; and
- (c) If the Secretary believes that a breach of any health regulatory provision has occurred on or in relation to the place, identify the relevant provision.

(6) A person to whom an abatement notice is issued under subsection (1) must comply with the notice.

(7) The Secretary must, as soon as practicable and in any event within 3 days of issuing an abatement notice, give a copy of the notice to any other occupier of the place that the Secretary considers appropriate.

(8) The following persons may appeal against an abatement notice to the Court under **Part 15** on the grounds that the notice is unreasonable:

- (a) Any person issued with that notice under subsection (1);
- (b) Any person to whom a copy of that notice has been given under subsection (7).

91. Powers on default of abatement notice - (1) Where an abatement notice issued to a person under **section 90** has not been complied with, the Secretary may do the following:

- (a) Cause any work to be done on or in relation to the place to which the abatement notice relates as is reasonably necessary for achieving the purposes of the notice;

(b) Issue a standard closing order to the person to whom the abatement notice was issued and any other person given a copy of that notice under **section 90(7)**.

(2) A standard closing order may prohibit the use of the place to which it relates for any purpose, or for specified purposes only, until such time as the steps specified in the abatement notice have been taken to the Secretary's satisfaction.

(3) A standard closing order must -

(a) Identify the place to which it relates; and

(b) Include a statement of the Secretary's reasons for believing that an abatement notice has not been complied with; and

(c) Be accompanied by a copy of the abatement notice concerned.

92. Imminent danger closing orders - (1) The Secretary may at any time issue an imminent danger closing order to the proprietor of any place, and any other occupier of the place that the Secretary considers appropriate, if the Secretary has reasonable grounds to believe that the place -

(a) Is a health hazard within the meaning of **section 90**; and

(b) Is an imminent danger to the health of any person.

(2) An imminent danger closing order may prohibit the use of the place for any purpose, or for specified purposes only, until such time as the Secretary notifies the persons issued with the order that the Secretary is satisfied that the place is no longer an imminent danger to health.

(3) An imminent danger closing order must -

(a) Identify the place to which it relates; and

(b) Include a statement of the Secretary's reasons for believing that the place -

(i) Is a health hazard within the meaning of **section 90**; and

(ii) Is an imminent danger to the health of any person; and

(c) If the Secretary believes that a breach of any health regulatory provision has occurred on or in relation to the place, identify the relevant provision.

93. Effect of closing orders - (1) No person to whom a closing order is issued may use, or cause or permit to be used, a place to which the order relates in breach of that order.

(2) Without limiting subsection (1), a person to whom a closing order is issued must -

(a) Take all reasonable steps to prevent people using the place in breach of that order; and

(b) As soon as practicable after being issued with that order, post a copy of that order in a prominent location at or near that place.

(3) Any person to whom a closing order is issued may appeal against the closing order to the Court under **Part 15** on the grounds that that order is unreasonable.

(4) Where an agent or employee of a person to whom a closing order is issued uses a place in breach of the order, the person to whom the closing order is issued is deemed to have failed to comply with subsection (1) unless that person had given a copy of that order to the agent or employee before that agent or employee breached that order.

(5) No person may knowingly breach a closing order.

94. Demolition orders - (1) Subject to **Part 15**, the Secretary may apply to the Court for an order under this section if he or she has reasonable grounds to believe that -

(a) A building is a health hazard within the meaning of **section 90**; and

(b) The building is in such an unsanitary or dangerous state that the hazard to health cannot be eliminated or adequately mitigated by merely issuing an abatement notice or closing order, and compliance with the notice or order.

(2) No Court may hear an application made under subsection (1) unless the Court is satisfied that -

(a) Notice of the application has been served on the owner of the building at least 14 days before the hearing; or

(b) It is impracticable in all the circumstances to give such notice or there are exceptional circumstances warranting the Court to hear the application.

(3) The following persons may attend the hearing and object to the application:

(a) Any person served with the application; and

(b) Any other person granted leave by the Court.

(4) On determining the application, the Court may make -

(a) An order requiring the owner to take down and remove the building, or a specified part of it, within such time as may be specified in the order; or

(b) An order requiring the owner to -

(i) Take all steps considered necessary or desirable by the Court to eliminate or adequately mitigate the hazard to health; and

(ii) Take those steps within a specified time.

(5) Where an order made under subsection (4)(b) has not been complied with on the expiry of the time allowed by the order, the Court may, without serving any further notice, make an order under subsection (4)(a).

(6) The Registrar must cause an order made under subsection (4) to be served on the owner of the building and any other person that the Court considers appropriate.

95. Powers on default of demolition order - (1) Where a demolition order served on the owner of a building has not been complied with, the Secretary may cause the building or parts of the building to be taken down and removed as is reasonably necessary for achieving the purposes of the order.

(2) The Secretary may offer for sale and sell, or otherwise dispose of, any thing taken down or removed under subsection (1).

(3) The Secretary must give the owner any monies left over from sale proceeds, after deducting -

(a) The expenses of taking down, removing, selling, or otherwise disposing of the materials under this section; and

(b) Any debt due to the Secretary by the owner of the building under **section 96**.

96. Cost recovery for work in default - Where the Secretary causes any work to be done under **section 91(1)(a)** or **95(1)**, the Secretary may recover the costs and expenses reasonably incurred in relation to the work as a debt due -

(a) In the case of work authorised by **section 91(1)(a)**, from the person to whom the abatement notice was issued;

(b) In the case of work authorised by **section 95(1)**, from the person on whom the demolition order was served.

PART 13 **GENERAL POWERS**

Entry and inspection

97. Entry and inspection - (1) A health inspector may, at any reasonable time, enter and inspect a place for any of the following purposes:

(a) Determining whether or not any of the following is present in the place:

(i) A person infected with a dangerous condition;

(ii) A person who has committed a breach of any provision or regulation specified in **section 112(2)**;

- (iii) A regulated vector, dangerous vector, or dangerous agent;
 - (iv) A thing that contains or harbours a regulated vector, dangerous vector, or dangerous agent;
 - (v) A thing that has been moved in breach of **section 65(1)(b)(ii)** or **(iii)**, or **108(5)(a)**, or an emergency regulation;
 - (vi) A thing that is evidence of the commission of an offence against this Act punishable by imprisonment.
- (b) Determining whether or not a breach of this Act has occurred on or in relation to the place;
 - (c) Determining whether or not the place is a health hazard within the meaning of **section 90** or an imminent danger to the health of any person;
 - (d) Eradicating, managing, or preventing the spread of any regulated vector, dangerous vector, or dangerous agent (whether or not the presence in the place of any such vector or agent is confirmed);
 - (e) Taking a sample of water for analysis for the purposes of **section 21**.

(2) No person may enter or inspect a dwelling house under subsection (1) except -

- (a) With the consent of an occupier of the dwelling house; or
- (b) In accordance with a warrant issued under **section 98**.

(3) In subsection (2), "dwelling house" excludes any vessel or aircraft that is in quarantine.

98. Warrant to inspect dwelling house - (1) A Justice of the Peace or Judge may, on the written application of any health inspector made on oath, issue to the health inspector unconditionally or subject to conditions a warrant authorising that inspector to enter and inspect a place on one occasion within 14 days of the issue of the warrant.

(2) No warrant may be issued under subsection (1) unless the Justice of the Peace or Judge concerned is satisfied that there is reasonable ground for suspecting any of the following:

- (a) The presence in the place of a person or thing specified in **paragraph (a) of section 97(1)**;
- (b) That a breach of this Act has occurred on or in relation to the place;
- (c) That the place is a health hazard within the meaning of **section 90** or an imminent danger to the health of any person.

99. Entry to do work in default - Notwithstanding **sections 97** and **98**, any person authorised in writing by the Secretary may at any reasonable time -

- (a) Enter any place to do work authorised by **section 91(1)(a)** or **95(1)**; and

(b) Do the work so authorised.

100. Duties on exercising power of entry - (1) A person exercising a power of entry conferred by **section 97** or **99** -

(a) Must have with him or her -

(i) In the case of entry under **section 97**, evidence of his or her appointment to the position of health inspector; and

(ii) In the case of entry under a warrant issued under **section 98**, the warrant; and

(iii) In the case of entry under **section 99**, evidence of the written authorisation by the Secretary; and

(b) Must produce them to any person appearing to be in charge of the place entered -

(i) On entering the place (if such a person is then present); and

(ii) At any reasonable time thereafter, if asked to do so by the person; and

(c) If there is no person appearing to be in charge of the place between the time of entry and the time the person leaves the place, must, as soon as is practicable upon leaving the place, give an occupier of the place written notice stating that the place has been entered, and specifying the following matters:

(i) The time and date of entry;

(ii) The circumstances and purpose of entry;

(iii) The name, office or position, and employer of every person entering;

(iv) If entry was under a warrant issued under **section 98**, the principal contents of the warrant;

(v) Every thing that has been seized, or that nothing has been seized, and every action taken (including work carried out) or that no action has been taken.

101. Specific inspection powers following authorised entry - (1) A person who has entered a place under **section 97** may, for a purpose specified in any of **paragraphs (a) to (c), and (e), of section 97(1)**, do the following:

(a) Bring onto the place, and leave for a reasonable time at the place, and later retrieve, any thing;

(b) Examine, inspect, apply tests to, destroy, sample, autopsy, section, or take specimens or samples of, or apply any other treatment or procedure to, any thing.

(2) No person may move or interfere with any thing left at a place under this section.

102. Medical examination of person suspected of dangerous condition - (1) This section applies to any person who a medical office-holder has reasonable grounds to suspect is infected with a dangerous condition.

(2) The medical office-holder may at any time direct a person to whom this section applies to present himself or herself for a medical examination at a specified place and

time, for the purpose of determining whether the person is infected with a dangerous condition.

(3) A person so directed must comply with the direction.

(4) Where a person presents himself or herself for examination under a direction, the medical officer-holder may examine the person for the purpose specified in subsection (2).

Seizure and further powers

103. Seizure of things following authorised entry - (1) A person who has entered a place under **section 97** may seize any thing that the person has reasonable grounds to believe is a thing referred to in any of **subparagraphs (iii) to (vi) of subsection (1)(a)** of that section.

(2) The Secretary may, either generally or in any particular case, give any reasonable directions as to the disposal or treatment of, or any other dealing with, any thing seized; and any person may dispose of, treat, or otherwise deal with the thing accordingly.

(3) In giving directions under subsection (2), the Secretary must, so far as is practicable while achieving the purposes of this Act, try to minimise unnecessary loss to the proprietor of that thing.

104. Power to eradicate, manage, and prevent spread following authorised entry - A person who has entered a place under **section 97** may do on or in respect of the place all such acts and things as appear to the person to be necessary or desirable for eradicating, managing, or preventing the spread of any regulated vector, dangerous vector, or dangerous agent (whether or not the presence in the place of any such vector or agent is confirmed).

105. General application of articles and substances - (1) The Secretary may, by making appropriate notification under this section, give approval for a specified person or class of persons to apply any thing to any place through spraying or other means for the purpose of -

(a) Determining whether or not any regulated vector, dangerous vector, or dangerous agent is present in the place; or

(b) Eradicating, managing, or preventing the spread of any regulated vector, dangerous vector, or dangerous agent (whether or not the presence in the place of any such vector or agent is confirmed).

(2) An approval may be given subject to any conditions that the Secretary considers necessary or desirable.

(3) Appropriate notification is made under this section by publishing in a newspaper circulating, or broadcasting in other media receivable, in the area in which the place is located, a notice specifying the following information:

- (a) The time and date on which, or as soon as practicable after which, it is intended to apply the article or substance;
- (b) The article or substance to be applied;
- (c) The places to which the article or substance is to be applied;
- (d) The person or class of persons approved to apply the article or substance;
- (e) The name and address of the person to contact for further information about the application of the article or substance.

(4) A notification must be made at least 24 hours before the time specified under subsection (3)(a).

(5) Any person or class of persons specified in the approval as having been approved to apply the article or substance may, after appropriate notification has been made in accordance with this section, act in accordance with that approval.

(6) Nothing in this section limits the powers conferred by **section 101** or **104**.

Powers to contain dangerous conditions

106. Segregation powers - (1) The purpose of this section is to provide for the detention of persons where an office-holder considers such detention necessary to prevent the transmission of a dangerous condition.

(2) Any office-holder may cause a person to be detained in any place if the office-holder believes on reasonable grounds -

- (a) That the person is infected with a dangerous condition; and
- (b) That such detention is necessary to prevent the transmission of the condition from that person.

(3) For the purposes of subsection (2), a health inspector or a member of the Police may, without warrant, but subject to subsection (6) -

- (a) Arrest and take that person into custody; and
- (b) Bring that person to any place directed by the office-holder.

(4) No person detained or kept in custody under this section may escape or attempt to escape from that detention or custody.

(5) No person may be detained or kept in custody under this section for a period exceeding 48 hours, except by a Court order made under **section 109**.

(6) No health inspector may exercise a power conferred by subsection (3), except -

- (a) When accompanied, assisted, or both by a member of the Police; or
- (b) Otherwise, in situations requiring urgent action on the health inspector's part.

(7) A member of the Police who makes an arrest under subsection (3), or accompanies or assists a health inspector making an arrest under that subsection, must, within 3 days of the arrest, give the Commissioner of Police a written report of that arrest and the circumstances in which it came to be made.

(8) A health inspector who makes an arrest under subsection (3) must, within 3 days of the arrest, give the Secretary a written report of that arrest and the circumstances in which it came to be made.

107. Declaration of restricted place - (1) The purpose of this section is to allow controls to be imposed on the movement of persons to and from a place, where the Secretary considers such controls necessary to prevent the transmission of a dangerous condition.

(2) This section applies to any place if the Secretary believes on reasonable grounds that a person in the place, or about to be brought to the place under **section 106**, is infected with a dangerous condition.

(3) The Secretary may, by notice given in accordance with subsection (4), declare any place to which this section applies and any other place in the neighbourhood a restricted place.

(4) A notice is given by serving a copy on the proprietor of each place included in the notice, but -

- (a) A copy need not be served on the proprietor of any place if the Secretary cannot with reasonable diligence find a proprietor of the place quickly; and
- (b) Notice may be given by public notification if it is impractical to give notice in accordance with the preceding provisions of this subsection.

(5) As soon as practicable after giving notice under subsection (4), the Secretary must -

- (a) Publicly notify the notice (unless it has been so notified under subsection (4)(b)); and
- (b) Post a copy of the notice in prominent locations at or near the places included in the notice.

(6) While a notice is in force, no person may, except in accordance with a written authorisation by the Secretary enter or leave the restricted place.

(7) The proprietor of each place included in the notice must take all reasonable steps to ensure that no person acts in breach of subsection (6).

(8) Without limiting subsection (6) or (7), where an agent or employee of the proprietor acts in breach of subsection (6), that action is deemed to be an action of that proprietor unless that proprietor had given a copy of the notice to the agent or employee before that agent or employee breached subsection (6).

(9) The Secretary may from time to time, by notice given in the manner provided by subsection (4), revoke, replace, or amend, a notice given under this section.

(10) Subject to **section 110**, a declaration made under this section ceases to have effect on the expiration of 48 hours after it comes into force unless sooner revoked under subsection (9).

108. Declaration of controlled area - (1) The purpose of this section is to allow directions to be given in respect of things within an area, where the Secretary considers such directions necessary to eradicate, manage, or prevent the spread of a dangerous agent or dangerous vector within or from the area.

(2) This section applies to an area if the Secretary is satisfied that -

(a) There are reasonable grounds to suspect that a dangerous agent or dangerous vector is present within the area; and

(b) It is necessary to make a declaration of controlled area in order to eradicate, manage, or prevent the spread of the agent or vector.

(3) The Secretary may, by notice given in accordance with subsection (4), -

(a) Declare any area to which this section applies to be an area that is controlled for the purposes of this section; and

(b) Issue a direction that the movement into, within, or from the controlled area of specified things is prohibited or regulated as specified in the notice; and

(c) Direct the proprietor of specified things located within the area to isolate, confine, store, treat, or subject those things to any other actions, as specified in the notice.

(4) A notice is given by public notification, or otherwise as the Secretary considers effective and appropriate.

(5) While a notice is in force, -

- (a) No person may move any thing in breach of a direction under subsection (3)(b), except with the permission of the Secretary; and
- (b) The proprietor of a thing in respect of which isolation, confinement, storage, treatment, or any other action is directed under subsection (3)(c) must do the action specified in the notice within the time specified in the notice, unless given permission to do otherwise by the Secretary.

(6) The Secretary may from time to time, by notice given in the manner provided by subsection (4), revoke, replace, or amend a notice given under this section.

(7) Subject to **section 111**, a declaration made under this section ceases to have effect on the expiration of 14 days after it comes into force unless sooner revoked under subsection (6).

109. Court may order continued detention - (1) The Secretary may at any time apply to the Court for an order to continue the detention of a medical detainee.

(2) No Court may hear an application made under subsection (1) unless the Court is satisfied that -

- (a) Notice of the application has been served on the medical detainee at least 24 hours before the hearing; or
- (b) In the absence of such notice, it is impracticable in all the circumstances to give such notice or there are exceptional circumstances warranting the Court to hear the application.

(3) The following persons may attend the hearing and object to the application:

- (a) The medical detainee (unless the Court orders that the detainee be represented by another person);
- (b) Any other person granted leave by the Court.

(4) On determining an application, the Court may make any order that it sees fit, including an order to continue to detain the medical detainee subject to conditions specified by the Court.

(5) The Registrar must cause the order to be served on the medical detainee and any other person that the Court considers appropriate.

(6) If the Court makes an order for the continued detention of a medical detainee, -

- (a) **Section 106** (except for **subsection (5)** of that section) applies, with any necessary modifications, in respect of the medical detainee; and

(b) The detainee may not be detained for a period greater than 30 days unless the order is renewed by a further Court order made on the application of the Secretary.

(7) Subsections (2) to (6) of this section apply, with any necessary modifications, to an application by the Secretary to renew a Court order as if it were an application made under subsection (1).

(8) No order for the continued detention of a medical detainee may be renewed more than once.

110. Court may extend declaration of restricted place - (1) The Secretary may at any time apply to the Court for an order to extend a declaration of restricted place.

(2) No Court may hear an application made under subsection (1) unless the Court is satisfied that -

(a) Notice of the application has been given in the manner provided by **section 107(4)** at least 24 hours before the hearing; or

(b) In the absence of such notice, it is impracticable in all the circumstances to give such notice or there are exceptional circumstances warranting the Court to hear the application.

(3) The following persons may attend the hearing and object to the application:

(a) The proprietor of the place (unless the Court orders that the proprietor be represented by another person);

(b) Any other person granted leave by the Court.

(4) On determining an application, the Court may make any order that it sees fit, including an order to extend the declaration of restricted place subject to conditions specified by the Court.

(5) The Registrar must cause the order to be served on the proprietor of the place and any other person that the Court considers appropriate.

(6) If the Court makes an order to extend a declaration of restricted place and the Secretary gives notice of the order in the manner provided by **subsection (4) of section 107, subsections (6) to (8) of that section** apply, with any necessary modifications, as if the notice of the order were a declaration of restricted place.

(7) The Court order ceases to have effect on the expiration of 30 days after it comes into force, unless it -

- (a) Ceases to have effect or is determined sooner under conditions specified in the order;
or
- (b) Is renewed by a further Court order made on the application of the Secretary.

(8) Subsections (2) to (7) of this section apply, with any necessary modifications, to an application by the Secretary to renew a Court order as if it were an application made under subsection (1).

(9) No order to extend a declaration of restricted place may be renewed more than once.

111. Court may extend declaration of controlled area - (1) The Secretary may at any time apply to the Court for an order to extend a declaration of controlled area.

(2) No Court may hear an application made under subsection (1) unless the Court is satisfied that -

- (a) Notice of the application has been given, at least 7 days before the hearing, in the manner provided by **section 108(4)**; or
- (b) In the absence of such notice, it is impracticable in all the circumstances to give such notice or there are exceptional circumstances warranting the Court to hear the application.

(3) The following persons may attend the hearing and object to the application:

- (a) The proprietor of any thing in respect of which a direction is made under **section 108(5)(a)** or **(b)** in the declaration of controlled area;
- (b) Any other person granted leave by the Court.

(4) On determining an application, the Court may make any order that it sees fit, including an order to extend the declaration of controlled notice subject to conditions specified by the Court.

(5) The Registrar must cause the order to be served on every person who has exercised his or her right to attend the hearing under subsection (3)(a) and any other person that the Court considers appropriate.

(6) If the Court makes an order to extend a declaration of controlled area and the Secretary gives notice of the order in the manner provided by **subsection (4) of section 108, subsection (5) of that section** applies, with any necessary modifications, as if the notice of the order were a declaration of controlled area.

(7) The Court order ceases to have effect on the expiration of 30 days after it comes into force, unless it -

- (a) Ceases to have effect or is determined sooner under conditions specified in the order;
or
- (b) Is renewed by a further Court order made on the application of the Secretary.

(8) Subsections (2) to (7) of this section apply, with any necessary modifications, to an application by the Secretary to renew a Court order as if it were an application made under subsection (1).

(9) No order to extend a declaration of controlled area may be renewed more than once.

Controls, arrests, searches, and miscellaneous powers

112. Road blocks, cordons, check-points, etc - (1) In this section, control means a road block, cordon, or check-point.

(2) Any member of the Police may, at the request of the Secretary, establish or operate a control in order to enforce any of the following:

- (a) **Section 65(1)** (movement restrictions in quarantine);
- (b) **Section 102(3)** (direction to submit to medical examination);
- (c) **Section 106(4)** (segregation);
- (d) **Section 107(6)** (restricted place notice);
- (e) **Section 108(5)(a)** (moving things in breach of controlled area notice);
- (f) **Section 113(2)** (custody);
- (g) A provision of this Act, the breach of which is punishable by imprisonment;
- (h) An emergency regulation.

(3) A member of the Police operating a control may do the following:

- (a) Stop any conveyance that is at or near the control; or
- (b) Detain any conveyance that is stopped at or near the control, either at the place where it is stopped or at any other convenient place nearby.

(4) A member of the Police who has stopped or detained a conveyance under subsection (3) may -

- (a) Enter and search that conveyance; and
- (b) Open any receptacle in that conveyance; and
- (c) Seize the following:
 - (i) Any dangerous agent or dangerous vector in respect of which a declaration of controlled area is for the time being in force.
 - (ii) Any thing that is believed to harbour or contain such an agent or vector;

- (iii) Any thing that has been moved from one place to another in breach of **section 65(1)(b)(ii)** or **(iii)**, or **section 108(5)(a)**, or an emergency regulation;
- (iv) Any thing that is evidence of the commission of an offence against this Act punishable by imprisonment.

(5) A member of the Police who seizes any thing under subsection (4)(c) must give it into the custody of a health inspector as soon as practicable.

(6) Subsections (2) and (3) of **section 103** apply to the thing given into the custody of a health inspector as if it were a thing seized under subsection (1) of that section.

(7) No person may, -

- (a) While in charge of any conveyance that is at or near a control, without reasonable excuse fail or refuse to stop it when a member of the Police in uniform asks him or her to stop it, or tries to stop it; or
- (b) While in charge of any conveyance lawfully stopped or detained under this section, without reasonable excuse move it from the place where it is stopped or detained without the permission of a member of the Police.

(8) Nothing in this section limits any power conferred on a functionary by any other provision of this Act.

113. Power of arrest and detention without warrant - (1) Subject to subsection (5), any health inspector or member of the Police may, without warrant, arrest and take into custody a person that the health inspector or member of the Police believes is about to commit, or has committed, a breach of -

- (a) A provision or regulation specified in any of **paragraphs (a) to (h) of section 112(2)**;
- or
- (b) **Section 112(7)** (stopping at controls); or
- (c) Subsection (2) of this section.

(2) No person taken into custody under this section may escape or attempt to escape from that custody.

(3) Unless sooner released from custody, any person arrested and taken into custody under subsection (1) must be brought before a Court as soon as practicable, and in any event within 48 hours of being taken into custody.

(4) The Court must order the person to be dealt with as it sees fit, taking into account the purposes of this Act.

(5) No health inspector may exercise the power conferred by subsection (1) except -

- (a) When accompanied, assisted, or both by a member of the Police; or
- (b) Otherwise, in situations requiring urgent action on the health inspector's part.

(6) A member of the Police who makes an arrest under subsection (1), or accompanies or assists a health inspector making an arrest under that subsection, must, within 3 days of the arrest, give the Commissioner of Police a written report of that arrest and the circumstances in which it came to be made.

(7) A health inspector who makes an arrest under subsection (1) must, within 3 days of the arrest, give the Secretary a written report of that arrest and the circumstances in which it came to be made.

114. Power to search people and seize things - (1) This section applies to any person who is taken into custody or detained under **section 106** or **113**.

(2) Subject to subsections (5) to (7), any health inspector or member of the Police may, without warrant, search a person to whom this section applies if the health inspector or member of the Police suspects on reasonable grounds that the person may be in possession of a thing specified in any of **subparagraphs (i) to (iv) of section 112(4)(c)**.

(3) A person conducting a search under subsection (2) may seize a thing specified in any of **subparagraphs (i) to (iv) of section 112(4)(c)**.

(4) **Subsections (2) and (3) of section 103** apply to a thing seized under subsection (3) of this section.

(5) No health inspector may exercise the power conferred by subsection (2) of this section except -

- (a) When accompanied, assisted, or both by a member of the Police; or
- (b) Otherwise, in situations requiring urgent action on the health inspector's part.

(6) Nothing in subsection (2) authorises any person to conduct an internal search of any part of another person's body.

(7) No person may search another person under subsection (2) without first -

- (a) Telling the latter that he or she proposes to do so under the authority of that subsection; and
- (b) Telling the latter that he or she is a health inspector or (as the case may be) member of the Police; and

- (c) Where the person searching is a member of the Police who is not in uniform, producing evidence that he or she is a member of the Police; and
- (d) Where the person searching is a health inspector, producing evidence that he or she has been appointed a health inspector.

(8) A member of the Police who conducts a search under subsection (2), or who accompanies or assists a health inspector conducting a search under that subsection, must, within 3 days of the search, give the Commissioner of Police a written report on that search and the circumstances in which it came to be conducted.

(9) A health inspector who conducts a search under subsection (2) must, within 3 days of the search, give the Secretary a written report on that search and the circumstances in which it came to be conducted.

115. Assistants and devices permitted - (1) A functionary acting in the exercise or performance of a power or duty under this Act -

- (a) May be accompanied, assisted, or both by any person that the functionary considers necessary and authorises for the purpose (including, for the avoidance of doubt, any member of the Police); and
- (b) May bring and use any thing to assist in the exercise or performance of the power or duty.

(2) Unless the context otherwise requires, every provision of this Act applying to a functionary in respect of the exercise or performance of his or her power or duty under this Act, applies, with any necessary modifications, to a person accompanying or assisting the functionary under authority of subsection (1) as if the person were that functionary.

116. Reasonable force permitted - (1) A functionary exercising or performing any power or duty under this Act may use reasonable force in the exercise or performance of the power or duty.

(2) Without limiting the generality of subsection (1), a functionary exercising the powers of entry and inspection conferred by **section 97** or **99**, or the powers of entry and search conferred by **section 112(4)(a)**, in respect of any place may use such force in going on, into, or under, the place concerned (whether by breaking down a door or otherwise), or in breaking open anything in the place, as is reasonable in the circumstances.

PART 14

EMERGENCY POWERS

117. Purpose of Part 14 - The purpose of this Part is to provide, in the event of emergencies or other exigencies, for the following:

- (a) Effective prevention of the spread of a dangerous condition;
- (b) Effective management or eradication of a dangerous condition.

118. Declaration of public health emergency - (1) On the recommendation of the Minister, the Queen's Representative may, by proclamation, declare a public health emergency if satisfied on reasonable grounds after having regard to all available information that it is likely that -

- (a) There has been an outbreak or occurrence in the Cook Islands of a dangerous condition; and
- (b) It is in the public interest that action be taken immediately to prevent the spread of, or manage or eradicate, the dangerous condition; and
- (c) Sufficient powers are not otherwise available to enable the dangerous condition to be effectively managed or eradicated.

(2) Before recommending that the Queen's Representative declare a public health emergency, the Minister must, to the extent that is practical in the circumstances, consult such persons as the Minister believes on reasonable grounds are representative of interests involved in the emergency.

(3) A declaration must state the area or areas to which it applies and specify the nature of the emergency.

(4) A declaration comes into force when it is made or at any later time stipulated in the proclamation making it.

(5) The Minister must publicly notify the declaration (to the extent that it has not been publicly notified by the making of the proclamation) not later than 24 hours after it is made.

(6) On the recommendation of the Minister, the Queen's Representative may by further proclamation amend or revoke a proclamation under this section and the Minister must publish notice of an amendment or revocation in the manner provided by subsection (5).

119. Emergency powers - (1) The Minister may, in the area or areas in which a declaration of public health emergency is in force, take such measures, and do all such acts and things and give all such directions, and require all such acts to be done or not to be done, as the Minister believes on reasonable grounds to be necessary or desirable for the purpose of eradicating, managing, or preventing the spread of the dangerous condition in respect of which the emergency has been declared.

(2) Without limiting the generality of the powers conferred by subsection (1), the Minister or a person authorised by the Minister for the purpose may require the proprietor of any place specified in subsection (3) to permit the place to be used for a specified period by the Minister or other person.

(3) Subsection (2) refers to any place -

- (a) That is for the time being located anywhere in the Cook Islands; and
- (b) The use of which the Minister or (as the case may be) person authorised by the Minister believes on reasonable grounds to be necessary or desirable in eradicating, managing, or preventing the spread of the dangerous condition.

(4) A person who has an interest in a place that is requisitioned under subsection (2) and who is directly affected by the requisition is entitled to be adequately compensated by the Minister, out of money appropriated by Parliament for the purpose, for any verified use, loss, damage, or destruction of the place.

120. Duration of emergency - (1) Unless it is sooner extended by Parliament, or sooner revoked under this Act, a declaration of public health emergency ceases to have effect on the expiration of 28 days after it comes into force.

(2) Parliament may from time to time by resolution extend any declaration of public health emergency for such period as the resolution may state.

(3) The Speaker of Parliament must publicly notify any resolution made under subsection (2).

121. Parliament to be informed - (1) The Minister must inform Parliament immediately of the making of a proclamation declaring, amending, or revoking a public health emergency if Parliament is then sitting, or, if it is not then sitting, the Minister must so inform Parliament as early as is practicable on its next sitting day.

(2) The Minister must explain to Parliament the reasons for the proclamation.

122. Revocation by Parliament of public health emergency - (1) Parliament may at any time by resolution revoke a declaration of public health emergency.

(2) A resolution revoking a declaration of public health emergency has effect from the time of the resolution or any later time specified in the resolution.

(3) The Speaker of Parliament must publicly notify any resolution made under subsection (1).

123. Emergency regulations - (1) On the recommendation of the Minister, the Queen's

Representative may, at any time while a declaration of public health emergency is in force, by Order in Executive Council make regulations for all or any of the following purposes:

- (a) Effective prevention of the spread of the dangerous condition in respect of which the emergency has been declared;
- (b) Effective management or eradication of the dangerous condition in respect of which the emergency has been declared;
- (c) Otherwise dealing effectively with the emergency.

(2) The Minister must, to the extent that is practical in the circumstances, consult such persons as the Minister believes on reasonable grounds are representative of interests affected by the proposed regulations before recommending that the Queen's Representative make such emergency regulations.

(3) The Minister may not recommend that the Queen's Representative make an emergency regulation unless the Minister is satisfied, on reasonable grounds, that it is necessary or desirable for a purpose specified in any of paragraphs (a) to (c) of subsection (1).

(4) Without limiting the generality of subsection (1), an emergency regulation may do all or any of the following:

- (a) Prescribe offences in respect of the breach of any emergency regulation, or non-compliance with a direction given or requirement made under the authority of such a regulation;
- (b) Prescribe as the penalty for such offences -
 - (i) Where the offence is committed by an individual, imprisonment for a term not exceeding **1 year**, a fine not exceeding **\$10,000**, or both; and, if the offence is a continuing one, a further fine not exceeding **\$1,000** for every day or part of a day during which the offence continues; and
 - (ii) Where the offence is committed by a body corporate, a fine not exceeding **\$100,000** and, if the offence is a continuing one, a further fine not exceeding **\$10,000** for every day or part of a day during which the offence continues.
- (c) Prescribe procedures for arbitration or resolution of disputes.

(5) An emergency regulation comes into force at the time at which the regulation is made, or the time specified in the regulation, whichever is the later.

(6) The Minister must lay all emergency regulations before Parliament not later than the second sitting day after they are made.

124. Duration of emergency regulations - (1) Unless it is sooner revoked, a regulation made under **section 123** ceases to have effect on the earlier of -

- (a) The declaration of public health emergency (in respect of which the regulation was made) being revoked or otherwise ceasing to have effect; or
- (b) The expiration of 180 days after the date on which the regulation was made.

(2) Nothing in paragraph (b) of subsection (1) applies to a regulation confirmed by an Act of Parliament passed before the expiration of the 180-day period referred to in that paragraph.

PART 15 **COURT ORDERS AND APPEALS**

125. Jurisdiction to hear applications for Court orders - The Court presided over by a Justice of the Peace has civil jurisdiction to hear an application made for an order of the Court under any the following provisions:

- (a) **Section 75** (vaccination order);
- (b) **Section 94** (order to take steps or demolition order);
- (c) **Section 109** (order for continued detention);
- (d) **Section 110** (order to extend declaration of restricted place);
- (e) **Section 111** (order to extend declaration of controlled area).

126. Appeals to High Court - (1) An appeal to the Court under any of **sections 52, 53, 90, and 93** may be brought by originating application made -

- (a) In the case of an appeal against a refusal to issue an offensive trade permit, within 14 days after written notice of the refusal is given to the applicant for the permit;
- (b) In the case of an appeal against any inclusion in or omission from an offensive trade permit, within 14 days after the permit is issued;
- (c) In the case of an appeal against an amendment to an offensive trade permit, within 14 days after written notice of the amendment is given to the permit holder;
- (d) In the case of an appeal against an abatement notice or a closing order, within 14 days after the notice or order is issued.

(2) The Registrar must cause the application to be served on the Secretary.

(3) The Court presided over by a Justice of the Peace has civil jurisdiction to hear any appeal brought under subsection (1).

(4) Where an appeal is brought under subsection (1), the Court must, after inquiring into the matter appealed against, do the following:

- (a) In the case of a refusal of an offensive trade permit, either confirm it or order the Secretary to reconsider the permit application;
- (b) In the case of an inclusion in or omission from an offensive trade permit, either confirm the inclusion or omission, or vary the permit;
- (c) In the case of an amendment to an offensive trade permit, vary, rescind, or confirm the amendment;
- (d) In the case of an abatement notice or closing order, vary, rescind, or confirm it.

(5) An appeal against any of the following matters operates as a stay of the matter, until the Court determines the appeal:

- (a) An amendment to an offensive trade permit;
- (b) An abatement notice;
- (c) A standard closing order.

127. Appeals as of right to High Court Judge - Any person affected by an order or a decision of the Court (presided over by a Justice of the Peace) determining an application referred to in **section 125** or an appeal brought under **section 126** may appeal against the order or decision as of right to a Judge of the High Court.

128. Standard of proof for applications and appeals - (1) This section applies to any proceedings arising from -

- (a) An application referred to in **section 125**; or
- (b) An appeal brought under **section 126**; or
- (c) An appeal provided for by **section 127**.

(2) For the avoidance of doubt, where, in any proceedings to which this section applies, any question arises as to whether or not a breach of this Act has occurred, the matter must be decided on the balance of probabilities.

129. Effect of other enactments - (1) To the extent consistent with this Act, the Judicature Act 1980-81 and rules and regulations made under that Act apply, with any necessary modifications, to the following:

- (a) An application referred to in **section 125**; or
- (b) An appeal brought under **section 126**; or
- (c) An appeal provided for by **section 127**.

(2) Nothing in this Part limits any right of appeal or remedy available under any other enactment, or otherwise arising from law or equity.

PART 16
OFFENCES AND PENALTIES

130. Offences - (1) Every person commits an offence against this Act who -

- (a) Threatens, assaults, or intentionally obstructs or hinders a functionary in the exercise or performance of a function, power, or duty of the functionary under this Act; or
- (b) In connection with the purposes of this Act, makes a statement or gives information to any functionary, knowing that the statement or information is false or misleading in a material particular; or
- (c) In circumstances where the person is required or directed under this Act to provide information, wilfully withholds relevant information from any functionary; or
- (d) In circumstances where the person is required or directed under this Act to make a declaration or answer a question, knowingly makes a declaration or provides an answer that is false or misleading in a material particular; or
- (e) Personates or falsely represents himself or herself to be a functionary authorised to exercise a function, power, or duty under this Act; or
- (f) Without reasonable excuse, fails to comply with a direction given to that person under this Act; or
- (g) Without reasonable excuse, fails to comply with a requirement made of that person under this Act; or
- (h) Wilfully breaches a condition in any permit, permission, authorisation, or exemption issued or given under this Act; or
- (i) Without the permission of a health inspector, takes or carries away or otherwise converts to his or her own use any thing, knowing that the thing has been seized under this Act; or
- (j) Fails or refuses to comply with any of the following:
 - (i) **Section 102(3)**;
 - (ii) **Section 106(4)**;
 - (iii) **Section 107(6)** and **(7)**;
 - (iv) **Section 108(5)(a)**;
 - (v) **Section 112(7)**;
 - (vi) **Section 113(2)**; or
- (k) Fails or refuses to comply with any of the following:
 - (i) **Section 15(1)** and **(2)**;
 - (ii) **Section 16**;
 - (iii) **Section 17(4)**;
 - (iv) **Sections 26 to 30**;
 - (v) **Section 37(2)**;
 - (vi) **Section 38(1)** and **(5)**;
 - (vii) **Section 39(1)** and **(2)**;
 - (viii) **Section 40**;
 - (ix) **Section 45(5)**;
 - (x) **Section 46**;
 - (xi) **Section 47(1)** and **(6)**;

- (xii) **Section 51(1)**;
- (xiii) **Section 52(5)**;
- (xiv) **Section 54(1)**;
- (xv) **Section 64**;
- (xvi) **Section 65(1), (2), (4), and (5)**;
- (xvii) **Section 80(2)**;
- (xviii) **Section 81**;
- (xix) **Section 93(1), (2), and (5)**;
- (xx) **Section 102(3)**;
- (xxi) **Section 108(5)(b)**; or
- (1) Fails or refuses to comply with any of the following:
 - (i) **Section 14(1)**;
 - (ii) **Section 19(2) and (3)**;
 - (iii) **Section 20(1)**;
 - (iv) **Section 23(4)**;
 - (v) **Section 36(2)**;
 - (vi) **Section 43(2)**;
 - (vii) **Section 44(2)**;
 - (viii) **Section 62(1) and (2)**;
 - (ix) **Section 71(1)**;
 - (x) **Section 72(1) and (3)**;
 - (xi) **Section 73(1)**;
 - (xii) **Section 76**;
 - (xiii) **Section 82**;
 - (xiv) **Section 83(2)**;
 - (xv) **Section 84**;
 - (xvi) **Section 87(1)**;
 - (xvii) **Section 90(6)**;
 - (xviii) **Section 101(2)**;
 - (xix) **Section 136(6)**.

(2) In this section, "functionary" includes any person exercising a power under **section 99** or **section 105(5)**.

131. Proof of permission, etc. - Where it is proved in any proceeding under this Act that a person has done or omitted to do any act and such person would commit an offence unless the act was done or omitted under, in accordance, or with a permit, permission, consent, authorisation, or exemption issued or given by another person, the onus is on the person who did or omitted to do the act to prove that he or she -

- (a) Had that permit, permission, consent, authorisation, or exemption; and
- (b) Did or omitted the act under, in accordance, or with the permit, permission, consent, authorisation, or exemption (as the case may be).

132. Liability of principals and agents - (1) If an offence is committed against this Act by any person acting as the agent or employee of another person, that other person is, without prejudice to the liability of the first-mentioned person, liable under this Act in the same manner and to the same extent as if he or she had personally committed the offence if it is proved -

- (a) That the act or omission that constituted the offence took place with his or her authority, permission, or consent; or
- (b) That he or she -
 - (i) Knew or should have known that the offence was to be or was being committed; and
 - (ii) Failed to take all reasonable steps to prevent or stop it.

(2) Where any body corporate is convicted of an offence against this Act, every person, being a director or a person concerned in the management of the body corporate, is guilty of the same offence if it is proved -

- (a) That the act or omission that constituted the offence took place with his or her authority, permission, or consent; or
- (b) That he or she -
 - (i) Knew or should have known that the offence was to be or was being committed; and
 - (ii) Failed to take all reasonable steps to prevent or stop it.

133. Penalties - (1) Every person who commits an offence against any of **paragraphs (a), (e), (i) or (j) of section 130(1)** is liable on conviction, -

- (a) In the case of an individual, to imprisonment for a term not exceeding **1 year**, a fine not exceeding **\$10,000**, or both; and, if the offence is a continuing one, to a further fine not exceeding **\$1,000** for every day or part of a day during which the offence continues;
- (b) In the case of a body corporate, to a fine not exceeding **\$100,000** and, if the offence is a continuing one, to a further fine not exceeding **\$10,000** for every day or part of a day during which the offence continues.

(2) Every person who commits an offence against any of **paragraphs (b), (c), (d), (f), (g), (h), or (k) of section 130(1)** is liable on conviction, -

- (a) In the case of an individual, to a fine not exceeding **\$1,000** and, if the offence is a continuing one, to a further fine not exceeding **\$100** for every day or part of a day during which the offence continues;
- (b) In the case of a body corporate, to a fine not exceeding **\$10,000** and, if the offence is a continuing one, to a further fine not exceeding **\$1,000** for every day or part of a day during which the offence continues.

(3) Every person who commits an offence against **paragraph (1) of section 130(1)** is liable on conviction, -

(a) In the case of an individual, to a fine not exceeding **\$200** and, if the offence is a continuing one, to a further fine not exceeding **\$20** for every day or part of a day during which the offence continues;

(b) In the case of a body corporate, to a fine not exceeding **\$1,000** and, if the offence is a continuing one, to a further fine not exceeding **\$100** for every day or part of a day during which the offence continues.

(4) Where a person is convicted of an offence against this Act, the Court may, instead of or in addition to imposing a penalty specified in any of subsections (1) to (3), make an order for the following purposes:

(a) Revoking or amending any permit, permission, authorisation, or exemption issued or given to the convicted person, or otherwise held by that person, under this Act;

(b) Requiring the convicted person to take specified steps (under the supervision and to the satisfaction of a person specified by the Court) to eliminate or adequately mitigate any health hazard arising directly or indirectly from the act or omission constituting the offence.

134. Time for laying information - Notwithstanding any other enactment, an information in respect of an offence against this Act may be laid at any time within 2 years of the time when the matter of the information arose.

PART 17 **MISCELLANEOUS**

135. Secretary to establish and implement educational programme - As soon as practicable after the commencement of this Act, the Secretary must establish and implement a programme to educate the public for the purpose of encouraging and fostering compliance with this Act.

136. Complaints procedure - (1) Any person may make a complaint to the Secretary in the prescribed form, if the person believes that in a particular case described by that person -

(a) This Act has been breached; or

(b) An offence has been committed under this Act; or

(c) There are sufficient grounds for the Secretary to exercise a power conferred in **Part 12**.

(2) The Secretary must investigate the complaint and, within 30 days of receiving the complaint, notify the complainant in writing of -

- (a) The outcome of the investigation; and
- (b) The actions, if any, that the Secretary has taken or intends to take arising from that outcome.

(3) Where the Secretary takes any actions arising from the outcome of the investigation, the Secretary must keep the complainant informed in writing of the progress of the matter until the Secretary notifies the complainant that he or she believes the matter has been brought to a satisfactory conclusion.

(4) For the purposes of subsection (3), the complainant must be kept informed at reasonable intervals not exceeding, in any event, a period of 60 days between each written communication by the Secretary to the complainant.

(5) Subsections (2) to (4) do not apply where the Secretary believes a complaint to be frivolous or vexatious and notifies the complainant in writing accordingly.

(6) No person may disclose to anyone any information or make any statement as to the identity or other details of a complainant, except where the disclosure or statement -

- (a) Is made to an office-holder or health inspector; or
- (b) Is made in a form in which the complainant is not identified and cannot reasonably be expected to be identified, even by people who know that complainant; or
- (c) Is necessary for the conduct of proceedings before any Court or commission of inquiry (being proceedings that have been commenced or are reasonably in contemplation); or
- (d) Is necessary to prevent or lessen a serious and imminent danger to the life or health of the complainant or another person; or
- (e) Is made to or by, or authorised by, the complainant; or
- (f) Is made, or authorised in writing, by an office-holder or health inspector, after consultation with the complainant.

137. Protection of persons acting under this Act - No person who does any act or omits to do any act in pursuance of any of the functions or powers conferred on that person by or under this Act is under any civil or criminal liability in respect of that act or omission, unless the person has acted, or omitted to act, in bad faith or without reasonable cause.

138. Liability for things - The Crown shall not be under any civil liability in respect of any loss or damage to any things suffered -

- (a) While those things are in the custody of the Crown by reason of the exercise, in good faith and with reasonable care, of authority under this Act; or
- (b) As a result of or in the course of any treatment or other handling of those things undertaken, directed, or required in good faith and with reasonable care by a person acting in the exercise of authority under this Act.

139. Procedure for giving directions or making requirements - (1) A direction, notice, order, or requirement may be given to (or as the case may require), issued to, served on, or made of a person under this Act by a written notice delivered -

- (a) In the case of an individual person, -
 - (i) By delivering the notice to the person; or
 - (ii) By delivering the notice to the person's usual or last known place of residence or business; or
 - (iii) By sending the notice by pre-paid post to the person at the usual or last known place of residence or business of the person; or
 - (iv) By sending the notice by facsimile to the person's usual or last known place of residence or business;
- (b) In the case of a body (whether incorporated or not), -
 - (i) By delivering the notice to an officer of the body; or
 - (ii) By delivering the notice to the usual or last known place of residence or business of an officer of the body; or
 - (iii) By sending the notice by pre-paid post to an officer of the body at the usual or last known place of residence or business of that person; or
 - (iv) By delivery of the notice to the registered office of the body; or
 - (v) By sending the notice by pre-paid post addressed to the body at the registered office of the body; or
 - (vi) By sending the notice by facsimile to the registered office of the body:
- (c) In the case of a partnership, -
 - (i) By delivering the notice to any one of the partners; or
 - (ii) By delivering the notice to the usual or last known place of residence or business of any one of the partners; or
 - (iii) By sending the notice by pre-paid post to any one of the partners at the usual or last known place of residence or business of that person; or
 - (iv) By delivery of the notice to the usual or last known place of business of the partnership; or
 - (v) By sending the notice by pre-paid post addressed to the usual or last known place of business of the partnership; or
 - (vi) By sending the notice by facsimile to the usual or last known place of business of the partnership.

(2) Where reasonable attempts have been made to find an occupier of a place and no occupier can be found, a written notice under this section may be delivered to the occupier of that place by affixing the notice in a prominent location in or on the place.

(3) Where a written notice is delivered in accordance with this section by post, the direction, notice, order, or requirement contained in the notice is deemed to have been given (or as the case may require), issued, served, or made, at the time at which the notice would have been delivered in the ordinary course of the post in the absence of evidence to the contrary.

140. Application of section 139 - **Section 139** -

- (a) Applies where no procedure is specified for giving, issuing, serving, or making a direction, notice, order, or requirement under this Act; and
- (b) Where the provisions of that section are consistent with a procedure specified in this Act for giving, issuing, serving, or making a direction, notice, order, or requirement, applies in addition to that procedure; and
- (c) Does not require any direction, notice, order, or requirement to be given, issued, served, or made in accordance with that section.

141. Transfer of permits, etc - Any permit, authorisation, or exemption issued or given to a person under this Act may, subject to regulations, be transferred to another person with the written consent of the Secretary.

142. Regulations - The Queen's Representative may from time to time, by Order in Executive Council, make regulations, not inconsistent with this Act, for all or any of the following purposes:

- (a) Prescribing circumstances in which a permit, authorisation, or exemption under this Act -
 - (i) Must be issued or given; or
 - (ii) Must be refused;
- (b) Prescribing procedures, criteria, or both, for the assessment, consideration, approval, and refusal of applications for permits, authorisations, and exemptions under this Act;
- (c) Providing for and regulating the transfer, amendment, suspension, revocation, cancellation, or withdrawal of permits, authorisations, and exemptions issued or given under this Act;
- (d) Prescribing conditions that must be specified in permits, authorisations, and exemptions issued or given under this Act;
- (e) Providing for the registration of places that are particularly liable to harbour regulated vectors, dangerous vectors, or dangerous agents;
- (f) Prescribing procedures to be followed and standards to be met by functionaries engaged in the exercise of powers and the performance of duties under this Act;
- (g) Prescribing matters in respect of which costs are recoverable under this Act, the amounts of those costs or the method by which they are to be assessed, the persons liable for payment of the costs, and the circumstances in which the recovery of costs may be remitted or waived (in whole or in part);

- (h) Requiring the holders of permits, authorisations, and exemptions issued or given under this Act to keep records and to provide copies of those records and other information (wherever held) to specified persons;
- (i) Prescribing offences in respect of the breach of any regulation made under this Act, or any direction given or requirement made under the authority of any such regulation;
- (j) Prescribing as the penalty for an offence referred to in paragraph (i) -
 - (i) Where the offence is committed by an individual, a fine not exceeding **\$1,000** and, if the offence is a continuing one, a further fine not exceeding **\$100** for every day or part of a day during which the offence continues;
 - (ii) Where the offence is committed by a body corporate, a fine not exceeding **\$10,000** and, if the offence is a continuing one, a further fine not exceeding **\$1,000** for every day or part of a day during which the offence continues;
- (k) Prescribing transitional and savings provisions relating to the coming into force of this Act, which may be in addition to or in place of **section 147**; and, without limiting the generality of the preceding power, any such regulations may provide that, subject to such conditions as are specified in the regulations, specified provisions of this Act do not apply, or specified provisions of Acts repealed or amended by this Act, or of regulations or Orders in Executive Council made, continue to apply during a specified transitional period;
- (l) A purpose specified in any of **sections 24, 34, 41, 48, and 78**;
- (m) Providing for such other matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

143. General provisions as to regulations - (1) Any regulation made under this Act may -

- (a) Apply generally throughout the Cook Islands or within a specified part or parts of the Cook Islands;
- (b) Apply generally or with respect to different classes of persons, activities, uses, places, or things;
- (c) Apply generally or at any specified time of the year.

(2) All regulations made under **paragraph (k) of section 142** that are still in force on the day that is 3 years after the commencement of this Act expire at the close of that day.

(3) Any regulations made under this Act may confer power on any functionary to give, issue, serve, or make a direction, notice, order, or requirement, for the purposes of this Act.

(4) Regulations made under this Act may authorise the Secretary to exempt any person, activity, use, place, or thing from any requirement of those regulations, if satisfied that, in the circumstances, the imposition of the requirement on that person, activity, use, place, or thing, is not necessary.

144. Repeals and revocations - (1) The enactments specified in **Schedule 4** are repealed.

(2) The regulations specified in **Schedule 5** are revoked.

145. Consequential amendment to Ministry of Health Act 1995-96 and Entry, Residence, and Departure Act 1971-72 - (1) Part 1 of Schedule 1 to the Ministry of Health Act 1995-96 is amended by -

(a) Omitting the following items:

"Mosquito Control Amendment Ordinance 1951";
"Mosquito Control Amendment Ordinance 1960";
"Notifiable Disease Ordinance 1953";
"Notifiable Disease Amendment Ordinance 1954";
"Notifiable Disease Amendment Ordinance 1963";
"Quarantine Ordinance 1952";
"Quarantine Amendment Ordinance 1961";
"Public Health Regulations 1987"; and

(b) Inserting, in its appropriate alphabetical order, the following item:

"Public Health Act 2002".

(2) The Entry, Residence, and Departure Act 1971-72 is amended by -

(a) Inserting the following definitions into section 2, in their appropriate alphabetical order:

"Dangerous condition" has the meaning given to it in section 3(1) of the Public Health Act 2002;

"Infected" has the meaning given to it in section 3(1) of the Public Health Act 2002;

"Port Health Officer" has the meaning given to it in section 3(1) of the Public Health Act 2002"; and

(b) Repealing paragraph (b) of section 9(1), and substituting the following paragraph:

"(b) On his arrival in the Cook Islands he is, in the opinion of the Port Health Officer:

(i) Mentally defective; or

(ii) Infected with a dangerous condition."

146. Transitional provisions for established offensive trades - (1) In this section, -

"Regulatory date", for any offensive trade, means -

(a) In the case of an offensive trade specified in **Schedule 1** immediately after the commencement of this Act, the date of such commencement;

(b) In the case of any other offensive trade, the date of the coming into force of the Order in Executive Council made under **section 57** specifying the offensive trade;

"Transitional date", for any offensive trade, means the first anniversary of the regulatory date for the offensive trade.

(2) Nothing in **section 51(1)** applies to an activity carried out in a place as part of an offensive trade where -

- (a) The activity is carried out before the transitional date for the offensive trade; and
- (b) The person carrying out the activity is able to prove that the same activity was, prior to the regulatory date for that offensive trade, carried out in the place as part of the trade, business, manufacture, or undertaking that comprises the offensive trade.

(3) For the purposes of paragraph (b) of subsection (2) -

- (a) No activity may be regarded or treated as the same as another if 12 months or longer have elapsed between the time that the two activities were carried out; and
- (b) No activity involving the use of a building erected after the regulatory date may be regarded or treated as the same as another activity carried out prior to the erection of the building.

(4) Nothing in subsection (3) limits **section 4(a)**.

147. Transitional provisions relating to Director, Port Health Officer, inspectors - (1) The person who, immediately before the commencement of this Act, held the position of Director of Clinical Services in the Ministry of Health, is deemed to have been appointed under this Act as -

- (a) Medical Director; and
- (b) Port Health Officer, until such time as an appointment is formally made under this Act.

(2) Every person who, immediately before the commencement of this Act, held office as an authorised officer under the Food Act 1992-93, is deemed to have been appointed a health inspector under this Act.

This Act is administered in the Ministry of Health.

SCHEDULE 1*

Section 3(1)

OFFENSIVE TRADES

- Asbestos removal, processing, or disposal
- Blood or offal treating
- Bone boiling, collecting, or crushing
- Collection or storage of used bottles
- Fish curing
- Fish processing for any purpose
- Gut scraping and treating
- Operating a cemetery (other than a family cemetery) or crematorium
- Operating a waste disposal site
- Oyster farming
- Pig farming
- Poultry farming
- Removal of waste from septic tanks
- Scrap metal processing
- Sea slug curing
- Shellfish drying
- Slaughtering of animals for any purpose other than for sale for human consumption within the meaning of the Food Act 1992-93
- Soap manufacturing
- Storage, drying, or preserving of bones, hides, hoofs or skins, or melting of tallow
- Waste collection, treatment, or disposal
- Brewing of home-made liquor
- Cremation

*Note: this Schedule may be amended, or repealed and substituted, by Order in Executive Council made under **section 57**.

SCHEDULE 2*

Section 3(1)

NOTIFIABLE CONDITIONS

Part 1 - Transmissible Notifiable Conditions

Anthrax

Cholera

Chickenpox (Varicella)

Conjunctivitis

Dengue

Dysentery: Amoebic, Bacillary (Shigellosis), and other types

Enteric fevers (Typhoid fever, Paratyphoid fever)

Infantile diarrhoea
Infectious hepatitis
Influenza
Leprosy
Measles (Rubella or Morbilli)
Mumps
Ringworm (Tinia Imbricata)
Scabies
Typhoid
The following venereal diseases:
(a) Gonorrhoea;
(b) Syphilis;
(c) Venereal warts;
(d) Trichomonas;
(e) Candidiasis
Whooping cough (Pertussis)
Yellow fever

The following are both transmissible notifiable conditions *and* dangerous conditions for the purposes of this Act:

Acute anterior poliomyelitis
AIDs (Acquired Immune Deficiency Syndrome)
Cerebro-spinal meningitis (meningococcal)
HIV (Human Immune Deficiency Virus)
MRSA (methicillin resistant staphylococcus aureus)
Tuberculosis: pulmonary and other sites

Part 2 - Other Notifiable Conditions

Asthma
Bronchitis
Cancer (all varieties)
Diabetes mellitus
Fish poisoning (ciguatera)
Food poisoning
Hypertension
Otitis media
Pneumonia
Rheumatic fever

*Note: this Schedule may be amended, or repealed and substituted, by Order in Executive Council made under **section 89**.

SCHEDULE 3*

Section 3(1)

VACCINE PREVENTABLE CONDITIONS

Diphtheria
Hepatitis B.
Measles
Mumps
Poliomyelitis
Tetanus
Tuberculosis
Whooping cough (Pertussis)

*Note: this Schedule may be amended, or repealed and substituted, by Order in Executive Council made under **section 77**.

SCHEDULE 4

Section 144(1)

ENACTMENTS REPEALED

Cook Islands Quarantine Ordinance 1952	(1952, No.2)
Cook Islands Quarantine Amendment Ordinance 1961	(1961, No.2)
Mosquito Control Ordinance 1947	(1947, No.1)
Mosquito Control Amendment Ordinance 1951	(1951, No.2)
Mosquito Control Amendment Ordinance 1960	(1960, No. 9)
Notifiable Disease Ordinance 1953	(1953, No. 1)
Notifiable Disease Amendment Ordinance 1954	(1954, No. 1)
Notifiable Disease Amendment Ordinance 1963	(1963, No. 5)

SCHEDULE 5

Section 144(2)

REGULATIONS REVOKED

Cook Islands Cemeteries Regulations 1917	(Gazette 1917, p 2971)
Cook Islands Leprosy Regulations 1917	(Gazette 1917, p 2449)
Cook Islands Quarantine (Aircraft) Regulations 1946	(SR 1946/38)
Public Health Regulations 1987*	(SR 1987/28)

[* To the extent, if any, that these regulations are in force immediately before the commencement of this Act]

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