

# Explanatory Statement

## PUBLIC AND ENVIRONMENTAL HEALTH AMENDMENT BILL 2022

LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

MINISTER FOR HEALTH

### GENERAL OUTLINE

This Bill amends the *Public and Environmental Health Act 2011*.

The primary purpose of this Bill is to ensure that necessary and proportionate public health directions can continue to be made to manage the COVID-19 virus following the revocation or otherwise ceasing to be in force of the declaration of the public health emergency in relation to the COVID-19 pandemic made on 18 March 2020 and published in *Government Gazette* No. S10 of 18 March 2020, as extended (the Declaration). The Bill does not limit existing powers of the Chief Health Officer (CHO) under the Act that apply during the declaration of a public health emergency, including those under section 52.

The CHO would be granted post-emergency powers by the insertion of Division 2A in Part 5. The Division would operate in the two years following the end of the section 48 emergency declaration, the 'post-emergency period'. The proposed powers are intended to apply during the period when the COVID-19 virus is moving towards becoming endemic in the Northern Territory, the public health emergency declaration is no longer wholly justified and the extent of public health measures needs to be increasingly balanced against social and economic considerations. In the post-emergency period the CHO would be able to take the same actions under section 52, if satisfied that the conditions imposed by section 52(1) are met, as if the public health emergency were still declared. Section 57B(2) lists the types of directions that the CHO may give, including the general type described in paragraph (i) for directions that the CHO is of the opinion are necessary, appropriate or desirable to reduce harm from COVID-19. The CHO is not able to make a direction preventing a resident for the Territory from entering the Territory or preventing a person from leaving the Territory.

The exercise of the CHO's powers under section 57B in the post-emergency period is limited by section 57C. The CHO would be required to take into account social considerations and economic considerations, in addition to public health considerations, when giving a direction of a type mentioned in section 57B(2)(f) to (i). Additionally, the CHO would be required to consult with specified Ministers. The extra requirements for these types of directions exist because they may have a wide impact on the community with potential for greater social and economic consequences. The requirement to consult with these Ministers safeguards broader interests of the community and creates a link in the decision making process to Ministerial responsibility.

Directions made under the powers may include, but are not limited to, directions on:

- use of technology to enable the registration of person/s attending certain venues for the purposes of contact tracing;
- mandatory vaccinations (and boosters) for certain categories of workers in the Northern Territory;
- authorisation of lockdowns and lockouts of certain communities;
- testing and isolation; and
- the ability to direct a person or persons at-risk to quarantine in a suitable location.

Publication requirements set out in section 57D ensure that directions are publicly available, unless given to individuals or vessels. Section 57J requires the CHO to make a report to the Minister summarising specified matters after the Division ceases to be in force.

If a person contravenes a direction, the section 57K penalty provision may apply. It is a defence for an offence against the provision if the defendant has a reasonable excuse.

Section 57L provides that an interlocutory order of a court, person or tribunal conducting a review of an action taken by the CHO under the Division may not stay the operation of the action. This is necessary to prevent a review of a decision halting the operation of a direction given with urgency, in order to protect public health.

Division 5 in Part 11 is a transitional provision that provides for written directions given by the CHO under section 52 immediately in force before the commencement of the Division to continue into the post-emergency period. They will be automatically revoked after 100 days of the commencement of the Division, unless the CHO publishes that directions are to continue to have effect. The provision additionally saves appointment of, and directions to, authorised officers in place immediately prior to the commencement of the Division.

Insertion of sections 52B and 57F will enable the making of a determination that provides that quarantine fees for repatriated Australians are not money within the meaning of the *Financial Management Act 1995*, because the fees are not held for or on behalf of the Territory or an Agency. Accordingly, the fees that have been and will be collected from repatriated Australians will be legally collected and managed by the Commonwealth as Commonwealth revenue. They do not need to be administered or accounted for by the Territory under the *Financial Management Act 1995*. Rather, the money the Territory will receive as revenue is the funding the Commonwealth provides for the actual expenses incurred in operating the quarantine facility. This funding for operational expenses provided by the Commonwealth will be the money received by the Territory, and it will of course be administered under the *Financial Management Act 1995*.

There are additional minor amendments in the Bill, including the following:

- Section 52A is to be amended to remove the limitation on the CHO to charge fees for people directed to quarantine at a place in the Territory, who have not entered the Territory from outside the jurisdiction. An equivalent provision, section 57E, will be inserted to provide that the CHO can charge quarantine fees during the post-emergency period.
- Section 55 is to be amended to adjust the requirement on the CHO to produce a report after an emergency declaration is extended from detailing specified matters, to summarising specified matters. The current reporting requirement is too onerous for declarations that have been extended on multiple occasions.
- The subordinate *Public and Environmental Health Regulations 2014* are to be amended to prescribe a fee amount that the CHO may impose on a person directed to quarantine under section 57E(1) and to prescribe an amount that may be imposed as an infringement notice under section 57G.

## **NOTES ON CLAUSES**

### **Clause 1. Short Title.**

This is a formal clause which provides for the citation of the Bill. The Bill when passed will be cited as the *Public and Environmental Health Legislation Amendment Act 2022*.

### **Clause 2. Commencement.**

This clause sets out that the Act will commence on the day after the day on which the Administrator's assent to the Act is declared.

### **Clause 3. Act amended**

This is a standard clause to indicate that amendments will be made to the *Public and Environmental Health Act 2011*.

### **Clause 4. Section 4 amended (Definitions)**

This clause inserts a definition of COVID-19 to be the Coronavirus disease named "COVID-19" by the World Health Organization.

### **Clause 5. Section 52A amended (CHO's power to charge fees during emergencies)**

The measure will amend section 52A(1) so that the CHO may charge a fee to a person or class of persons for any action taken under section 52(1) that requires the person or class to enter quarantine and remain quarantined at a place, regardless of whether that person or class of persons has entered the Territory from a place outside the Territory, or not.

### **Clause 6. Section 52B inserted**

Clause 6 will insert section 52B to grant the Minister the power to make a determination that fee money charged by the CHO under section 52A is Commonwealth money.

### **Clause 7. Section 55 amended (Report on public health emergency)**

The clause inserts section 55(1A). Presently under section 55(1), after an emergency declaration ceases to be in force, the CHO must make a report to the Minister 'detailing' specified matters. Under the proposed provision, if an emergency declaration extended under section 50(2) ceases to have an effect, the CHO would alternatively be able to make a report to the Minister 'summarising' matters listed in section 55(1), rather than produce a more extensive report required under section 55(1).

### **Clause 8. Division 2A inserted in Part 5**

The insertion of Division 2A in Part 5 will create a scheme of post-emergency powers of the CHO following the COVID-19 pandemic.

Proposed section 57A provides that the Division applies for two years following the day the declaration of the public health emergency in relation to the COVID-19 pandemic made under section 48 on 18 March 2020 and published in Government Gazette No. S10 of 18 March 2020, as extended from time to time (the post-emergency period), is revoked or ceases to have effect. The Division will not apply to other public health emergency declarations. The Division will cease to apply if the Minister makes a further declaration under section 48 in relation to the COVID-19 pandemic. None of the CHO's existing powers under Division 2 would be affected by the insertion of Division 2A.

Section 57A(4) provides that in the event of an inconsistency between a provision under this Division and another provision in this Act (other than Division 2) the provision of or under this Division prevails to the extent of the inconsistency.

Section 57B sets out the CHO's powers during the post-emergency period. Under proposed subsection (1), the CHO could take actions specified under existing section 52 as if the public health emergency was still declared. Under proposed subsection (2), the CHO may make a range of directions of a type listed in paragraphs (a)-(i). Paragraph (i) is a broad general provision granting the CHO the power to make any other direction that in the opinion of the CHO is necessary, appropriate or desirable to reduce harm from COVID-19. The powers granted in section 57B would be limited by subsection (3) to protect the fundamental right of Territory residents to enter the Territory and allow any person to choose to leave the Territory.

Section 57C would require the CHO to take into account social considerations and economic considerations, in addition to public health considerations, when giving a direction of a type mentioned in section 57B(2)(f) to (i). The CHO would also be required to consult with Ministers specified in section 57C(1) when making a direction of these types. These additional requirements are necessary for these types of directions because they may be particularly burdensome or affect broad cohorts of the population. Consultation would not be required to be in writing, although a direction requiring consultation must state which Minister was consulted with.

Directions given under section 57B(2)(b), (c) or (f) to (i), must be published, such as on an agency website, in accordance with section 57D. This will ensure transparency. There is an exemption to this requirement for directions given directly to a person or vessel to protect privacy.

The CHO would be given the power to charge fees of persons directed to quarantine under section 57E. The fee would be recoverable as a debt due to the Territory from the person or class of persons. The provision has a similar effect to section 52A, but applies during the post-emergency period.

Section 57F grants the Minister the power to determine that a fee or class fees charged by the CHO under section 57E is or are Commonwealth money, and specifies that a fee so determined is a debt due to the Commonwealth, despite section 57E(3). The provision has a similar effect section 52B, but applies during the post-emergency period.

Section 57G grants the CHO the power to appoint and direct authorised officers for the purpose of assisting the CHO in exercising the CHO's powers under the division. An authorised officer may use necessary and reasonable force in relation to the authorised officer's functions and in accordance with section 57G(2). The scope of the power is further described by section 57G(3).

The CHO would be required keep and maintain record of action taken under the proposed division in accordance with section 57H. After the Division ceases to apply, the CHO would be required to make a report to the Minister summarising matters specified in section 57J(1) within 3 months after the date that the Division ceases to have effect. To ensure transparency this report will be required to be tabled in the Legislative Assembly by the Minister within 6 sitting days after receiving the report.

Section 57K is the penalty provision for a person failing to comply with a direction of the CHO given under section 57B. The requisite strict liability fault element is that the person intentionally engages in conduct; and the conduct results in a contravention of the direction and the person is reckless in relation to that result. A defence is provided under subsection (3) where the defendant has a reasonable excuse for not complying with a direction.

Section 57L provides that an interlocutory order of a court, person or tribunal conducting a review of an action taken by the CHO under the Division may not stay the operation of the action.

**Clause 9. Section 113A amended (Coughing or spitting on certain workers)**

Clause 9 will remove a definition of COVID-19 made redundant by clause 4.

**Clause 10. Section 114 amended (Definitions for Part 9, Division 2)**

Clause 10 updates the definition of “declared provision”.

**Clause 11. Part 11, Division 5 inserted**

This clause inserts Division 5 providing for transitional matters of the Bill.

Section 142 defines commencement in the Division to mean the commencement of section 8 of the *Public and Environmental Health Legislation Amendment Act 2022*.

Section 143 provides that written directions of the CHO made under section 52(1) immediately in force before the commencement of the Division will continue to operate into the post-emergency period. These directions may be revoked at any time by the CHO or will be automatically revoked 100 days after commencement, unless specified to continue by the CHO publishing the title of the direction in the *Gazette*. Any saved directions will cease to operate when the Division ceases to have effect.

Section 144 will save the appointment of and direction to authorised officers into the post-emergency period.

**Clause 12. Regulations amended**

This is a standard clause to indicate that amendments will be made to the *Public and Environmental Health Regulations 2014*.

**Clause 13. Regulation 4B inserted**

This clause inserts regulation 4B to provide that for section 57E(1) of the Act, the prescribed maximum fee is \$10 000.

**Clause 14. Schedule 5 amended (Infringement notices and prescribed amounts)**

This clause inserts an entry in Schedule 5 of the Regulations to prescribe that the offence under section 56(1) has 35 penalty units for an individual if an infringement notice is issued.

**Clause 15. Repeal of Act**

This is a standard clause to ensure the Act is repealed after it has changed existing laws.