



TASMANIA

HIV/AIDS PREVENTIVE MEASURES ACT 1993

No. 25 of 1993

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**HIV/AIDS PREVENTIVE MEASURES ACT 1993**

No. 25 of 1993

AN ACT to provide measures for the prevention and containment of HIV/AIDS and for the protection and promotion of public health and for appropriate treatment, counselling and care of persons infected with HIV/AIDS or at risk of HIV/AIDS infection

[Royal Assent 3 June 1993]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART 1**PRELIMINARY****Short title**

1—This Act may be cited as the *HIV/AIDS Preventive Measures Act 1993*.

Commencement

2—This Act commences on the day on which it receives the Royal Assent.

Interpretation

3—In this Act, unless the contrary intention is shown—

“**AIDS**” means Acquired Immune Deficiency Syndrome;

“**approved health care worker**” means a person approved under section 13;

“**approved specialist medical practitioner**” means a specialist medical practitioner approved by the Secretary for the purposes of section 20;

“**consent**” means consent given without any force, fraud or threat and with knowledge and understanding of the medical and social consequences of the matter to which the consent relates;

“**dentist**” means a person registered as a dentist under the *Dental Act 1982*;

“**HIV**” means Human Immunodeficiency Virus;

“**HIV test**” means a test which determines whether or not a person is infected with HIV;

“**medical practitioner**” means a legally-qualified medical practitioner;

“**narcotic substance**”, “**prohibited substance**” and “**raw narcotic**” have the meanings assigned to those expressions by the *Poisons Act 1971*;

“**negative**”, in relation to the result of an HIV test, means a result which shows that the person who is tested was not, at the time the test was undertaken, infected with HIV or which does not show any evidence of such infection;

“**nurse**” means a person registered as a nurse under the *Nursing Act 1987*;

“**partner**” means a spouse, a de facto spouse or a person with whom another person is living in a domestic relationship;

“**pharmaceutical chemist**” means a pharmaceutical chemist registered under the *Pharmacy Act 1908*;

“**police officer**” has the meaning assigned to that expression by the *Police Regulation Act 1898*;

“**positive**”, in relation to the result of an HIV test, means a result which shows that the person who is tested is infected with HIV or which shows evidence of such infection;

“**Secretary**” means the Secretary of the Department;

“**sell**” includes—

- (a) offer or expose for sale; and
- (b) keep or have in possession for sale; and
- (c) barter or exchange; and
- (d) agree to sell; and
- (e) send, forward or deliver for sale; and
- (f) authorize, direct, cause, attempt or permit any act referred to in paragraph (a), (b), (c), (d) or (e);

“**tissue**” includes an organ or part of a human body, semen and any other substance or secretion, other than blood, extracted from the human body or from a part of the human body;

“**trace element**” means any element that remains in a syringe or needle in such a quantity as to be unusable for the purpose of injecting.

Act prevails over other provisions

4—Where the provisions of any other Act or regulations made under any other Act are inconsistent with the provisions of this Act, this Act prevails to the extent of that inconsistency.

PART 2

HIV TESTING

Division 1—HIV tests

Non-application of Division

5—This Division does not apply to HIV testing carried out in accordance with any code, guidelines or instructions relating to HIV testing that is approved by the Secretary.

HIV tests

6—(1) The Secretary is to ensure that confidential HIV testing facilities are made available to persons who—

- (a) request an HIV test in respect of themselves; and
- (b) are required under this or any other Act to undergo an HIV test.

(2) A person must not induce another person to undergo an HIV test for the purpose of any employment or the provision of goods or services.

Penalty: Fine not exceeding 50 penalty units.

(3) Subsection (2) does not apply to any surgical and dental procedures referred to in section 12.

(4) The Secretary may, on application made by a person, exempt that person from the application of subsection (2).

Consent of HIV testing

7—(1) A person must not undertake an HIV test in respect of another person except—

- (a) with the consent of that other person; or
- (b) if that person is a child under the age of 12 years, with the written consent of a parent or legal guardian of that child; or
- (c) if that person is a child between the age of 12 and 18 years and, in the opinion of the medical practitioner who wishes to undertake the HIV test, is incapable of giving consent, with the written consent of a parent or legal guardian of that child; or
- (d) if, in the opinion of the medical practitioner who wishes to undertake the HIV test, the other person has a disability by reason of which that person appears incapable of giving consent, with the consent, in order, of—
 - (i) a legal guardian of that person; or
 - (ii) a partner of that person; or
 - (iii) a parent of that person; or
 - (iv) an adult child of that person; or
 - (v) a prescribed independent authority; or
- (e) if the other person is required to undergo such a test under this Act or any other Act; or

(f) if an HIV test is required to be carried out on the blood of that other person under this or any other Act.

Penalty: Fine not exceeding 50 penalty units.

(2) A medical practitioner responsible for the treatment of a person may undertake an HIV test without the consent of that person if—

(a) the person is unconscious and unable to give consent; and

(b) the medical practitioner believes that such a test is clinically necessary or desirable in the interests of that person.

(3) A medical practitioner who undertakes an HIV test under subsection (2) is not, by reason only of undertaking that test, liable to any civil or criminal liability in relation to that undertaking.

Testing of donors of tissue

8—(1) A person who offers to donate any tissue or whose tissue is offered to be donated must undergo an HIV test immediately before such a donation is carried out.

(2) The tissue of a person must not be used unless an HIV test has been carried out immediately before that proposed use and the result of that test is negative.

(3) A person who offers to donate tissue and who has undergone an HIV test under subsection (1) is not liable to any civil or criminal liability in relation to any subsequent use of that tissue if the person believes on reasonable grounds that the result of the HIV test is negative.

Testing of donated blood

9—An HIV test must be undertaken on any blood donated by a person in accordance with the testing procedures under the *Blood Transfusion (Limitation of Liability) Act 1986*.

Compulsory testing in certain cases

10—(1) The Secretary may require a person charged with a crime of a sexual nature under Chapter XIV or Chapter XX of the *Criminal Code* to undergo an HIV test.

(2) The Secretary may require a person to undergo an HIV test where it is necessary to determine the medical treatment of another person who may be at risk of becoming infected with HIV and whose condition, or suspected condition, in the opinion of a medical practitioner, is directly or indirectly caused by the person required to undergo the HIV test.

(3) The Secretary must require a person to undergo an HIV test if the Secretary has reasonable grounds to believe that the person—

- (a) is infected with HIV; and
- (b) behaves in such a way as to place other persons at risk of becoming infected with HIV; and
- (c) is likely to continue to behave in such a way.

Compulsory orders

11—(1) If a person who is required to undergo an HIV test under section 10 refuses to do so, the Secretary may apply to a magistrate for an order requiring that person to undergo the HIV test.

(2) A hearing under this section is to be in a closed session.

(3) When determining whether to make an order under this section, a magistrate shall consider the following matters:—

- (a) whether other persons are or have been exposed to the possibility of transmission of HIV;
- (b) the right to information of a person at risk of infection;
- (c) the availability of a proven treatment in relation to HIV.

(4) A magistrate is not to make an order under this section unless satisfied on the balance of probabilities that it is in the interests of public health to make the order.

Surgical and dental procedures

12—(1) In this section, a surgical or dental procedure is urgently required if the procedure needs to be carried out on a person before the result of an HIV test in respect of that person can be obtained.

(2) Before carrying out a surgical or dental procedure, a medical practitioner, nurse or dentist may assess whether or not the procedure is urgently required.

(3) If, in the opinion of a medical practitioner, nurse or dentist, the surgical or dental procedure is urgently required in respect of a person, the medical practitioner, nurse or dentist is to—

- (a) carry out the appropriate procedure; or
- (b) refer the person to another medical practitioner, nurse or dentist, as appropriate, who is available and willing to carry out the urgently required procedure; or
- (c) seek advice from the Secretary in relation to appropriate treatment in respect of that person.

(4) If, in the opinion of a medical practitioner, nurse or dentist, the surgical or dental procedure is not urgently required in respect of a person, the medical practitioner, nurse or dentist may require the person to undergo an HIV test before carrying out that procedure.

(5) If a person undergoes an HIV test after being required to do so under subsection (4) and the result of the test is positive, the medical practitioner, nurse or dentist is to—

- (a) carry out the appropriate procedure; or
- (b) refer the person to another medical practitioner, nurse or dentist, as appropriate, who is available and willing to carry out the procedure; or
- (c) seek advice from the Secretary in relation to appropriate treatment in respect of that person.

(6) If a person refuses to undergo an HIV test after being required to do so under subsection (4), the medical practitioner, nurse or the dentist is to—

- (a) carry out the appropriate procedure; or
- (b) refer the person to another medical practitioner, nurse or dentist, as appropriate, who is available and willing to carry out the procedure; or
- (c) seek advice from the Secretary in relation to appropriate treatment in respect of that person.

(7) A medical practitioner, nurse or dentist who carries out a medical or dental procedure under subsection (3) (a), (5) (a) or (6) (a) must carry it out in accordance with the Infectious Control Guidelines issued from time to time by the National Health and Medical Research Council of Australia and the Australian National Council on AIDS.

(8) This section does not interfere with the right of a medical practitioner, nurse or dentist to make a decision, on medical grounds, whether or not to carry out any surgical or dental procedure irrespective of the result of an HIV test.

Approved health care worker

13—(1) A person may apply to the Secretary to be an approved health care worker.

(2) An application is to be in writing and contain such particulars as the Secretary may require.

(3) On receipt of an application, the Secretary may grant the application or refuse to grant the application.

(4) Before granting an application, the Secretary may require a person to undergo such courses or to have such qualifications as the Secretary thinks fit.

(5) The Secretary may grant an application subject to such conditions and terms and for such period as the Secretary thinks fit.

Pre-test counselling

14—(1) Before an HIV test is undertaken by a person under this Act or any other Act, a medical practitioner or approved health care worker authorized by the medical practitioner is to counsel that person and any other person the medical practitioner considers should be counselled in respect of the medical and social consequences of being tested.

(2) Subsection (1) does not apply to an HIV test carried out on blood donated by a person.

Results of HIV tests

15—(1) As soon as possible after the result of an HIV test is obtained, the medical practitioner or approved health care worker authorized by the medical practitioner is to—

- (a) inform the tested person in person of that result; and
- (b) if the result is positive, inform the Secretary.

(2) If the result is negative, the medical practitioner or approved health care worker authorized by the medical practitioner is to counsel the tested person in person in relation to that person's continued protection from acquiring HIV.

(3) If the result of an HIV test is positive, the medical practitioner or approved health care worker authorized by the medical practitioner is to—

(a) counsel the tested person in person; and

(b) require the tested person to provide relevant information—

in accordance with the Guidelines issued by the Secretary for the purposes of this section.

(4) Subsection (1) (b) does not apply where the result of an HIV test carried out on a blood donor is negative.

(5) Subsection (2) does not apply to an HIV test carried out on a blood donor.

Notification of HIV test results

16—Any notification of the result of an HIV test is to be in a form approved by the Secretary.

Division 2—Confidentiality

Privacy guidelines

17—(1) The Secretary, subject to the approval of the Minister, is to issue privacy guidelines, including the use of an identifying code, relating to the recording, collecting, storing and security of information, records or forms used in respect of HIV tests and related medical assessments.

(2) In issuing privacy guidelines, the Secretary is to have regard to—

(a) the Guidelines for Protecting Privacy in the Conduct of Medical Research issued from time to time by the National Health and Medical Research Council of Australia; and

(b) the Information Privacy Principles established under the *Privacy Act 1988* of the Commonwealth.

(3) A person must not record, collect, transmit or store records, information or forms in respect of HIV tests or related medical assessments of another person otherwise than in accordance with privacy guidelines issued under subsection (1).

Penalty: Fine not exceeding 50 penalty units.

Confidentiality of records

18—A person must not, in any records or forms used in relation to—

- (a) a request for an HIV test by persons in respect of themselves; or
- (b) an instruction by a medical practitioner to a laboratory for an HIV test to be conducted; or
- (c) the laboratory testing for HIV or HIV antibodies; or
- (d) the notification to the medical practitioner of the result of the HIV test; or
- (e) the notification under section 15 (1) (b) to the Secretary of a positive result—

include any information which directly or indirectly identifies the person to whom an HIV test relates, except in accordance with any privacy guidelines issued under section 17.

Penalty: Fine not exceeding 50 penalty units.

Disclosure of information

19—(1) A person must not disclose any information concerning the result of an HIV test or immune function test, including the HIV or HIV antibody status or the sexual behaviour of a person or the use of drugs by a person, to any other person except—

- (a) with the written consent of that person; or
- (b) if that person has died, with the written consent of that person's partner, personal representative, administrator or executor; or
- (c) if that person is a child under the age of 12 years, with the written consent of a parent or legal guardian of that person; or

- (d) if that person is a child between the age of 12 and 18 years and, in the opinion of the medical practitioner who undertook the HIV test, is incapable of giving consent, with the written consent of a parent or legal guardian of that child; or
- (e) if that person is unable to give written consent, with the oral consent of that person or with the written consent of the person with power of attorney for that person; or
- (f) if, in the opinion of the medical practitioner who undertook the HIV test, that person has a disability by reason of which the person appears incapable of giving consent, with the written consent in order, of—
 - (i) a legal guardian of that person; or
 - (ii) a partner of that person; or
 - (iii) a parent of that person; or
 - (iv) an adult child of that person; or
 - (v) a prescribed independent authority; or
- (g) to a person being an approved health care worker, approved specialist medical practitioner, a dentist, a medical practitioner or a nurse who is directly involved in the treatment or counselling of that person; or
- (h) for the purpose of an epidemiological study or research authorized by the Secretary; or
- (i) to a court or tribunal where that information contained in medical records is directly relevant to the proceedings before the court or tribunal; or
- (j) if authorized or required to do so under this Act.

Penalty: Fine not exceeding 50 penalty units.

(2) Subsection (1) does not prevent a person from disclosing statistical or other information that could not reasonably be expected to lead to the identification of the person to whom it relates.

*Division 3—Orders***Transmission of HIV**

20—(1) A person who is and is aware of being infected with HIV or is carrying and is aware of carrying HIV antibodies must—

- (a) take all reasonable measures and precautions to prevent the transmission of HIV to others; and
- (b) inform in advance any sexual contact or person with whom needles are shared of that fact.

(2) A person who is and is aware of being infected with HIV or who is carrying and is aware of carrying HIV antibodies must not knowingly or recklessly place another person at risk of becoming infected with HIV unless that other person knew that fact and voluntarily accepted the risk of being infected.

Penalty: Fine not exceeding 50 penalty units
or imprisonment for a term not
exceeding 2 years.

(3) The Secretary is to ensure that a person referred to in subsection (1) or (2) has received—

- (a) adequate information and education about the transmission of HIV; and
- (b) adequate counselling under section 15; and
- (c) appropriate medical and psychological assessment; and
- (d) a letter from the Secretary warning that criminal liability attaches to behaviour which may constitute an offence under subsection (2).

(4) A person referred to in subsection (1) or (2) may request any medical practitioner or approved health care worker authorized by the medical practitioner to inform and counsel a sexual contact of the HIV or HIV antibody status of that person.

(5) A request under subsection (4) is to be made in writing and contain relevant particulars.

(6) On receipt of a request made under subsection (4), the medical practitioner or approved health care worker authorized by the medical practitioner is to comply, whenever possible, with that request in person.

(7) A medical practitioner who is responsible for the treatment of a person and who becomes aware that the person has not, after reasonable opportunity to do so—

- (a) complied with subsection (1) or (2); or
- (b) made a request under subsection (4)—

may, after consultation with an approved specialist medical practitioner, inform any sexual contact of that person of the HIV or HIV antibody status of that person.

(8) Any medical practitioner or approved health care worker who informs a sexual contact as provided under subsection (6) or (7) is not, by reason only of that action, liable to any civil or criminal liability in relation to that action.

Orders

21—(1) The Secretary may apply to a magistrate for an order where the Secretary reasonably believes that a person infected with HIV—

- (a) is not complying with section 20 (1); or
- (b) knowingly or recklessly places another person at risk of becoming infected with HIV; or
- (c) is likely to continue the behaviour referred to in paragraph (b).

(2) For the purpose of subsection (1), a magistrate may make any or all of the following orders:—

- (a) an order that the person infected with HIV undergoes such medical and psychological assessment as the Secretary determines;
- (b) an order imposing restrictions on the behaviour or movements of that person for a period not exceeding 28 days;
- (c) an order requiring that the person be isolated and detained by a person, at a place and in the manner specified in the order for a period not exceeding 28 days.

(3) In making an order in respect of a person under subsection (2), a magistrate is to take into account the following matters:—

- (a) whether, and by what method, the person transmitted HIV;
- (b) the seriousness of the risk of the person infecting other persons;

- (c) the past behaviour and likely future behaviour of the person;
- (d) any other matter the magistrate considers relevant.

(4) The Secretary may apply to a magistrate to renew an order made under subsection (2) (b) or (2) (c) for a further period or periods not exceeding 28 days.

(5) In renewing an order, a magistrate may vary the terms of the order.

(6) A person must not fail, without reasonable cause, to comply with an order made under subsection (2) or renewed under subsection (5).

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years.

(7) Proceedings under this section are to be heard in a closed session.

(8) A person must not publish or cause to be published a report of, or any information relating to, the whole or any part of the proceedings under this section.

Penalty: Fine not exceeding 10 penalty units.

(9) An isolation order made under this section is authority for the person named in the order to be detained by the person and at the place specified in the order.

Public promotion of certain sexual behaviour

22—(1) A person must not publicly promote participation in sexual activity of a kind which is likely to cause damage to health through the sexual transmission of HIV.

Penalty: Fine not exceeding 5 penalty units or imprisonment for a term not exceeding 3 months.

(2) Any proceedings in respect of an offence against subsection (1) are to be instituted by the Director of Public Prosecutions.

Isolation orders

23—(1) If the Secretary has reason to believe that an arrest may be necessary in order to enforce an isolation order made under section 21, the Secretary may apply to a magistrate for a warrant authorizing a police officer to carry out an isolation order.

(2) The Secretary may direct a person authorized for the purpose to assist a police officer in carrying out an isolation order.

(3) For the purposes of carrying out an isolation order against a person, a warrant under subsection (1) may authorize a police officer, together with an authorized person specified in the warrant—

- (a) to enter in, remain on and search premises; and
- (b) to use any force that may be reasonably necessary; and
- (c) to arrest that person.

(4) A person arrested under this section is to be taken to the place referred to in the isolation order.

(5) An authorized person who assists in the carrying out of an isolation order is not liable to any civil or criminal liability in relation to that action.

PART 3

NEEDLE EXCHANGE PROGRAMME

Division 1—Permits

Interpretation

24—In this Part—

“needle exchange officer” means a person who has completed a course of instruction approved by the Secretary relating to the hygienic distribution, use, collection and disposal of syringes and needles;

“permit” means a permit issued under section 26.

Supply of syringes and needles

25—(1) A person who is not the holder of a permit must not supply a syringe or needle to another person for the purpose of administering a narcotic substance, prohibited substance or raw narcotic.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years.

(2) Subsection (1) does not apply to—

- (a) the supply and use of syringes and needles for lawful medical purposes or veterinary treatment purposes; and
- (b) a person authorized under section 26 (6) to supply syringes and needles.

Permits to supply syringes and needles

26—(1) A medical practitioner, pharmaceutical chemist, nurse or needle exchange officer may apply to the Secretary for a permit to supply syringes and needles.

(2) An application is to—

- (a) be in writing; and
- (b) state the full name and business and private address of the applicant; and
- (c) set out details of the applicant's occupation or business.

(3) If satisfied that an applicant is an appropriate person to participate in a needle exchange programme, the Secretary may grant the application and issue a permit for such period as the Secretary determines.

(4) A permit may be issued subject to such conditions and for such purposes as the Secretary considers appropriate.

(5) A permit is to specify—

- (a) the full name and address of the holder; and
- (b) the capacity in which the person holds the permit; and
- (c) an identifying number; and
- (d) the period for which the permit is in force.

(6) The holder of a permit may authorize an employee or other person working for the holder of a permit to supply a syringe or needle in accordance with this part.

Renewal of permit

27—(1) The holder of a permit may, at any time before the permit expires, apply in writing to the Secretary for a renewal of the permit.

(2) The Secretary may renew the permit for such further period as the Secretary may determine.

(3) A permit may be renewed subject to such conditions and issued for such purposes as the Secretary considers appropriate.

Production of permit

28—Upon request by a police officer, the holder of a permit must produce the permit for inspection at a police station within 7 days of that request.

Penalty: Fine not exceeding 10 penalty units.

Transfer or loan of permit

29—The holder of a permit must not transfer or lend the permit to another person for the purpose of assisting that other person to supply syringes or needles.

Penalty: Fine not exceeding 10 penalty units.

Surrender of permit

30—(1) The holder of a permit may surrender the permit by giving written notice to the Secretary.

(2) The surrender of a permit takes effect—

(a) on the date the notice of surrender is given; or

(b) on such later date as may be specified in the notice.

Cancellation of permit

31—(1) The Secretary may, by notice in writing given to the holder of a permit, cancel a permit if the Secretary believes on reasonable grounds that the holder of the permit—

- (a) without reasonable excuse, has failed to comply with any condition or purpose to which the permit is subject; or
- (b) has been convicted of an offence against section 28 or 29; or
- (c) is no longer an appropriate person to hold a permit.

(2) The cancellation of a permit takes effect on the date on which the notice of cancellation is given.

(3) A person must return a permit to the Secretary immediately the permit ceases to be in force.

Penalty: Fine not exceeding 10 penalty units.

Duration of permit

32—A permit under this Part remains in force, unless sooner cancelled or surrendered, for the period specified in the permit.

Division 2—Exchange, disposal and possession of syringes and needles**Exchange of syringes and needles**

33—A person who obtains a syringe or needle from the holder of a permit must give to that person any used syringe or needle in that person's possession in exchange for the syringe or needle obtained.

Passing on of syringes and needles

34—The holder of a permit may, in accordance with any guidelines issued by the Secretary, authorize a person to whom a syringe or needle is supplied by that holder to pass on the syringe or needle to another person.

Disposal of syringes and needles

- 35**—A person must dispose of a used syringe or needle—
- (a) by placing the syringe or needle in a container that—
 - (i) has rigid walls; and
 - (ii) is resistant to puncture; and
 - (iii) is capable of being sealed or securely closed in such a way that its contents are not capable of causing injury; or
 - (b) by such other method as the Secretary may determine.
- Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years.

Avoiding danger to life and safety of other persons

36—A person who is in possession of a syringe or needle must use all reasonable care and take all reasonable precautions in respect of that syringe or needle so as to avoid danger to the life, safety or health of another person.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years.

Possession of syringes and needles

37—A person who is in possession of a syringe or needle is not, by reason only of that possession, taken to have committed an offence under the *Poisons Act 1971*.

Possession of trace elements of certain substances

38—A person who is in possession of any trace element of a narcotic substance, prohibited substance or raw narcotic that is contained in a syringe or needle is not by reason only of that possession, taken to have committed an offence under the *Poisons Act 1971*.

Crimes under the *Criminal Code*

39—(1) A holder of a permit who supplies a syringe or needle to another person in the course of professional practice or occupational duties is not, by reason only of that supply, taken to have committed any crime under Chapters II or XXXV of the *Criminal Code* or taken to have committed, aided, abetted or instigated an offence under any Act.

(2) A person who prints or publishes a notice, announcement or advertisement in any form relating to the supply by a holder of a permit of syringes or needles is not, by reason only of that printing or publishing, taken to have committed any crime under Chapters II or XXXV of the *Criminal Code*.

PART 4**MISCELLANEOUS****Testing carried out in certain institutions**

40—A person must not carry out an HIV test unless the test is carried out at an institution approved by the Secretary.

Penalty: Fine not exceeding 50 penalty units.

Manufacture and sale of testing kits and devices

41—A person must not manufacture or sell to another person in this State or elsewhere a kit or device for the use of carrying out an HIV test except where the other person is a representative approved for that purpose by an institution referred to in section 40.

Penalty: Fine not exceeding 50 penalty units.

Court proceedings

42—In any proceedings, if a court is of the opinion that it is necessary to disclose information relating to the HIV or HIV antibody status of a person, the court, because of the social and economic consequences to that person, may—

- (a) order that the whole or any part of the proceedings to be heard in closed session; or
- (b) order that only specified persons may be present during the whole or any part of the proceedings; or
- (c) make an order prohibiting the publication of a report of the whole or any part of the proceedings or of any information derived from the proceedings.

Evidence of certain communication

43—Any communication made by a person in undergoing an HIV test, any surgical or dental procedure or counselling under this Act relating to the sexual behaviour of any person is not admissible in any proceedings under section 122 or 123 of the *Criminal Code*.

Regulations

44—(1) The Governor may make regulations for the purposes of this Act.

(2) The regulations may—

- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
- (b) in respect of such an offence, provide for the imposition of a penalty not exceeding 10 penalty units and, in the case of a continuing offence, a further penalty not exceeding 1 penalty unit for each day during which the offence continues.

Administration of Act

45—Until an order is made under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Minister for Community and Health Services; and
- (b) the Department responsible to the Minister for Community and Health Services is the Department of Community and Health Services.

PART 5

AMENDMENT OF PRISON ACT 1977

Sections 17A, 17B, 17C and 17D inserted

46—After section 17 of the *Prison Act 1977**, the following sections are inserted:—

Medical tests for HIV

17A—(1) The Director is to require each prisoner and detainee to undergo an HIV test by a medical officer—

- (a) as soon as possible on admission to a prison; and
- (b) at such regular intervals as the Director may consider appropriate or necessary in the circumstances; and
- (c) if the prisoner or detainee has been in prison 2 months or more, no less than 14 days before being released from prison.

(2) If a prisoner or detainee refuses to undergo an HIV test, an approved counsellor nominated by the Director for the purpose is to counsel the prisoner or detainee in respect of the necessity or desirability of undergoing the test.

* No. 19 of 1977. Amended by No. 29 of 1984, Nos. 4, 51 and 120 of 1985, No. 88 of 1987, No. 5 of 1990, Nos. 43 and 46 of 1991 and No. 3 of 1993.

(3) If a prisoner or detainee refuses to undergo an HIV test after being counselled, the Director may take such steps as are necessary to ensure—

- (a) that the prisoner or detainee undergoes an HIV test; and
- (b) that any other prisoner or detainee is not placed at risk of becoming infected with HIV.

(4) In this section, “**approved counsellor**” means a person approved by the Secretary of the Department responsible for the administration of the *HIV/AIDS Preventive Measures Act 1993* for the purposes of this section.

Report of test

17B—A medical officer who carries out an HIV test under section 17A is to submit a report of the results of the test to the Director immediately the result is obtained.

Separation and treatment of HIV positive prisoners

17C—If, as the result of an HIV test carried out under section 17A, a prisoner or detainee is found to be or suspected of being infected with HIV or carrying HIV antibodies, the Director—

- (a) may order that the prisoner or detainee—
 - (i) be kept separate from other prisoners or detainees who are not so infected; or
 - (ii) be kept in an area where access is restricted; or
 - (iii) is to be otherwise dealt with in a manner the Director considers suitable or in the best interests of the prisoner or detainee; and
- (b) is to order that the prisoner or detainee undergo such medical treatment as may be necessary.

Application of *HIV/AIDS Preventive Measures Act 1993*

17D—The provisions of sections 6 to 19 inclusive of the *HIV/AIDS Preventive Measures Act 1993* apply to the HIV testing of prisoners and detainees.

*[Second reading presentation speech made in:—
House of Assembly on 25 March 1993
Legislative Council on 21 April 1993]*