



New South Wales

# Mandatory Disease Testing Regulation 2022

under the

Mandatory Disease Testing Act 2021

His Honour the Administrator, with the advice of the Executive Council, has made the following Regulation under the *Mandatory Disease Testing Act 2021*.

MARK SPEAKMAN, MP  
Attorney General

## Explanatory note

The object of this Regulation is to provide for the following matters relating to mandatory disease testing—

- (a) the content of a mandatory testing order,
- (b) submissions to a senior officer in relation to the determination of an application for a mandatory testing order,
- (c) the disclosure of blood test results,
- (d) delegation of the functions of senior officers and the Chief Health Officer,
- (e) prescribed classes of workers.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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## Mandatory Disease Testing Regulation 2022

under the

Mandatory Disease Testing Act 2021

### 1 Name of Regulation

This Regulation is the *Mandatory Disease Testing Regulation 2022*.

### 2 Commencement

This Regulation commences on 29 July 2022.

### 3 Definition

In this Regulation—

*the Act* means the *Mandatory Disease Testing Act 2021*.

**Note—** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

### 4 Content of mandatory testing order—the Act, s 18

- (1) For the Act, section 18(1)(g), a mandatory testing order must include the following—
  - (a) the name and contact details of the medical practice, if any, at which the medical practitioner specified in the mandatory testing order works,
  - (b) the date of birth of the third party, if known,
  - (c) for a mandatory testing order made by a senior officer—a statement of the following—
    - (i) the third party may apply to the Chief Health Officer under the Act, section 23 for a review of the senior officer’s decision to make the mandatory testing order,
    - (ii) the application for a review must be made by the third party within 1 business day of the third party being notified of the senior officer’s decision.
- (2) For the Act, section 18(2), the form for a mandatory testing order is prescribed in Schedule 1.

### 5 Submissions to senior officers—the Act, s 38(1)

Submissions made under the Act, sections 11(3)(a) and 11(4)(b) may be—

- (a) written or oral, and
- (b) given by audio or audio visual means.

### 6 Disclosure of blood test results—the Act, s 38(1)

To avoid doubt, a medical practitioner authorised by a worker to receive the third party’s blood test results on the worker’s behalf under the Act, section 22(1)(a) may disclose the blood test results to the worker.

## 7 Applications for review—the Act, s 38(2)(b)

- (1) An application for review made by a worker under the Act, section 23(1) must include a copy of the senior officer's determination and the reasons for the determination.
- (2) An application for review made by a third party under the Act, section 23(3) must include the following—
  - (a) a copy of the mandatory testing order,
  - (b) a copy of the third party's written submissions made to the senior officer under the Act, section 11(4)(b), if any.

## 8 Delegation—the Act, s 35

- (1) For the Act, section 35(1), the class comprising the following persons is prescribed—
  - (a) NSW Health Service senior executives,
  - (b) Public Service senior executives employed in Corrective Services NSW,
  - (c) Public Service senior executives employed within the Ministry of Health,
  - (d) Public Service senior executives employed in Youth Justice NSW within the Department of Communities and Justice,
  - (e) the Sheriff.
- (2) For the Act, section 35(2), the class comprising the following persons is prescribed—
  - (a) NSW Health Service senior executives,
  - (b) Public Service senior executives employed within the Ministry of Health.

- (3) In this section—

*Corrective Services NSW* has the same meaning as in the *Crimes (Administration of Sentences) Act 1999*.

*NSW Health Service senior executive* has the same meaning as in the *Health Services Act 1997*.

*Public Service senior executive* has the same meaning as in the *Government Sector Employment Act 2013*.

*Sheriff* has the same meaning as in the *Sheriff Act 2005*.

## 9 Law Enforcement Conduct Commission workers

- (1) The following are prescribed as a class of workers for the Act, Dictionary, definition of *worker*—
  - (a) a Commissioner of the Law Enforcement Conduct Commission (the *LECC*),
  - (b) a member of staff of the LECC.
- (2) The Secretary is both the senior officer and the funding provider for a Commissioner of the LECC.
- (3) The senior officer for a member of staff of the LECC is the Chief Commissioner of the LECC.
- (4) The funding provider for a member of staff of the LECC is the Secretary.

## Schedule 1 Form of mandatory testing order

section 4(2)

### Mandatory testing order under Mandatory Disease Testing Act 2021

#### Name of third party

[*Name of third party*] is required to attend [*name and address of place*] to provide blood as soon as practicable but no later than 2 business days after being served with this order.

#### Date of birth of third party

[*Date of birth of third party*].

#### Details of blood-borne diseases

The blood of [*name of third party*] must be tested for—

- \*all blood-borne diseases, or
- \* [*specific blood-borne diseases*].

*\*Delete whichever does not apply*

**Note—** *Blood-borne disease* is defined in the *Mandatory Disease Testing Act 2021* to mean HIV infection, Hepatitis B, Hepatitis C or other blood-borne disease prescribed by the regulations under that Act.

#### Details of worker's medical practitioner

[*Name of worker*] has authorised the following medical practitioner to receive the third party's blood test results on the worker's behalf—

Name of medical practitioner—

Telephone number—

Address—

Email address—

Name of medical practice at which the medical practitioner works—

Telephone number of medical practice—

Address of medical practice—

Email address of medical practice—

**Note 1—** More than one medical practitioner at a medical practice can be listed.

**Note 2—** Under the *Mandatory Disease Testing Act 2021*, section 22(1)(a), the third party's blood test results will be provided to the medical practitioner authorised by the worker to receive the blood test results on the worker's behalf.

#### Details of third party's medical practitioner—if applicable

[*Name of third party*] has authorised the following medical practitioner to receive the third party's blood test results on the third party's behalf—

Name of medical practitioner—

Telephone number—

Address—

Email address—

Name of medical practice at which the medical practitioner works—

Telephone number of medical practice—

Address of medical practice—

Email address of medical practice—

**Note—** More than one medical practitioner at a medical practice can be listed.

#### Notice to third party

It is an offence under the *Mandatory Disease Testing Act 2021*, section 27 to fail to comply with this order. The maximum penalty for the offence is imprisonment for 12 months or a fine of \$11,000, or both.

A third party may apply to the Chief Health Officer under the *Mandatory Disease Testing Act 2021*, section 23 for a review of the senior officer's decision to make this order. The application must be made within 1 business day of the third party being notified of the senior officer's decision.

**Notice to detained third party**

If the third party is a detained third party, reasonable force may be used to ensure that the third party complies with this order.

**Note— *Detained third party*** is defined in the *Mandatory Disease Testing Act 2021* to mean a third party who is in police custody or who is an inmate within the meaning of the *Crimes (Administration of Sentences) Act 1999*.