

# Public Health (Disposal of Bodies) Regulation 2002

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New South Wales

## Status Information

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### Authorisation

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# Public Health (Disposal of Bodies) Regulation 2002



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Public Health (Disposal of Bodies) Regulation 2002*.

### 2 Commencement

This Regulation commences on 1 September 2002.

**Note—**

This Regulation replaces Part 5 of the *Public Health Regulation 1991* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

**attending practitioner**, in relation to a dead person, means a medical practitioner who attended the person immediately before, or during the illness terminating in, the death of the person.

**body** means a body of a dead person.

**body preparation room** means that part of a mortuary that is used for the preparation of bodies for burial or cremation.

**burial** includes putting in a vault.

**cemetery authority** means the person or body of persons (including a council) by whom the cemetery's operations are directed.

**chief executive officer**, in relation to a hospital, has the same meaning as it has in Division 2 of Part 7 of the Act.

**coroner** means a person who exercises or performs the functions of a coroner in accordance with the *Coroners Act 2009*.

**cremation authority**, in relation to a crematory, means the person or body of persons by whom the crematory's operations are directed.

**dead person** includes a still-born child.

**death certificate** means a certificate given by a medical practitioner as to the cause of death.

**disinfectant** means a hospital grade disinfectant as defined in clause 2 of the [Therapeutic Goods Regulations 1990](#) of the Commonwealth.

**embalming** means the process of preserving a body by means of the removal of body fluids and arterially injecting the body with embalming fluids, or other means approved by the Director-General.

**exhumation** means the removal of a dead person's remains (not being ashes) from a grave or vault, but does not include their removal from one vault for immediate transfer to another vault in the same cemetery.

**funeral director** means a person (other than the operator of a mortuary transport service) who, in the conduct of the person's business, engages, for the purpose of burial, cremation or transport, in the collection, transport, storage, preparation or embalming of bodies or engages in the conduct of exhumations.

**holding room** means a room that includes refrigerated body storage facilities for at least 2 adult bodies but does not include a body preparation room.

**hospital** has the same meaning as it has in Division 2 of Part 7 of the Act.

**List A disease** means any one or more of the following conditions:

- Creutzfeldt-Jakob disease
- Hepatitis C
- Human immunodeficiency virus infection (HIV infection).

**List B disease** means any one or more of the following diseases:

- Diphtheria
- Plague
- Respiratory anthrax
- Smallpox
- Tuberculosis
- Any viral haemorrhagic fever (including Lassa, Marburg, Ebola and Congo-Crimean

fevers).

**medical referee** means a person qualified or appointed under clause 42 to be a medical referee.

**mortuary** means premises that are used, or intended to be used, for the preparation or storage of bodies as part of the arrangements for their burial or cremation, but does not include any premises (such as a hospital) in which bodies may be temporarily stored pending their transfer to a mortuary.

**mortuary transport service** means a service that, for fee, gain or reward, transports bodies for funeral directors.

**nearest surviving relative** means:

- (a) in relation to a still-born child—a parent, or sibling at or above the age of 16 years, of the child, and
- (b) in relation to a dead person who is not a still-born child—the spouse or de facto partner of the dead person immediately before death, a parent of the dead person, a child at or above the age of 16 years of the dead person or any relative of the dead person who was residing with the dead person when he or she died.

**Note—**

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

**refrigerated body storage facility** means a storage facility for bodies maintained at between 1 and 5 degrees Celsius.

**the Act** means the [Public Health Act 1991](#).

- (2) A reference in this Regulation to a publication is a reference to the publication as in force for the time being.

#### 4 Notes

Notes in the text of this Regulation do not form part of this Regulation.

## Part 2 Facilities

### 5 Premises for handling of bodies

- (1) A person must not, without the approval of the Director-General, use any premises other than a mortuary approved under the [Local Government Act 1993](#) for the embalming, or other preparation, of bodies for burial or cremation or for the placing of bodies in coffins for burial or cremation.
- (2) A person must not, without the approval of the Director-General, use any premises

other than a holding room or a mortuary for the storage of bodies for burial or cremation.

- (3) A person must not store a body in a vehicle except during the transport of the body or with the approval of the Director-General.
- (4) A person must not use a holding room for any purpose other than the storage of bodies.
- (5) A person must not, without the approval of the Director-General, use the facilities of a hospital for the purpose of the business of a funeral director or of the operator of a mortuary transport service except for the removal of bodies of persons who died in the hospital.
- (6) The Director-General may give approval:
  - (a) under subclause (1), (2) or (3)—either generally or in a particular case, or
  - (b) under subclause (5)—in a particular case.

Maximum penalty: 15 penalty units.

## **6 Facilities of body preparation rooms**

- (1) A person must not use a body preparation room unless it has the following:
  - (a) a vehicle reception area adjacent to it and so designed that the transfer of uncoffined bodies from area to room and room to area is screened from public view,
  - (b) at least one hand wash basin, with an adequate supply of hot and cold water and fitted with elbow operated, foot operated or hands-free taps,
  - (c) sufficient slabs, tables and other fittings for the preparation of bodies for burial or cremation constructed of smooth impervious material and so designed as to facilitate draining and their cleaning,
  - (d) refrigerated body storage facilities big enough for 2 adult bodies,
  - (e) one or more impervious containers, each fitted with an elbow operated or foot operated close-fitting cover or lid, for the reception and storage of all solid wastes arising from the preparation of bodies and for the reception and storage of all screenings from floor drains.
- (2) A person must not use the refrigerated body storage facilities in a body preparation room or holding room except to store bodies.

Maximum penalty: 15 penalty units.



## **7 Waste disposal**

A person must not dispose of any solid waste arising from the preparation of bodies for burial or cremation except as contaminated waste in a manner approved by the Director-General.

Maximum penalty: 10 penalty units.

## **8 Vehicles**

- (1) A funeral director must, for use in connection with the funeral director's business, provide:
  - (a) at least 1 hearse, and
  - (b) at least 1 body-collection vehicle.
- (2) Subclause (1) (b) is satisfied if a funeral director causes the bodies that the funeral director conveys to be transported by a mortuary transport service or public vehicle operated by a carrier of freight.
- (3) A funeral director or the operator of a mortuary transport service must not use for the transport of bodies the part of a vehicle that is used by the funeral director or service for other purposes.
- (4) A funeral director or the operator of a mortuary transport service must not use for any other purpose the part of a vehicle that is used by the funeral director or service for the transport of bodies.
- (5) If part of a vehicle has been used to transport a body, a person must not use, or permit the use of, that part for the transport of another body until it has been cleaned of any exudates from the first body.
- (6) A person must not dispose of a vehicle that that person has used for the transport of a body unless the vehicle has been cleaned since that use to remove any body exudates.
- (7) A person must not transport an unembalmed body unless:
  - (a) during that transport, the body is refrigerated so that it is exposed continuously to a temperature of less than 10 degrees Celsius, or
  - (b) the duration of the transport is 8 hours or less and the person has reason to believe that transporting the body without refrigeration will not prejudice public health or amenity.

Maximum penalty: 5 penalty units.

## **Part 3 Handling of bodies**

### **9 Retention of bodies by a person who is not a funeral director**

- (1) A person who is not a funeral director must not retain a body if more than 5 days have passed since death.
- (2) The Director-General may approve, in a particular case, of a body being retained for a longer time than that permitted by this clause, subject to any conditions that the Director-General considers appropriate.
- (3) Subclause (1) does not apply to a body that has been removed to premises licensed under the [Anatomy Act 1977](#) or that is the subject of an inquest under the [Coroners Act 2009](#).

Maximum penalty: 20 penalty units.

### **10 Retention of bodies by a funeral director**

- (1) A funeral director must not retain a body other than in a mortuary or holding room.
- (2) A funeral director who keeps a body in a mortuary or holding room and who has reason to believe that not refrigerating the body will prejudice public health or amenity must put the body in a refrigerated body storage facility.
- (3) However, a funeral director may cause the body to be removed from a refrigerated body storage facility:
  - (a) to another part of the mortuary, for a maximum of 8 hours a day for the purposes of preparing the body for burial or cremation, embalming the body or viewing of the body by mourners, or
  - (b) for the purpose of transporting the body for burial, interment or cremation, or
  - (c) for the purpose of transporting the body to another mortuary.
- (4) A funeral director must not retain a body, other than a body that has been embalmed, for more than 7 working days after the issue of a death certificate, a burial permit issued by a coroner or a cremation permit issued by a coroner in relation to the body.
- (5) The Director-General may approve, in a particular case, of a body being retained for a longer time than that permitted by this clause, subject to any conditions that the Director-General considers appropriate.

Maximum penalty: 20 penalty units.

### **11 Embalming of bodies**

- (1) A person must not embalm a body unless that person has a certificate of proficiency

of, or equivalent to, Certificate IV standard, issued by an institute approved by the Director-General.

- (2) A person must not embalm a body that the person has reason to believe is infected with a List B disease.

Maximum penalty: 20 penalty units.

## **12 Invasive body preparation procedures**

- (1) A person must not carry out a procedure on a body infected with a List A disease in which the dermis is pierced or cut unless the person has completed a training course, or a series of training courses, in mortuary practice, infection control procedures and occupational health and safety, being a course or course approved by the Director-General.

Maximum penalty: 15 penalty units.

- (2) This clause has effect on and from 1 March 2003.

## **13 Bodies to be placed in body bags**

- (1) A person must not remove the body of a dead person from a place unless:
- (a) the body has been placed and secured in a bag approved by the Director-General or a wrapping so approved in such a manner as to prevent the leakage of any body exudate or substance, and
  - (b) the name of, or an identification of, the dead person is clearly and indelibly written on the top outer surface of the bag or wrapping, and
  - (c) if subclause (3) or (4) applies—that subclause has also been complied with.

Maximum penalty: 15 penalty units.

- (2) The body bag or wrapping referred to in subclause (1):
- (a) is to be made of low density polyethylene film (or a similar material) of not less than 150 micrometres in thickness, and
  - (b) if the bag is used for enclosing the body of an adult it is to be (when flat) not less than 2.4 metres in length and 75 centimetres in width, or if for enclosing the body of a child, not less than 75 centimetres in length and 50 centimetres in width, and
  - (c) if a wrapping is used for enclosing the body of an adult it is to be (when opened and flat) not less than 2.4 metres in length and 2 metres in width, or if for enclosing the body of a child, not less than 1.5 metres in length.
- (3) If a person has reason to believe that a body is infected with a List A disease, the

person must ensure that the bag or wrapping referred to in subclause (1) (a), and any bag or wrapping used to replace that bag or wrapping, is clearly and indelibly marked with the words “INFECTIOUS DISEASE—LIST A—HANDLE WITH CARE”.

- (4) If a person has reason to believe that a body is infected with a List B disease, the person must ensure that the bag or wrapping referred to in subclause (1) (a), and any bag or wrapping used to replace that bag or wrapping, is clearly and indelibly marked with the words “INFECTIOUS DISEASE—LIST B—HANDLE WITH CARE”.
- (5) The person responsible for complying with this clause is:
  - (a) if the body is at a hospital—the chief executive officer, or
  - (b) if the body is at any other premises or place—the funeral director or other person removing the body.

#### **14 Protective clothing**

- (1) A person engaged in placing in a plastic bag or wrapping a body that the person has reason to believe is infected with an infectious disease must wear:
  - (a) a clean protective outer garment such as a gown, overalls or jumpsuit, and
  - (b) a clean pair of disposable gloves, and
  - (c) a disposable mask and appropriate eye protection.
- (2) The person who wears those items must ensure that they are placed, immediately after use, in a clean plastic bag and then laundered as soon as practicable or, if disposable, disposed of as soon as practicable as contaminated waste.

Maximum penalty: 5 penalty units.

#### **15 Removal of bodies from body bags**

- (1) A funeral director may remove from a body bag a body that the funeral director has no reason to believe is infected with a List A disease or a List B disease for the purpose of:
  - (a) embalming the body, or
  - (b) preparing the body for viewing, transport, burial or cremation, or
  - (c) transferring the body to a coffin.
- (2) A funeral director may remove from a body bag a body that the funeral director has reason to believe is infected with a List A disease for the purpose of:
  - (a) preparing the body for viewing, transport, burial or cremation, or

(b) transferring the body to a coffin.

- (3) After a funeral director has embalmed or prepared a body, the funeral director must place it in a coffin or in a new body bag approved by the Director-General.

Maximum penalty: 10 penalty units.

- (4) A person must not remove from a body bag required under clause 13 (4) a body that the person has reason to believe is infected with a List B disease.

Maximum penalty: 10 penalty units.

- (5) Subclause (4) does not apply to a body that is the subject of an inquest under the [Coroners Act 2009](#) or a post-mortem examination carried out under the [Human Tissue Act 1983](#).

## **16 Body viewing**

- (1) A funeral director may make a body available for viewing by mourners.

- (2) However, a funeral director must not make available for viewing a body infected with a List B disease or a body that the funeral director has reason to believe is infected with a List B disease.

Maximum penalty: 10 penalty units.

- (3) A funeral director who makes an unembalmed body available for viewing:

- (a) must not remove the body from refrigeration for a period longer than is necessary for making it available for viewing, and
- (b) unless the body is to be buried or cremated immediately, must replace the body under refrigeration after the viewing, and
- (c) must not allow the body to remain unrefrigerated for a period exceeding 8 hours in any day.

Maximum penalty: 5 penalty units.

## **17 48 hours' holding**

- (1) A person (other than a funeral director) must not keep a body in a holding room for more than 48 hours.

- (2) A person (other than a funeral director) who keeps a body in a holding room and who has reason to believe that not refrigerating the body will prejudice public health or amenity must put the body in the refrigerated body storage facility of the holding room.

Maximum penalty: 15 penalty units.

### **18 Register of bodies prepared in a mortuary**

- (1) A person who operates a mortuary must maintain a register of all bodies prepared in the mortuary.
- (2) The person must make an entry in the register relating to each body immediately after the body is prepared.
- (3) Each entry must include the following:
  - (a) the name, age and last address of the person whose body was prepared,
  - (b) the date of the person's death,
  - (c) the date the body was received,
  - (d) the date the body was removed from the mortuary,
  - (e) the name of the cemetery or crematory to which, or the person to whom, the body was delivered.

Maximum penalty: 10 penalty units.

### **19 Bodies to be placed in coffins**

Unless otherwise approved by the Director-General generally or in a particular case, a person must not bury or cremate a body unless:

- (a) the body has been placed in a coffin, and
- (b) the lid of the coffin has been securely sealed.

Maximum penalty: 10 penalty units.

### **20 Burial of bodies**

Unless otherwise approved by the Director-General in a particular case, a person who buries a body contained in a coffin must place the coffin so that its upper surface is not less than 900 millimetres below the natural surface level of the soil where it is buried.

Maximum penalty: 5 penalty units.

### **21 Bagging of bodies for freighting**

- (1) A person must not use, or agree to the use of, a vehicle (other than a hearse or body collection vehicle) for transporting a body that the person has reason to believe is infected with an infectious disease without informing the owner or driver of the vehicle that the body is so infected.
- (2) A funeral director must, before despatching a body by a carrier other than a funeral director or the operator of a mortuary transport service:

- (a) comply with the procedure in clause 13 (4) in relation to the body as if the funeral director has reason to believe the body is infected with a List B disease, and
- (b) enclose the body in a watertight coffin.

Maximum penalty: 10 penalty units.

## **22 Burials in certain areas prohibited**

- (1) A person must not place a body in any grave or vault unless that grave or vault is located:
  - (a) in a public cemetery, or
  - (b) in a private cemetery or other place approved for that purpose by a local authority, or
  - (c) on private land, where the area of landholding is 5 hectares or more and the location has been approved for that purpose by a local authority, or
  - (d) on land reserved under the [National Parks and Wildlife Act 1974](#) or acquired under Part 11 of that Act, where the location has been approved for that purpose by:
    - (i) a person or body (including a local council, trust or board of management within the meaning of that Act) in which the care, control and management of the land is vested, or
    - (ii) if no such person or body has been vested with the care, control and management of the land—the Director-General of the Department of Environment and Conservation.
- (2) A person must not bury a body in or on any land if to do so would make likely the contamination of a drinking water supply or a domestic water supply.

Maximum penalty: 10 penalty units.

## **23 Burials in vaults**

- (1) A person must not place a body in a vault unless:
    - (a) the body has been embalmed, then hermetically enclosed with material approved by the Director-General without any viewing panel in the enclosure and the body and enclosure placed in a coffin and the lid secured in position, or
    - (b) the conditions approved in relation to the body under subclause (2) are met.
- Maximum penalty: 5 penalty units.
- (2) The Director-General may, generally or in a particular case, approve other conditions under which a body may be placed in a vault.

## **24 Register of burials**

- (1) A cemetery authority must maintain a register of all burials carried out in the cemetery the operations of which it directs.
- (2) The cemetery authority must make in the register an entry relating to each burial immediately after the burial has been carried out.
- (3) Each entry must include the following:
  - (a) the name, age and last address of the person whose body or remains have been buried,
  - (b) the date of the person's death,
  - (c) the date of the burial,
  - (d) the section and allotment where the burial has been made,
  - (e) the name of the person (if any) who continues to hold any right of burial in that allotment,
  - (f) the name of the funeral director who transported the body to the cemetery,
  - (g) the fees paid to the cemetery authority for the burial.
- (4) If a cemetery authority ceases to exist, the person who was its last chief executive officer must ensure that the register is sent to the Director-General or otherwise disposed of as the Director-General may direct.

Maximum penalty: 10 penalty units.

## **Part 4 Exhumations**

### **25 Exhumation without approval prohibited**

- (1) A person must not exhume the remains of a body unless the exhumation of those remains has been:
  - (a) ordered by a coroner, or
  - (b) approved by the Director-General.
- (2) Despite subclause (1), a funeral director may, without a coroner's order or Director-General's approval, transfer a coffin from a vault in a cemetery to a mortuary for the purpose of the coffin being immediately repaired and returned to the vault.
- (3) A funeral director must return the coffin to the cemetery within 24 hours of its transfer pursuant to subclause (2).



Maximum penalty: 10 penalty units.

## **26 Application to exhume remains**

- (1) An application for approval to exhume the remains of the body of a dead person may be made to the Director-General by:
  - (a) an executor of the estate of the dead person, or
  - (b) the nearest surviving relative of the dead person, or
  - (c) if there is no such executor or relative available to make the application—a person who, in the opinion of the Director-General, is a proper person in all the circumstances to make the application.
- (2) Such an application is to be made to the Director-General in the approved form and is to be accompanied by:
  - (a) a certified copy of the death certificate relating to the dead person, and
  - (b) a statutory declaration as to the relationship of the applicant to the dead person and the dead person's wishes, if any, regarding the disposal of his or her body (so far as any such wishes are known to the applicant), and
  - (c) an application fee of \$295.

## **27 Approval to exhume remains**

- (1) The Director-General may:
  - (a) grant an approval to exhume the remains of a body, subject to such conditions as may be specified in the approval, or
  - (b) refuse the application.
- (2) An approval granted under this clause lapses at the expiration of 3 months after the date of the approval or within any longer time agreed to by the Director-General.

## **28 Exhumations not to take place without officer present**

- (1) A person must not proceed with an exhumation unless an officer of the Department of Health or an environmental health officer (whether an officer of the Department of Health or otherwise) is present at the exhumation.
- (2) A person must not proceed with an exhumation if an officer of the Department of Health, or an environmental health officer, present has ordered the exhumation to stop.

Maximum penalty: 10 penalty units.

## **Part 5 Crematories**

### **29 Cleanliness**

A cremation authority must keep a crematory whose operations it directs clean, tidy and in good working order.

Maximum penalty: 5 penalty units.

### **30 Closing of crematories**

- (1) The Minister may, on giving 28 days' notice in writing to a cremation authority, order the closing of a crematory whose operations are directed by the authority.
- (2) A cremation authority must not direct or permit the operation of a crematory the subject of an order under this clause after the expiration of the 28-day period until the order is revoked by the Minister.
- (3) Except where an order has been given pursuant to subclause (1), a cremation authority must, not less than 28 days before temporarily or permanently closing a crematory whose operations it directs:
  - (a) forward to the Minister notice of the intended closure, and
  - (b) publish a notice giving details of the intended closure in a newspaper circulating in the district where the crematory is located, and
  - (c) prominently display a copy of the notice at the entrance of the crematory.
- (4) A person must not re-open a crematory closed by a cremation authority without the approval of the Minister.

Maximum penalty: 20 penalty units.

## **Part 6 Cremation**

### **31 No refusal to cremate**

A cremation authority must not, without lawful excuse, refuse to accept a body for cremation.

Maximum penalty: 10 penalty units.

### **32 One body at a time**

A person must not cremate more than one body in the same crematory retort at any one time, except with the approval of the Director-General.

Maximum penalty: 10 penalty units.

### **33 Cremation within 4 hours**

A cremation authority must commence cremating a body within 4 hours of the delivery of the body to the crematory, unless it places the body in a holding room.

Maximum penalty: 5 penalty units.

### **34 No cremation against dead person's wishes**

A person must not cremate the body of a dead person if informed that the latter has left a written direction that his or her body was not to be cremated or that it was to be disposed of by some other means.

Maximum penalty: 10 penalty units.

### **35 No cremation without documentation**

- (1) A person must not cremate the remains of a body that has not been identified.
- (2) A cremation authority must not cremate the body of a dead person who is not a still-born child unless the authority has in its possession:
  - (a) an application for cremation under clause 36, and
  - (b) except where a cremation permit has been issued by a coroner under clause 40—a cremation certificate issued under clause 38, and
  - (c) a cremation permit issued under clause 39 or 40.
- (3) A cremation authority must not cremate a still-born child unless the authority has in its possession:
  - (a) an application for cremation under clause 37, and
  - (b) a cremation permit issued under clause 41.

Maximum penalty: 20 penalty units.

### **36 Cremation application: dead persons other than still-born children**

- (1) An application for cremation of a dead person who is not a still-born child is to be made in the approved form to a medical referee or coroner.
- (2) The form may require any information contained in the form to be supported by a statutory declaration.
- (3) The application may be made by:
  - (a) an executor of the estate of the dead person, or
  - (b) a nearest surviving relative of the dead person, or

- (c) where there is no such executor or relative available to make the application—a person who, in the opinion of the medical referee or coroner, is a proper person in all the circumstances to make the application.

### **37 Cremation application: still-born children**

- (1) An application for cremation of a still-born child is to be made in the approved form to a medical referee.
- (2) The form may require any information contained in the form to be supported by a statutory declaration.
- (3) The application may be made by:
  - (a) a nearest surviving relative of the child, or
  - (b) where there is no such relative available to make the application—a person who, in the opinion of the medical referee, is a proper person in all the circumstances to make the application.

### **38 Cremation certificate**

- (1) An attending practitioner may issue a cremation certificate for the body of a dead person:
  - (a) if the certificate is in the approved form, and
  - (b) if the practitioner is able to certify definitely the cause of death of the person, and
  - (c) if the person is not one whose death is examinable under the [Coroners Act 2009](#) by a coroner.
- (2) A medical practitioner expert in anatomical pathology may issue a cremation certificate for the body of a dead person:
  - (a) if the certificate is in the approved form, and
  - (b) if the practitioner has carried out a post-mortem examination of the body, and
  - (c) if the person is not one whose death is examinable under the [Coroners Act 2009](#) by a coroner.
- (3) A cremation certificate issued for the body of a dead person by a person registered as a medical practitioner in another State or Territory, under legislation of that State or Territory regulating the cremation of bodies, is taken to have been issued under this clause.

### **39 Medical referee's cremation permit: dead persons who are not still-born children**

- (1) A medical referee who receives:

- (a) an application for cremation of the body of a dead person made under clause 36, and
  - (b) a cremation certificate issued under clause 38 for the body,
- may issue a cremation permit for the body in the approved form.
- (2) However, a medical referee must not issue a cremation permit for the body of a dead person if:
- (a) the death of the person is examinable under the *Coroners Act 2009* by a coroner, or
  - (b) the person left a written direction that his or her body was not to be cremated or that it was to be disposed of by some other means, or
  - (c) the medical referee has not made an external examination of the body, or
  - (d) the medical referee is not satisfied that the identity of the body has been correctly disclosed in the application for cremation or in the cremation certificate, or
  - (e) the medical referee is not satisfied that the cause of death has been correctly disclosed in the cremation certificate, or
  - (f) the application for cremation or the cremation certificate appears to the medical referee to be otherwise incorrect or incomplete, or
  - (g) the same medical referee issued a cremation certificate in respect of the body.

#### **40 Coroner's cremation permit**

- (1) A coroner who receives an application for cremation of the body of a person whose death is examinable under the *Coroners Act 2009* by the coroner may issue a cremation permit in the approved form.
- (2) However, a coroner must not issue a cremation permit for the body of a dead person if:
  - (a) the person left a written direction that his or her body was not to be cremated or that it was to be disposed of by some other means, or
  - (b) the application for cremation appears to the coroner to be incorrect or incomplete.
- (3) A cremation permit issued for the body of a dead person by a person who exercises or performs the functions of a coroner in another State or Territory, under legislation of that State or Territory regulating the cremation of bodies, is taken to have been issued under this clause.

#### **41 Medical referee's permit: still-born children**

- (1) A medical referee who receives an application made under clause 37 for cremation of the body of a still-born child may issue a cremation permit in the approved form.
- (2) However, a medical referee must not issue a cremation permit for the body of a still-born child unless:
  - (a) the child has been certified to be still-born by a medical practitioner who was in attendance at the delivery of the child, or
  - (b) the medical referee is satisfied, after such inquiries as the medical referee thinks necessary, that the child was still-born.

#### **42 Medical referees**

A person may perform the functions of a medical referee under this Part if the person is:

- (a) a medical officer of health, or
- (b) a medical superintendent of a public hospital (within the meaning of the [Health Services Act 1997](#)), or
- (c) a medical practitioner who has been appointed by the Director-General as a medical referee for the purposes of clauses 39 and 41, or
- (d) a person who is duly registered as a medical practitioner under the law in force in another State or Territory and who has been appointed by the Director-General as a medical referee for the purposes of clauses 39 and 41.

#### **43 Ashes**

- (1) After cremating the body of a dead person, a cremation authority must, in accordance with the reasonable written directions of the person (or with the reasonable directions of the applicant for the cremation):
  - (a) give the ashes to the applicant, or
  - (b) dispose of the ashes in a burial ground or in land adjoining the crematory reserved for the burial of ashes, or
  - (c) otherwise retain or dispose of the ashes.
- (2) If ashes are, in accordance with subclause (1), to be given by a cremation authority to the applicant, and the applicant does not take them within a reasonable time, the cremation authority must give 14 days' notice to the applicant of its intention to dispose of the ashes before it does dispose of them.

Maximum penalty: 10 penalty units.

#### **44 Register of cremations**

- (1) A cremation authority must maintain in the approved form a register of all cremations carried out by it.
- (2) A cremation authority must make in the register an entry relating to each cremation immediately after the cremation has taken place, except that it must enter details relating to the disposal of ashes as soon as the ashes have been disposed of.

Maximum penalty: 10 penalty units.

#### **45 Keeping of register and documents**

- (1) A cremation authority must keep all applications, certificates, permits and other documents relating to any cremation carried out by it and mark them with a number corresponding to the number in the register referred to in clause 44, and file them.
- (2) The documents referred to in subclause (1) (but not the register of cremations or any part of it) may be destroyed by the cremation authority after the expiration of 15 years from the date of the cremation to which they relate.
- (3) When a crematory is closed, its cremation authority must send all registers and documents relating to the cremations that have taken place there to the Director-General or otherwise dispose of them as the Director-General may direct.

Maximum penalty: 20 penalty units.

#### **46 (Repealed)**

### **Part 7 Register of mortuaries and crematories**

#### **47 Register of mortuaries and crematories**

The Department is to maintain a register of mortuaries and crematories.

#### **48 Notification of details of mortuaries and crematories**

- (1) A person who operates a mortuary or crematory must notify the Department of the following matters for inclusion on the register:
  - (a) the name and location of the mortuary or crematory,
  - (b) the name and address of the person who operates the mortuary or crematory,
  - (c) the telephone number of the mortuary or crematory or of the person who operates the mortuary or crematory,
  - (d) in the case of a mortuary—the name and address of any funeral director that has access to the mortuary.

Maximum penalty: 20 penalty units.

- (2) A fee of \$50 is payable when a notification is given pursuant to subclause (1).
- (3) If any of the details notified in relation to a mortuary or crematory change, the person who operates the mortuary or crematory must notify the Department of that change, within 28 days after the change. No fee is payable in relation to the notification.

Maximum penalty: 20 penalty units.

- (4) (Repealed)

## **Part 8 General**

### **49 Inspection**

- (1) An environmental health officer may enter and inspect a mortuary or premises that the officer has reason to suspect are mortuaries.
- (2) An environmental health officer may enter a crematory and inspect any equipment or apparatus at the crematory.
- (3) An environmental health officer may enter a cemetery and inspect any part of the cemetery.
- (3A) An environmental health officer may enter and inspect a holding room.
- (4) An environmental health officer may inspect any register or other record or document at a mortuary, crematory, cemetery or holding room and take copies of or extracts from the register, record or document.
- (5) An environmental health officer may enter any premises used by a mortuary transport service and may inspect any records, equipment or apparatus used by the mortuary transport service.

### **50 Public access to registers**

- (1) A cemetery authority must allow members of the public to inspect the register of burials maintained by the authority.
- (2) A cremation authority must allow members of the public to inspect the register of cremations maintained by the authority.
- (3) An authority must do so:
  - (a) without charge to the public, and
  - (b) during the normal business hours of the authority.
- (4) An authority must also provide copies of entries in the register maintained by it on



request by members of the public, but may charge them the reasonable cost of providing the copies.

#### **51 Guidelines as defence**

It is a defence to a prosecution for an offence against this Regulation if the defendant satisfies the court that the act or omission constituting the offence was done in compliance with any guidelines published by the Department of Health.

#### **52 Saving**

Anything done or omitted under Part 5 of the *Public Health Regulation 1991* is taken to have been done or omitted under this Regulation.