

# Public Health Act 2010 No 127

[2010-127]



New South Wales

## Status Information

### Currency of version

Historical version for 8 July 2016 to 6 April 2017 (accessed 22 July 2024 at 2:03)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Water Industry Competition Amendment \(Review\) Act 2014 No 57](#) (not commenced)
- **See also**  
[Public Health Amendment \(Registered Nurses in Nursing Homes\) Bill 2016](#) [Non-government Bill: Hon R L Brown, MLC]  
[Local Government Amendment \(Parliamentary Inquiry Recommendations\) Bill 2016](#) [Non-government Bill: Rev the Hon F J Nile, MLC]  
[Public Health Amendment \(Vaccination of Children Attending Child Care Facilities\) Bill 2017](#) [Non-government Bill: the Hon Walt Secord, MLC]

### Authorisation

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New South Wales

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# Public Health Act 2010 No 127



New South Wales

An Act with respect to public health.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Public Health Act 2010*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects

(1) The objects of this Act are as follows:

- (a) to promote, protect and improve public health,
- (b) to control the risks to public health,
- (c) to promote the control of infectious diseases,
- (d) to prevent the spread of infectious diseases,
- (e) to recognise the role of local government in protecting public health.

(2) The protection of the health and safety of the public is to be the paramount consideration in the exercise of functions under this Act.

### 4 Responsibilities of local government relating to environmental health

- (1) A local government authority has, in relation to its area, the responsibility to take appropriate measures to ensure compliance with the requirements of this Act in relation to public swimming pools and spa pools, regulated systems and premises on which skin penetration procedures are carried out (as referred to in Part 3).
- (2) In particular, a local government authority has the responsibility of appointing authorised officers to enable it to exercise its functions under this Act and ensuring that its authorised officers duly exercise their functions under this Act.

**Note—**

The Secretary is responsible for providing guidance and support to local government authorities in the exercise of their functions under this Act but may also (in appropriate circumstances) exercise compliance functions relating to environmental health.

**5 Definitions**

(1) In this Act:

**approved form** means a form approved for the time being by the Secretary.

**area** means:

- (a) in relation to a council within the meaning of the [Local Government Act 1993](#), the area for which the council is constituted by that Act, or
- (b) in relation to the Western Lands Commissioner, the part of the Western Division of the State that is not within the area of a council, or
- (c) in relation to the Lord Howe Island Board, Lord Howe Island.

**authorised officer** means a person who is appointed as an authorised officer under section 126.

**chief executive officer** of a hospital means the person responsible for the day to day administration of the affairs of the hospital.

**Chief Health Officer** means the Chief Health Officer of the Department.

**Department** means the Ministry of Health.

**drinking water**—see section 13.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**health practitioner** has the same meaning as it has in the [Health Care Complaints Act 1993](#).

**health service** has the same meaning as it has in the [Health Care Complaints Act 1993](#).

**hospital** means:

- (a) a public hospital within the meaning of the [Health Services Act 1997](#), or
- (b) a declared mental health facility within the meaning of the [Mental Health Act 2007](#), or

- (c) a private health facility within the meaning of the [Private Health Facilities Act 2007](#), or
- (d) a nursing home, or
- (e) any other institution declared by the regulations to be a hospital for the purposes of this definition.

**improvement notice** means a notice under section 42.

**International Statistical Classification of Diseases and Related Health Problems** means the document published under that title by the World Health Organization, Geneva, as in force from time to time.

**local government authority** means:

- (a) a council within the meaning of the [Local Government Act 1993](#), or
- (b) the Western Lands Commissioner, or
- (c) the Lord Howe Island Board.

**member of the NSW Health Service** has the same meaning as it has in the [Health Services Act 1997](#).

**notifiable disease** means a medical condition listed in Schedule 2.

**nursing home** means a facility at which residential care (within the meaning of the [Aged Care Act 1997](#) of the Commonwealth) is provided, being:

- (a) a facility at which that care is provided in relation to an allocated place (within the meaning of that Act) that requires a high level of residential care (within the meaning of that Act), or
- (b) a facility that belongs to a class of facilities prescribed by the regulations.

**occupier** of premises or a part of premises (including premises that are vacant) means:

- (a) except as provided by paragraph (b), the owner of the premises or part, or
- (b) if any other person is entitled to occupy the premises or part to the exclusion of the owner, the person so entitled.

**premises** includes any land, temporary structure, vehicle or vessel.

**professional council** has the same meaning as it has in the [Health Care Complaints Act 1993](#).

**prohibition order** means an order under section 45.

**public authority** means an incorporated or unincorporated body constituted by or under an Act for a public purpose.

**public health officer** means a public health officer appointed under section 121.

**public health order** means a public health order referred to in section 62.

**public health organisation** has the same meaning as it has in the [Health Services Act 1997](#).

**public place** means a place (including a place in any vehicle or vessel) that the public, or a section of the public, is entitled to use or that is open to, or is used by, the public or a section of the public (whether on payment of money, by virtue of membership of a club or other body, or otherwise).

**registration authority** has the same meaning as it has in the [Health Care Complaints Act 1993](#).

**regulated system**—see section 26.

**scheduled medical condition** means any medical condition listed in Schedule 1.

**Secretary** means the Secretary of the Ministry of Health.

**skin penetration procedure** means any procedure (whether medical or not) that involves skin penetration (such as acupuncture, tattooing, ear piercing or hair removal), and includes any procedure declared by the regulations to be a skin penetration procedure, but does not include:

- (a) any procedure carried out by a health practitioner registered under the Health Practitioner Regulation National Law, or by a person acting under the direction or supervision of a registered health practitioner, in the course of providing a health service, or
- (b) any procedure declared by the regulations not to be a skin penetration procedure.

**supplier of drinking water** means any of the following:

- (a) Sydney Water Corporation,
- (b) Hunter Water Corporation,
- (c) a water supply authority within the meaning of the [Water Management Act 2000](#),
- (d) a local council or a county council exercising water supply functions under Division 2 of Part 3 of Chapter 6 of the [Local Government Act 1993](#),
- (e) the Lord Howe Island Board,

- (f) a licensed network operator or a licensed retail supplier within the meaning of the *Water Industry Competition Act 2006*,
- (g) any person who treats or supplies water on behalf of a person referred to in any of the preceding paragraphs,
- (h) any person who supplies drinking water in the course of a commercial undertaking (other than that of supplying bottled or packaged drinking water), being a person who has not received the water:
  - (i) from a person referred to in any of the preceding paragraphs, or
  - (ii) in the form of bottled or packaged water,
- (i) any person who receives water from a person referred to in this definition and who supplies drinking water from a water carting vehicle in the course of a commercial undertaking.

**temporary structure** includes a booth, tent or other temporary enclosure (whether or not part of the booth, tent or enclosure is permanent), and also includes a mobile structure.

(2) Notes included in this Act do not form part of this Act.

**Note—**

For the purposes of comparison, a number of provisions of this Act contain bracketed notes in headings, drawing attention (“cf”) to equivalent or comparable (though not necessarily identical) provisions of the previous public health legislation. Abbreviations used include 1991 Act (the *Public Health Act 1991*), Microbial Control Reg (the *Public Health (Microbial Control) Regulation 2000*), Swimming Pools Reg (the *Public Health (Swimming Pools and Spa Pools) Regulation 2000*), and Skin Penetration Reg (the *Public Health (Skin Penetration) Regulation 2000*).

**6 Act binds Crown** (cf 1991 Act, s 81)

- (1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.
- (2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

**Part 2 General public health**

**7 Power to deal with public health risks generally** (cf 1991 Act, s 5)

- (1) This section applies if the Minister considers on reasonable grounds that a situation has arisen that is, or is likely to be, a risk to public health.
- (2) In those circumstances, the Minister:
  - (a) may take such action, and

- (b) may by order give such directions,  
as the Minister considers necessary to deal with the risk and its possible consequences.
- (3) Without limiting subsection (2), an order may declare any part of the State to be a public health risk area and, in that event, may contain such directions as the Minister considers necessary:
  - (a) to reduce or remove any risk to public health in the area, and
  - (b) to segregate or isolate inhabitants of the area, and
  - (c) to prevent, or conditionally permit, access to the area.
- (4) An order must be published in the Gazette as soon as practicable after it is made, but failure to do so does not invalidate the order.
- (5) Unless it is earlier revoked, an order expires at the end of 90 days after it was made or on such earlier date as may be specified in the order.
- (6) Action may not be taken, and an order has no effect, in relation to any part of the State for which a state of emergency exists under the *State Emergency and Rescue Management Act 1989*.
- (7) An application may be made to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of any of the following decisions:
  - (a) any action taken by the Minister under this section other than the giving of a direction by an order under this section,
  - (b) any direction given by any such order.

**8 Power to deal with public health risks during state of emergency** (cf 1991 Act, s 4)

- (1) This section applies in relation to any part of the State for which a state of emergency exists under the *State Emergency and Rescue Management Act 1989* (**the 1989 Act**) if, after consultation with the Minister administering that Act, the Minister considers on reasonable grounds that the emergency is, or is likely to be, a risk to public health.
- (2) In these circumstances, the Minister, with the agreement of the Minister administering the 1989 Act:
  - (a) may take such action, and
  - (b) may by order give such directions,  
as the Minister considers necessary to deal with the risk and its possible

consequences.

- (3) Without limiting subsection (2), an order may direct:
  - (a) all persons in a specified group, or
  - (b) all persons residing in a specified area,to submit themselves for medical examination in accordance with the order.
- (4) An order must be published in the Gazette as soon as practicable after it is made, but failure to do so does not invalidate the order.
- (5) Unless it is earlier revoked, an order expires when the relevant state of emergency ceases to exist.
- (6) Action taken (including any order made) under this section has effect as if it had been taken in the execution of Division 4 of Part 2 of the 1989 Act.

**Note—**

Consequently, it is an offence under that Act to obstruct or hinder the Minister administering that Act in the exercise of any such function (section 40), and no proceedings may be brought against any person (including the Crown) as a consequence of any damage, loss, death or injury arising from the exercise of any such function (section 41).

**9 Power to deal with public health risks arising from conduct of public authorities** (cf 1991 Act, s 9)

- (1) This section applies if the Minister considers that, because of an act or omission of a public authority, or of any person acting on behalf of a public authority, a situation has arisen that is, or is likely to be, a risk to public health.
- (2) In these circumstances, the Minister may, by order in writing served on the public authority or the chief executive officer (however described) of the authority, direct the public authority or the chief executive officer to take specified action to minimise or rectify any adverse consequences of the act or omission.
- (3) If a public authority or the chief executive officer (however described) of a public authority considers that, for any reason, a situation has arisen that is, or is likely to be, a risk to public health, the public authority or chief executive officer is to notify the Minister of that fact.

**10 Offence not to comply with Ministerial direction**

A person who:

- (a) is subject to a direction under section 7, 8 or 9, and
- (b) has notice of the direction,

must not, without reasonable excuse, fail to comply with the direction.

Maximum penalty:

- (a) in the case of an individual—100 penalty units, or imprisonment for 6 months, or both, and, in the case of a continuing offence, a further 50 penalty units for each day the offence continues, or
- (b) in the case of a corporation—500 penalty units and, in the case of a continuing offence, a further 250 penalty units for each day the offence continues.

**11 Power to close public premises on public health grounds** (cf 1991 Act, s 8)

- (1) If the Secretary considers that access to any premises on which the public, or sections of the public, are required, permitted or accustomed to congregate should be restricted or prohibited in order to protect public health, the Secretary may, by order, direct that access to the premises be restricted or prohibited as specified in the order.
- (2) An order must be published in the Gazette as soon as practicable after it is made, but failure to do so does not invalidate the order.
- (3) In the case of premises that are not under the control of a Minister, any person who:
  - (a) controls, or is involved in the control of, the premises, and
  - (b) has notice of the direction,

must take such reasonably practicable action as is necessary to comply with the direction.

Maximum penalty:

- (a) in the case of an individual—100 penalty units, or imprisonment for 6 months, or both and, in the case of a continuing offence, a further 50 penalty units for each day the offence continues, or
- (b) in the case of a corporation—500 penalty units and, in the case of a continuing offence, a further 250 penalty units for each day the offence continues.

**12 Power to direct disinfection or destruction of noxious articles** (cf 1991 Act, s 6)

- (1) If the Secretary suspects that there is a noxious article on any premises, the Secretary may, by order in writing, authorise any person to enter the premises, seize anything that appears to be a noxious article and, there or elsewhere, disinfect or destroy it.
- (2) A person (other than a public authority) must not:
  - (a) transfer possession of an article to another person, or
  - (b) expose an article to another person, or



(c) remove an article from any premises the subject of an order under subsection (1), if the person knows it to be a noxious article.

Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.

- (3) A public authority has a duty to avoid doing anything that, if done by a person other than a public authority, would be an offence under this section.
- (4) A person who suffers damage as a result of the disinfection or destruction of an article is entitled to reasonable compensation unless the condition of the article that necessitated its disinfection or destruction was attributable to that person's act or default.
- (5) Any such compensation is payable out of money to be provided by Parliament.
- (6) In this section, **noxious article** means any article or animal that:
- (a) has been in contact with a person who has an infectious disease that is transmissible by contact with the article or animal, or
  - (b) is or is likely to be infested with vermin, or
  - (c) is or is likely to be a risk to health as a result of its having been in contact with any article, person or animal that is infested with vermin.

## Part 3 Environmental health

### Division 1 Safety measures for drinking water

#### 13 Definitions (cf 1991 Act, s 10A)

In this Division:

**boil water advice** for drinking water means advice to the effect that the water should not be used for human consumption (or for purposes connected with human consumption) until after it has been boiled or otherwise treated.

**drinking water** means water that is intended, or likely, to be used for human consumption, or for purposes connected with human consumption, such as:

- (a) the washing or cooling of food, or
- (b) the making of ice for consumption, or for the preservation of unpackaged food, whether or not the water is used for other purposes.

**treatment** of water means any process or technique used to improve the quality of water.

**14 Evidentiary provision** (cf 1991 Act, s 10K)

A certificate that is issued by the Minister, the Secretary or the Chief Health Officer and that states that, on a specified day, he or she gave a specified direction under this Division to a specified person is admissible in any legal proceedings as prima facie evidence of the fact or facts so stated.

**15 Drinking water must be fit for human consumption** (cf 1991 Act, s 10IA)

A person must not, by means of a reticulated water system, supply any other person with drinking water that is not fit for human consumption.

Maximum penalty:

- (a) in the case of an individual—2,500 penalty units, or 12 months imprisonment, or both, or
- (b) in the case of a corporation—10,000 penalty units.

**16 Power to take action with respect to unsafe water** (cf 1991 Act, s 10I)

- (1) The Minister may take such action, and by order give such directions, as the Minister considers necessary:
  - (a) to restrict or prevent the use of unsafe water, and
  - (b) to bring unsafe water to such a condition that it is no longer unsafe water.
- (2) Before giving a direction to a supplier of drinking water constituted under an Act, the Minister is to consult with the Minister responsible for the Act under which the supplier is constituted.
- (3) In this section, **unsafe water** means:
  - (a) drinking water that the Minister suspects to be unfit for human consumption, or
  - (b) any other water that the Minister suspects is, or is likely to be, a risk to public health.

**17 Offence not to comply with Ministerial direction**

- (1) A person who:
  - (a) is subject to a direction under section 16, and
  - (b) has notice of the direction,must not, without reasonable excuse, fail to comply with the direction.

Maximum penalty:

- (a) in the case of an individual—2,500 penalty units or 12 months imprisonment, or both, and, in the case of a continuing offence, a further 500 penalty units for each day the offence continues, or
  - (b) in the case of a corporation—10,000 penalty units and, in the case of a continuing offence, a further 2,000 penalty units for each day the offence continues.
- (2) If a direction under section 16 is not complied with, the Minister may take the action referred to in the direction and:
- (a) unless the person represents the Crown, may recover an amount equal to the cost of doing so as a debt owed by the person to the Crown, or
  - (b) if the person represents the Crown, may require the person to pay to the Secretary an amount equal to the cost of doing so.

**18 Power to direct testing of drinking water** (cf 1991 Act, s 10G)

- (1) The Secretary may, by notice in writing, direct a supplier of drinking water to carry out such tests on the drinking water that it has available for supply, or on any substance used in or produced by the treatment of any such water, as the Secretary considers appropriate.
- (2) Any such direction may specify that the test to be carried out on water is to be carried out in any one or more of the following ways:
- (a) on the water in its raw state,
  - (b) while the water is undergoing treatment,
  - (c) after the water has been treated or partly treated.

**19 Power to direct production of information** (cf 1991 Act, s 10H)

- (1) The Secretary may, by notice in writing, direct a supplier of drinking water to produce to the Secretary such information as the Secretary may specify concerning:
- (a) the quality of the drinking water that the supplier has available for supply, and
  - (b) the methods by which the water is treated.
- (2) The information to be produced may include (but is not limited to) the following:
- (a) copies of relevant records of the supplier,
  - (b) the results of any tests required under this Division.
- (3) The information is to be provided in such form and manner as the Secretary may direct.

## **20 Offence not to comply with Secretary's direction**

- (1) A supplier of drinking water to which a direction is given under section 18 or 19 must not, without reasonable excuse, fail to comply with the direction.

Maximum penalty:

- (a) in the case of an individual—500 penalty units, or imprisonment for 6 months, or both, and, in the case of a continuing offence, a further 100 penalty units for each day the offence continues, or
  - (b) in the case of a corporation—2,000 penalty units and, in the case of a continuing offence, a further 400 penalty units for each day the offence continues.
- (2) If a direction under section 18 or 19 is not complied with, the Secretary may take the action referred to in the direction and:
    - (a) unless the supplier of drinking water represents the Crown, may recover an amount equal to the cost of doing so as a debt owed by the supplier to the Crown, or
    - (b) if the supplier represents the Crown, may require the supplier to pay to the Secretary an amount equal to the cost of doing so.

## **21 Chief Health Officer responsible for determining necessity for boil water advices** (cf 1991 Act, s 10E)

The Chief Health Officer may from time to time decide, in relation to any supplier of drinking water:

- (a) whether or not it should issue a boil water advice for the drinking water it supplies or has available for supply, and
- (b) whether or not it should provide additional information to the public in connection with any boil water advice it issues, and
- (c) whether or not a boil water advice is to be retracted or corrected.

## **22 Advice to public** (cf 1991 Act, s 10B)

- (1) The Chief Health Officer may from time to time prepare advice, for the benefit of the public, concerning the safety of available drinking water (or drinking water available from a particular supplier of drinking water) and any possible risks to health involved in the consumption of that water.
- (2) The advice may include a boil water advice.
- (3) The Chief Health Officer is to provide the advice in writing to the relevant supplier of drinking water.

- (4) The supplier of drinking water to whom the advice is provided must issue the advice to the public in such form and manner as the Chief Health Officer may direct by notice in writing.

Maximum penalty:

- (a) in the case of an individual—100 penalty units, or imprisonment for 6 months, or both, or
- (b) in the case of a corporation—500 penalty units.
- (5) The Chief Health Officer may also issue the advice to the public as the Chief Health Officer sees fit.

**23 Correction of misleading information** (cf 1991 Act, s 10C)

- (1) The Chief Health Officer may, by notice in writing, direct a supplier of drinking water to retract or correct any information or advice issued, by or on behalf of the supplier, to the public in relation to the safety of the supplier's drinking water if the Chief Health Officer is of the opinion that the information or advice is inaccurate, incomplete or otherwise misleading.
- (2) The Chief Health Officer may specify any one or more of the form, content and manner of the retraction or correction and of its publication.
- (3) A supplier of drinking water to which a direction is given under this section must not, without reasonable excuse, fail to comply with the direction.

Maximum penalty:

- (a) in the case of an individual—500 penalty units and, in the case of a continuing offence, a further 100 penalty units for each day the offence continues, or
- (b) in the case of a corporation—2,000 penalty units and, in the case of a continuing offence, a further 400 penalty units for each day the offence continues.
- (4) If a direction given to a supplier of drinking water is not complied with, the Chief Health Officer may take the action referred to in the direction and:
- (a) unless the supplier of drinking water represents the Crown, may recover an amount equal to the cost of doing so as a debt owed by the person to the Crown, or
- (b) if the supplier represents the Crown, may require the person to pay to the Secretary an amount equal to the cost of doing so.

**24 Protection from liability** (cf 1991 Act, s 10J)

- (1) The provision of any information or advice concerning drinking water by the Chief

Health Officer exercising any function under this Division, or by a supplier of drinking water pursuant to a direction under this Division, in good faith for the purpose of executing this Act does not subject:

- (a) the State, or
  - (b) a Minister of the Crown in right of New South Wales, or
  - (c) a member of staff of the Department, or
  - (d) a member of the NSW Health Service, or
  - (e) the supplier or any of its staff,
- to any action, liability, claim or demand.

- (2) A reference in this section to the exercise by the Chief Health Officer of a function includes a reference to a decision by the Chief Health Officer not to exercise that function.

## **25 Quality assurance programs** (cf 1991 Act, s 10M)

- (1) A supplier of drinking water must establish, and adhere to, a quality assurance program that complies with the requirements prescribed by the regulations.
- (2) The regulations may make provision for or with respect to any of the following:
- (a) the tests on water and other substances to be carried out by a supplier of drinking water pursuant to this Division,
  - (b) the records to be maintained by a supplier.
- (3) The Chief Health Officer may, by notice in writing, exempt a supplier of drinking water or class of suppliers from subsection (1) if the Chief Health Officer is satisfied that the supplier, or class of suppliers, is subject to other appropriate licensing or other regulatory requirements.

## **Division 2 Legionella control**

### **26 Definitions** (cf 1991 Act, s 44)

In this Division:

**duly qualified**, in relation to a person who installs, maintains or operates a regulated system, means a person who might reasonably be expected to be competent to do so.

**install** includes construct.

**maintain** includes repair, inspect, carry out preventive servicing and clean.

**prescribed installation requirements** means requirements prescribed by the regulations with respect to the design and installation of a regulated system.

**prescribed maintenance requirements** means requirements prescribed by the regulations with respect to the maintenance of a regulated system.

**prescribed operating requirements** means requirements prescribed by the regulations with respect to the operation of a regulated system.

**regulated system** means any of the following:

- (a) an **air-handling system**, being a system designed for the purpose of directing air in a positive and controlled manner to and from specific enclosures by means of air-handling plant, ducts, plenums, air-distribution devices and automatic controls,
- (b) a **hot water system**, being a system designed to heat and deliver water at a temperature of at least 60°C at each outlet point,
- (c) a **humidifying system**, being a system for adding moisture to air in order to raise its humidity,
- (d) a **warm-water system**, being a system designed to heat and deliver water at a temperature of less than 60°C at each outlet point,
- (e) a **water-cooling system**, being:
  - (i) a device for lowering the temperature of water or other liquid by evaporative cooling, or
  - (ii) an evaporative condenser that incorporates a device containing a refrigerant or heat exchanger,together with its associated equipment and pipe work,
- (f) any other system for the treatment of air or water that is declared by the regulations to be a regulated system for the purposes of this Division.

## **27 Exemption of certain premises**

This Division does not apply to or in respect of any regulated system installed on premises that is declared by the regulations to be exempt from the operation of this Division.

## **28 Installation of regulated systems** (cf 1991 Act, s 45)

- (1) If a regulated system is installed on any premises otherwise than in accordance with the prescribed installation requirements (including any design requirements of those requirements), the occupier of the premises at the time the system is installed is guilty of an offence.

Maximum penalty:

- (a) in the case of an individual—200 penalty units, or
- (b) in the case of a corporation—1,000 penalty units.

(2) It is a defence to proceedings for an offence under subsection (1) if the occupier satisfies the court that the regulated system was installed by a duly qualified person.

(3) If a duly qualified person:

- (a) is engaged by the occupier of any premises to install a regulated system on the premises, and
- (b) fails to ensure that the prescribed installation requirements are complied with, that person is guilty of an offence.

Maximum penalty:

- (a) in the case of an individual—100 penalty units for a first offence or 200 penalty units, or imprisonment for 12 months, or both, for a second or subsequent offence, or
- (b) in the case of a corporation—500 penalty units for a first offence or 1,000 penalty units for a second or subsequent offence.

(4) If a duly qualified person who is engaged by the occupier of any premises to install a regulated system on the premises engages a person other than an employee (a **subcontractor**) to install the system, the subcontractor is guilty of an offence if the subcontractor fails to ensure that the prescribed installation requirements are complied with.

Maximum penalty:

- (a) in the case of an individual—100 penalty units for a first offence or 200 penalty units, or imprisonment for 12 months, or both, for a second or subsequent offence, or
- (b) in the case of a corporation—500 penalty units for a first offence or 1,000 penalty units for a second or subsequent offence.

## **29 Operation of regulated systems** (cf 1991 Act, s 46)

(1) If an occupier of any premises on which a regulated system is installed fails to ensure that the prescribed operating requirements are complied with, the occupier is guilty of an offence.

Maximum penalty:



- (a) in the case of an individual—100 penalty units for a first offence or 200 penalty units, or imprisonment for 12 months, or both, for a second or subsequent offence, or
  - (b) in the case of a corporation—500 penalty units for a first offence or 1,000 penalty units for a second or subsequent offence.
- (2) It is a defence to proceedings for an offence under subsection (1) if the occupier satisfies the court that a duly qualified person was engaged to operate the regulated system.
- (3) If a duly qualified person:
- (a) is engaged by the occupier of any premises to operate a regulated system, and
  - (b) fails to ensure that the prescribed operating requirements are complied with,
- that person is guilty of an offence.

Maximum penalty:

- (a) in the case of an individual—100 penalty units for a first offence or 200 penalty units, or imprisonment for 12 months, or both, for a second or subsequent offence, or
  - (b) in the case of a corporation—500 penalty units for a first offence or 1,000 penalty units for a second or subsequent offence.
- (4) If a duly qualified person who is engaged by the occupier of any premises to operate a regulated system on the premises engages a person other than an employee (a **subcontractor**) to operate the system, the subcontractor is guilty of an offence if the subcontractor fails to ensure that the prescribed operating requirements are complied with.

Maximum penalty:

- (a) in the case of an individual—100 penalty units for a first offence or 200 penalty units, or imprisonment for 12 months, or both, for a second or subsequent offence, or
- (b) in the case of a corporation—500 penalty units for a first offence or 1,000 penalty units for a second or subsequent offence.

### **30 Maintenance of regulated systems** (cf 1991 Act, s 46)

- (1) If an occupier of any premises on which a regulated system is installed fails to ensure that the prescribed maintenance requirements are complied with, the occupier is guilty of an offence.

Maximum penalty:

- (a) in the case of an individual—100 penalty units for a first offence or 200 penalty units, or imprisonment for 12 months, or both, for a second or subsequent offence, or
- (b) in the case of a corporation—500 penalty units for a first offence or 1,000 penalty units for a second or subsequent offence.

(2) It is a defence to proceedings for an offence under subsection (1) if the occupier satisfies the court that a duly qualified person was engaged to maintain the regulated system.

(3) If a duly qualified person:

- (a) is engaged by the occupier of any premises to maintain a regulated system, and
- (b) fails to ensure that the prescribed maintenance requirements are complied with, that person is guilty of an offence.

Maximum penalty:

- (a) in the case of an individual—100 penalty units for a first offence or 200 penalty units, or imprisonment for 12 months, or both, for a second or subsequent offence, or
- (b) in the case of a corporation—500 penalty units for a first offence or 1,000 penalty units for a second or subsequent offence.

(4) If a duly qualified person who is engaged by the occupier of any premises to maintain a regulated system on the premises engages a person other than an employee (a **subcontractor**) to maintain the system, the subcontractor is guilty of an offence if the subcontractor fails to ensure that the prescribed maintenance requirements are complied with.

Maximum penalty:

- (a) in the case of an individual—100 penalty units for a first offence or 200 penalty units, or imprisonment for 12 months, or both, for a second or subsequent offence, or
- (b) in the case of a corporation—500 penalty units for a first offence or 1,000 penalty units for a second or subsequent offence.

**31 Notification required where water-cooling or warm-water systems are installed on premises** (cf Microbial Control Reg, cl 15)

The occupier of premises at which a water-cooling system or warm-water system is installed must cause notice of that fact to be given to the person prescribed by the

regulations in the approved form and in the manner prescribed by the regulations:

- (a) if the system is installed before he or she becomes the occupier, within one month after he or she becomes the occupier, or
- (b) if the system is installed after he or she becomes the occupier, within one month after the system is installed.

Maximum penalty: 10 penalty units.

**32 Secretary may give training directions** (cf 1991 Act, s 48)

- (1) The Secretary may serve on a person found guilty of an offence under section 28 (3), 29 (3) or 30 (3) a notice in writing:
  - (a) directing that the person undertake specified training, and
  - (b) prohibiting the person from carrying out specified functions relating to a regulated system until the training is completed.
- (2) A person who:
  - (a) is subject to a direction or prohibition under this section, and
  - (b) has notice of the direction or prohibition,

must not, without reasonable excuse, fail to comply with the direction or prohibition.

Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both, and, in the case of a continuing offence, a further 100 penalty units for each day the offence continues.

**33 Investigation of outbreaks of Legionnaires' disease** (cf Microbial Control Reg, cl 14)

- (1) Any investigation of an outbreak of Legionnaires' disease is to be carried out in accordance with any procedures approved by the Secretary for the purposes of this section.
- (2) An authorised officer investigating an occurrence of Legionnaires' disease may, by order in writing served on the occupier of the premises, direct that a regulated system that is on the premises and is described in the order be maintained as directed by the order while it is in force.
- (3) Any such direction is a prescribed maintenance requirement for the purposes of this Division, and prevails to the extent of any inconsistency with any other prescribed maintenance requirement.

**Note—**

Such a prescribed maintenance requirement may be enforced by the giving of an improvement notice or prohibition order (see Division 5).

## Division 3 Control of public swimming pools and spa pools

### 34 Definitions (cf Swimming Pools Reg, cl 4)

In this Division:

**prescribed operating requirements** means requirements prescribed by the regulations with respect to the operation of a public swimming pool or spa pool.

**public swimming pool or spa pool** means a swimming pool or spa pool to which the public is admitted, whether free of charge, on payment of a fee or otherwise, including:

- (a) a pool to which the public is admitted as an entitlement of membership of a club, or
- (b) a pool provided at a workplace for the use of employees, or
- (c) a pool provided at a hotel, motel or guest house or at holiday units, or similar facility, for the use of guests, or
- (d) a pool provided at a school or hospital,

but not including a pool situated at private residential premises.

**spa pool** includes any structure (other than a swimming pool) that:

- (a) holds more than 680 litres of water, and
- (b) is used or intended to be used for human bathing, and
- (c) has facilities for injecting jets of water or air into the water.

**swimming pool** includes any structure that is used or intended to be used for human bathing, swimming or diving, and includes a water slide or other recreational aquatic structure.

### 35 Operation of premises where public pools are situated

- (1) If an occupier of any premises at which a public swimming pool or spa pool is situated fails to ensure that the prescribed operating requirements are complied with, the occupier is guilty of an offence.

Maximum penalty:

- (a) in the case of an individual—100 penalty units, or
  - (b) in the case of a corporation—500 penalty units.
- (2) The occupier of premises at which a public swimming pool or spa pool is situated must not allow a person to use the pool unless the occupier has caused notice of the pool's existence to be given to the person prescribed by the regulations in the approved form and in the manner prescribed by the regulations.

Maximum penalty: 10 penalty units.

**36 Disinfection and cleaning of public pools** (cf Swimming Pools Reg, cll 5, 6 and 9)

- (1) The occupier of premises at which a public swimming pool or spa pool is situated must not allow a person to use the pool unless the water in the pool is disinfected in such a way as to minimise the transmission of disease to the other users of the pool.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

- (2) The occupier of premises at which a public swimming pool or spa pool is situated must ensure that the pool surrounds, including any toilets or change rooms, are kept clean and in such condition as to minimise the transmission of disease.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

- (3) It is a defence to proceedings for an offence under this section if the defendant satisfies the court that the public swimming pool or spa pool was maintained in accordance with any standards prescribed by the regulations for the purposes of this section.

**37 Pools subject to prohibition orders**

The occupier of premises at which there is a public swimming pool or spa pool the subject of a prohibition order must display a copy of the order in a conspicuous place at or near each entrance to the premises concerned.

Maximum penalty: 10 penalty units.

**Division 4 Control of skin penetration procedures**

**38 Operation of skin penetration procedures** (cf Skin Penetration Reg, cl 12)

- (1) The occupier of premises where skin penetration procedures are carried out must comply with the requirements prescribed by the regulations with respect to such premises.

Maximum penalty:

- (a) in the case of an individual—100 penalty units, or  
(b) in the case of a corporation—500 penalty units.

- (2) The occupier of any premises where skin penetration procedures are carried out must cause notice of the carrying out of skin penetration procedures at the premises to be given to the person prescribed by the regulations in the approved form and in the manner prescribed by the regulations.

Maximum penalty: 10 penalty units.

### **39 Secretary may give training directions relating to skin penetration procedures**

- (1) The Secretary may serve on a person found guilty of an offence under this Act or the regulations in relation to the conduct of a skin penetration procedure at premises a notice:
  - (a) directing that the person undertake specified training, and
  - (b) prohibiting the carrying out of specified skin penetration procedures at the premises until the training is completed.
- (2) A person who:
  - (a) is subject to a direction or prohibition under this section, and
  - (b) has notice of the direction or prohibition,must not, without reasonable excuse, fail to comply with the direction or prohibition.  
Maximum penalty: 1,000 penalty units or imprisonment for 12 months, or both.

## **Division 5 Improvement notices and prohibition orders**

### **40 Definitions**

In this Division:

***enforceable requirement*** means:

- (a) a prescribed installation requirement, prescribed maintenance requirement or prescribed operating requirement with respect to a regulated system under Division 2, or
- (b) a prescribed operating requirement with respect to a public swimming pool or spa pool under Division 3, or
- (c) a requirement prescribed with respect to premises at which skin penetration procedures are carried out under section 38.

***public swimming pool or spa pool*** has the same meaning as it has in Division 3.

### **41 Non-complying premises or procedures**

An authorised officer may serve an improvement notice on the occupier of premises at which there is a regulated system or a public swimming pool or spa pool or premises at which a person carries out skin penetration procedures if the officer believes, on reasonable grounds, that:

- (a) the premises, or a regulated system, public swimming pool or spa pool at those premises, does not comply with an enforceable requirement, or

- (b) a regulated system, public swimming pool or spa pool at the premises is not being maintained or operated in accordance with an enforceable requirement.

#### **42 Improvement notices**

- (1) An improvement notice is to take the form of a direction that requires a specified enforceable requirement to be complied with within a period of 72 hours (or such longer period as is specified in the notice) after the service of the notice on the occupier or person.
- (2) The notice may specify the actions to be taken to comply with the requirement.
- (3) An improvement notice is to state that it is issued under this section and to specify any provision of the regulations to which it relates.

#### **43 Compliance with improvement notice**

- (1) If an improvement notice is complied with, an authorised officer is to note the date of compliance on the notice.
- (2) An authorised officer must give a copy of an improvement notice, noted in accordance with this section, to the person on whom the improvement notice was served if requested to do so by the person.

#### **44 Failure to comply with notice relating to regulated system**

- (1) The Secretary, a local government authority or the General Manager of a council may take action under this section or section 45 if the occupier of premises at which there is a regulated system fails to comply with an improvement notice.
- (2) The Secretary, local government authority or General Manager may take the action referred to in the notice and:
  - (a) unless the occupier represents the Crown, may recover an amount equal to the cost of doing so as a debt owed by the person to the Crown or to the local government authority, as the case may be, or
  - (b) if the occupier represents the Crown, may require the occupier to pay to the Secretary or to the local government authority an amount equal to the cost of doing so.
- (3) An employee assigned, or a contractor engaged, by the Secretary or a local government authority to do any work on regulated premises under this section may, at any reasonable time, enter the premises and do the work or have it done.

#### **45 Prohibition order**

- (1) The Secretary, a local government authority or a General Manager of a council may serve a prohibition order on the occupier of premises if the Secretary, authority or

General Manager believes on reasonable grounds:

- (a) that any of the circumstances in which an improvement notice may be issued exist and that:
    - (i) the occupier has not complied with an improvement notice within the time required under the notice, and
    - (ii) the issue of the prohibition order is necessary to prevent or mitigate a serious risk to public health, or
  - (b) that any of the circumstances in which an improvement notice may be issued exist and that the issue of the order (without first issuing an improvement notice) is urgently necessary to prevent or mitigate a serious risk to public health.
- (2) A prohibition order made against the occupier of premises at which there is a regulated system is to take the form of an order that the system must not be operated until the occupier has been given a clearance certificate stating that the system may be operated.
  - (3) A prohibition order made against the occupier of premises at which there is a public swimming pool or spa pool is to take the form of an order that the swimming pool or spa pool must not be opened for use by the public until the occupier has been given a clearance certificate stating that the swimming pool or spa pool may be opened for use by the public.
  - (4) A prohibition order made against the occupier of premises at which skin penetration procedures are carried out is to take the form of an order that such procedures must not be carried out at the premises until the occupier has been given a clearance certificate stating that skin penetration procedures may be carried out at the premises.
  - (5) A prohibition order is to state that it is issued under this section and to specify any provision of the regulations to which it relates.
  - (6) The Secretary, local government authority or General Manager who made the prohibition order must give a certificate of clearance if, after an inspection of the premises subject to the order, an authorised officer is satisfied that there is no serious danger to public health.

#### **46 Request for re-inspection**

- (1) An occupier of premises who is subject to a prohibition order may at any time after the order has been served make a written request to the person who made the order to cause the premises to be inspected by an authorised officer.
- (2) If a request for inspection is made under this section and, through no fault of the person who made the request, the inspection does not take place within 2 working



days of the request being received by the person who made the prohibition order, a certificate of clearance is taken to have been given under this Division to the person who made the request.

#### **47 Contravention of prohibition order**

A person must not fail to comply with a prohibition order served on the person under this Part.

Maximum penalty (for an offence in respect of a public swimming pool or spa pool or premises where skin penetration procedures are carried out):

- (a) in the case of an individual—200 penalty units, or 12 months imprisonment, or both, and, in the case of a continuing offence, a further 100 penalty units for each day the offence continues, or
- (b) in the case of a corporation—1,000 penalty units and, in the case of a continuing offence, a further 500 penalty units for each day the offence continues.

Maximum penalty (for an offence in respect of a regulated system):

- (a) in the case of an individual—500 penalty units, or 12 months imprisonment, or both, and, in the case of a continuing offence, a further 250 penalty units for each day the offence continues, or
- (b) in the case of a corporation—2,500 penalty units and, in the case of a continuing offence, a further 1,250 penalty units for each day the offence continues.

#### **48 Administrative review of decision to refuse certificate of clearance**

An occupier of premises on whom a prohibition order has been served may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of a decision of the person who made the order to refuse to give a certificate of clearance under this Part to the occupier.

#### **49 Compensation**

- (1) A person against whom a prohibition order is made who suffers loss as a result of the making of the order may apply to the person who made the order for compensation if the person against whom the order is made considers that the order was not made in good faith or that there were no grounds for the making of the order.
- (2) If the order was not made in good faith or there were no grounds for the making of the order, the Secretary, the local government authority or the council (if the order was issued by the General Manager of the council) is to pay such compensation to the applicant as is just and reasonable.
- (3) The person who made the prohibition order is to determine the compensation payable in accordance with subsection (2).

- (4) The person who made the prohibition order is to send written notification of its determination as to the payment of compensation under this section to each applicant for the payment of such compensation.
- (5) If an application for compensation under this section is not determined by the person who made the prohibition order within 28 days of receiving the application, the application is taken to have been refused.
- (6) An applicant for the payment of compensation under this section who is dissatisfied with a determination as to the refusal to pay compensation or as to the amount of compensation may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the determination:
  - (a) within 28 days after the day on which notification of the determination was received, or
  - (b) in a case to which subsection (5) applies, within 28 days after the expiration of the 28-day period referred to in that subsection.

## 50 Environmental health registers

- (1) The regulations may provide for the establishment and maintenance of registers of regulated systems, public swimming pools and spa pools and premises where skin penetration procedures are carried out.
- (2) Without limiting subsection (1), the regulations may provide for the following:
  - (a) the information to be provided by occupiers of premises required to be registered,
  - (b) the matters to be included in a register,
  - (c) the form of the register.

## Part 4 Scheduled medical conditions

### Division 1 Preliminary

#### 51 Definitions (cf 1991 Act, s 3)

- (1) In this Part:

**Category 1 condition** means a medical condition listed under Category 1 in Schedule 1.

**Category 2 condition** means a medical condition listed under Category 2 in Schedule 1.

**Category 3 condition** means a medical condition listed under Category 3 in Schedule 1.

**Category 4 condition** means a medical condition listed under Category 4 in Schedule 1.

**Category 5 condition** means a medical condition listed under Category 5 in Schedule 1.

- (2) The Minister may, by order published on the NSW legislation website, amend or substitute Schedule 1.

## **Division 2 General precautions**

### **52 Precautions against spread of certain medical conditions** (cf 1991 Act, s 11)

- (1) A person who:

- (a) has a Category 2, 3, 4 or 5 condition, and
- (b) is in a public place,

must not fail to take reasonable precautions against spreading the condition.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

- (2) It is a defence to proceedings for an offence under this section if the defendant satisfies the court that at the time of commission of the alleged offence, the defendant was not aware that he or she had the medical condition on which the prosecution is based.

### **53 Notification of death arising from scheduled medical condition** (cf 1991 Act, s 20)

Immediately after registering the death of a person where the apparent cause of death involves a scheduled medical condition, the Registrar of Births, Deaths and Marriages is to arrange to have sent to the Secretary, in the approved form, a notice of the death stating:

- (a) the name, address and age of the deceased, and
- (b) the name of the scheduled medical condition, and
- (c) the name of the person who certified the cause of death, and
- (d) such other particulars as may be prescribed by the regulations.

## **Division 3 Notification and treatment of Category 1, 2 and 3 conditions and other conditions**

### **54 Medical practitioner to notify Secretary of Category 1 and 2 conditions** (cf 1991 Act, ss 14 and 15)

- (1) This section applies if a registered medical practitioner:

- (a) attends a person in connection with a Category 1 condition, or
  - (b) while attending a person in connection with any medical condition, reasonably suspects that the person has a Category 2 condition, or
  - (c) as a result of conducting a post-mortem examination, reasonably suspects that a person's cause of death involves a Category 1 or 2 condition.
- (2) In these circumstances, the registered medical practitioner must, as soon as practicable:
- (a) record such particulars concerning the person's medical condition as may be prescribed by the regulations, and
  - (b) send to the Secretary a certificate, in the approved form, of the particulars so recorded.
- (3) The registered medical practitioner:
- (a) must keep any such particulars for the period prescribed by the regulations, and
  - (b) subject to section 56, must provide the Secretary with such further information concerning the person's medical condition and transmission and risk factors as is available to the medical practitioner and as the Secretary may request.
- (4) A registered medical practitioner who attends a person as a patient at a hospital is not required to comply with this section if:
- (a) the Category 1 or 2 condition concerned is a notifiable disease, and
  - (b) the medical practitioner believes on reasonable grounds that the Secretary has been notified of the disease in accordance with Division 2 of Part 5.
- (5) A registered medical practitioner must not, without reasonable excuse, fail to comply with the requirements of this section.
- Maximum penalty: 50 penalty units.
- (6) It is a defence to proceedings for an offence under this section if the defendant satisfies the court:
- (a) that the record alleged not to have been made or kept, or
  - (b) that the certificate alleged not to have been sent,
- had been made, kept or sent by another registered medical practitioner.
- (7) This section applies to a person engaged in an occupation prescribed by the regulations in the same way as it applies to a registered medical practitioner.

**55 Pathology laboratories to notify Secretary of Category 3 conditions** (cf 1991 Act, s 16)

(1) This section applies if:

- (a) a pathology test is carried out at the request of a registered medical practitioner (***the requesting practitioner***) for the purpose of determining whether a person has a Category 3 condition, and
- (b) the test has a positive result.

(2) In these circumstances, the person who certifies the test results (***the certifier***) must send to the Secretary a report, in the approved form, as to those results as soon as practicable.

Maximum penalty: 50 penalty units.

(3) If the certifier so requests, the requesting practitioner must provide the certifier, within 72 hours after the request is made, with sufficient information to enable the report to be completed.

Maximum penalty: 50 penalty units.

(4) On receiving a report that appears to be incomplete or incorrect, the Secretary may ask any medical practitioner involved in the treatment of the person concerned to provide:

- (a) such information as is necessary to complete or correct the report, and
- (b) such other information concerning the person's medical condition and transmission and risk factors as is available to the medical practitioner.

(5) A medical practitioner who is asked to provide such information is authorised to do so, subject to section 56 but despite any other Act or law.

**56 Protection of patient's identity** (cf 1991 Act, s 17)

(1) A registered medical practitioner must not include a patient's name or address:

- (a) in a certificate under section 54, if the condition to which the certificate relates is a Category 5 condition, or
- (b) in a written or oral communication made by the medical practitioner for the purpose of arranging a test to determine whether the patient has a Category 5 condition.

(2) Subsection (1) (b) does not apply if the patient concerned:

- (a) is receiving hospital services or other health services, within the meaning of the [Health Services Act 1997](#), provided by a hospital, or

(b) consents to the disclosure of his or her name and address in the relevant communication.

(3) A person who, in the course of providing a service, including the conduct of a pathology test under section 55, acquires information that another person (***the person concerned***):

(a) has been, is to be or is required to be tested for a Category 5 condition, or

(b) has, or has had, a Category 5 condition,

must take all reasonable steps to prevent that information from being disclosed to any other person.

(4) Subsection (3) does not apply to the disclosure of such information:

(a) with the consent of the person concerned, or

(b) to a person who is involved in the provision of care, treatment or counselling to the person concerned so long as the information is relevant to the provision of such care, treatment or counselling, or

(c) to the Secretary, if a person has reasonable grounds to suspect that failure to disclose the information would be likely to be a risk to public health, or

(d) in connection with the administration of this Act or the regulations, or

(e) for the purposes of any legal proceedings arising out of this Act or the regulations, or of any report of any such proceedings, or

(f) in accordance with a requirement imposed under the [Ombudsman Act 1974](#), or

(g) in the circumstances prescribed by the regulations.

(5) A registered medical practitioner or other person must not, without reasonable excuse, fail to comply with the requirements of this section.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

## **57 Notification of other conditions**

(1) A registered medical practitioner or a person who provides a pathology service who is of the opinion that a patient is suffering from a medical condition or disease that may pose a significant risk to public health may notify the Secretary in writing in the approved form of particulars of the person and the condition or disease.

(2) On receiving a notification under this section, the Secretary may ask the medical practitioner or person to provide further information as to the patient's condition and risk factors.

- (3) A medical practitioner or person may provide information under this section despite any other Act or law.
- (4) This section does not apply to a medical condition or disease for which notification is otherwise provided under this Act.

**58 District Court may authorise disclosure of name and address**

- (1) The Secretary may apply to the District Court, in accordance with the rules of the District Court, for an order authorising the service on a medical practitioner of a notice requiring disclosure of a name and address that would otherwise be protected by this Division from disclosure.
- (2) An application under this section may be made in relation to a medical practitioner only if the Secretary has reasonable grounds for believing that:
  - (a) the person whose name and address are sought is suffering from a Category 5 condition, and
  - (b) identification of the person is necessary in order to safeguard the health of the public.
- (3) An application to the District Court under this section is to be heard and determined in the absence of the public but is to be otherwise heard and determined in accordance with the rules of the District Court.
- (4) The District Court:
  - (a) is to make an order applied for under this section if satisfied that there are reasonable grounds for making the order, or
  - (b) is to dismiss the application if not so satisfied.

**59 Proceedings for offences** (cf 1991 Act, s 37)

Proceedings for an offence under this Division are to be heard and determined in the absence of the public.

**Division 4 Public health orders for Category 4 and 5 conditions**

**60 Definitions** (cf 1991 Act, s 21)

In this Division:

***authorised medical practitioner*** means:

- (a) the Chief Health Officer, or
- (b) a registered medical practitioner authorised by the Secretary to exercise the functions of an authorised medical practitioner under this Division.

**public health detainee** means a person subject to a public health order who is detained pursuant to a requirement of the order of a kind referred to in section 62 (4) or (5).

**61 Secretary may direct persons to undergo medical examination** (cf 1991 Act, s 22)

- (1) This section applies if the Secretary:
  - (a) suspects on reasonable grounds that a person may have a Category 4 or 5 condition and may, on that account, be a risk to public health, and
  - (b) considers that the nature of the suspected condition is such as to warrant medical examination.
- (2) In these circumstances, the Secretary may, by notice in writing, direct the person concerned to undergo, within a specified period, a specified kind of medical examination and associated tests:
  - (a) by a registered medical practitioner in general practice, or
  - (b) by a registered medical practitioner practising in a specified field.
- (3) If the person fails to comply with a direction under subsection (2), the Secretary may, by further notice in writing, direct the person to undergo the specified kind of medical examination and associated tests, at a specified time and place, by a specified registered medical practitioner.
- (4) A person must not, without reasonable excuse, fail to comply with a direction under subsection (3).

Maximum penalty: 50 penalty units.
- (5) A direction under subsection (2) or (3) must have due regard to the sensitivities of the person concerned in relation to the gender, ethnicity and cultural background of the registered medical practitioner by whom the examination is to be carried out.

**62 Authorised medical practitioner may make public health order** (cf 1991 Act, s 23)

- (1) An authorised medical practitioner may make a public health order in respect of a person if satisfied, on reasonable grounds, that the person:
  - (a) has a Category 4 or 5 condition, and
  - (b) because of the way the person behaves may, as a consequence of that condition, be a risk to public health.
- (2) A public health order:
  - (a) must be in writing, and
  - (b) must name the person subject to the order, and



- (c) must state the grounds on which it is made, and
- (d) must state that, unless sooner revoked, it expires at the end of a specified period (not exceeding 28 days) after it is served on the person subject to the order.

**Note—**

An order based on a Category 5 condition expires after 3 days unless an application is made for its confirmation (see section 63 (2)).

- (3) A public health order may require the person subject to the order to do any one or more of the following:
  - (a) to refrain from specified conduct,
  - (b) to undergo specified treatment,
  - (c) to undergo counselling by one or more specified persons or by one or more persons belonging to a specified class of persons,
  - (d) to submit to the supervision of one or more specified persons or of one or more persons belonging to a specified class of persons,
  - (e) to undergo specified treatment at a specified place.
- (4) A public health order based on a Category 4 condition, being an order that requires the person to undergo specified treatment at a specified place, may authorise the person subject to the order to be detained at that place while undergoing the treatment.
- (5) A public health order based on a Category 5 condition may authorise the person subject to the order to be detained at a specified place for the duration of the order.
- (6) In deciding whether or not to make a public health order, the authorised medical practitioner must take into account:
  - (a) the principle that any restriction on the liberty of a person should be imposed only if it is the most effective way to prevent any risk to public health, and
  - (b) any matters prescribed by the regulations for the purposes of this section.
- (7) A public health order may include provisions ancillary to, or consequential on, the matters included in the order.
- (8) A public health order does not take effect until it is served personally on the person subject to the order.

**63 Duration of public health order** (cf 1991 Act, s 24)

- (1) Unless sooner revoked, a public health order based on a Category 4 or 5 condition

expires at the end of the period specified in the order.

- (2) Despite subsection (1), a public health order based on a Category 5 condition expires at the end of 3 business days after the person subject to the order is served with the order unless, before it expires, the person is served with a copy of an application for its confirmation under section 64.
- (3) In this section, **business day** means any day that is not a Saturday, Sunday or public holiday.

**64 NCAT may confirm public health orders relating to Category 5 conditions** (cf 1991 Act, s 25)

- (1) An application may be made to the Civil and Administrative Tribunal for confirmation of a public health order based on a Category 5 condition.

**Note—**

The confirmation of any such order is a **decision** for the purposes of the [Civil and Administrative Tribunal Act 2013](#).

- (2) As soon as practicable after such an application is made, the Civil and Administrative Tribunal is to inquire into the circumstances surrounding the making of the public health order.
- (3) Following its inquiry, the Civil and Administrative Tribunal:
  - (a) may confirm the public health order, or
  - (b) may vary the order and confirm it as varied, or
  - (c) may revoke the order.
- (4) An inquiry under this section may not be adjourned for more than 7 days at a time.
- (5) For the purposes of an inquiry under this section, the Civil and Administrative Tribunal:
  - (a) may obtain the assistance of any person having medical or other qualifications relevant to the subject-matter of the inquiry, and
  - (b) may take into account any advice given by such a person.
- (6) The Civil and Administrative Tribunal's power to **vary** a public health order under this section is a power:
  - (a) to omit a requirement from the order, or
  - (b) to include in the order a requirement that could have been included in the order when it was made, or
  - (c) to substitute a requirement that could have been included in the order when it

was made for any one or more of the requirements already included in the order.

(7) (Repealed)

**65 NCAT may continue public health order** (cf 1991 Act, s 26)

(1) At any time before the expiration of:

- (a) a public health order based on a Category 4 condition, or
- (b) a public health order based on a Category 5 condition and confirmed under section 64,

an authorised medical practitioner may apply to the Civil and Administrative Tribunal for continuation of the order.

- (2) An application may be made only if the applicant is satisfied that the person subject to the order would continue to be a risk to public health, as a consequence of a Category 4 or 5 condition, if not subject to a public health order.
- (3) If such an application is made and the person subject to the order notifies the Civil and Administrative Tribunal that continuation of the order is not opposed, the Tribunal may, without inquiry, continue the order for a period not exceeding 6 months.
- (4) Unless the order is continued under subsection (3), the Civil and Administrative Tribunal is to make such inquiries as it thinks fit in relation to the application and:
  - (a) may continue the order, with or without variation, for a period not exceeding 6 months from the date of the Tribunal's decision, or
  - (b) may refuse to continue the order, or
  - (c) may revoke the order.

**Note—**

If the Civil and Administrative Tribunal refuses to continue the order, it will continue to have effect for the period specified in the order. If the Tribunal revokes the order, it will cease to have effect on revocation.

- (5) For the purposes of an inquiry under this section, the Civil and Administrative Tribunal:
  - (a) may obtain the assistance of any person having medical or other qualifications relevant to the subject-matter of the inquiry, and
  - (b) may take into account any advice given by such a person.
- (6) More than one application may be made under this section in respect of the same order.

**66 NCAT may administratively review public health orders relating to Category 4**

**conditions** (cf 1991 Act, s 41)

An application may be made to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of a public health order based on a Category 4 condition by the person the subject of the order.

**Note—**

The making of any such order is a **decision** for the purposes of the *Administrative Decisions Review Act 1997*.

**67 Revocation of public health order by authorised medical practitioner** (cf 1991 Act, s 31)

If the authorised medical practitioner by whom a public health order has been made considers that the person subject to the order is no longer a risk to public health, the medical practitioner is to revoke the order and immediately give notice in writing of the revocation to the person and the Civil and Administrative Tribunal.

**68 Restriction on making of further public health order** (cf 1991 Act, s 32)

If a public health order is revoked, a further public health order may not be made in respect of the same person unless the authorised medical practitioner proposing to make the further order is satisfied on reasonable grounds that, since the earlier order ceased to have effect, there has been a change in the person's health or behaviour that increases the risk to public health.

**69 Inspection of medical records** (cf 1991 Act, s 36)

- (1) Unless the Civil and Administrative Tribunal otherwise directs, a person subject to a public health order is entitled to inspect, and make copies of, the medical records kept by any other person in relation to the person.
- (2) If the medical records are not kept in a readable form, the person in charge of the records must provide a readable copy of them.

**70 Offence not to comply with public health order** (cf 1991 Act, s 28)

- (1) A person who fails to comply with a requirement of a public health order is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

- (2) Proceedings for an offence under this section may be commenced only by the Secretary or a police officer.
- (3) Proceedings for an offence under this section do not preclude action from being taken under section 73 for the contravention on which the proceedings are based.

**71 Arrest of persons who contravene public health orders** (cf 1991 Act, s 29)

- (1) An authorised medical practitioner may issue a certificate to the effect that a named person is contravening a public health order.

- (2) A police officer may apply to an authorised warrants officer for an arrest warrant in relation to the person named in a certificate issued under subsection (1).
- (3) The authorised warrants officer may issue an arrest warrant in relation to the person so named if satisfied that there are reasonable grounds for doing so.
- (4) A warrant under this section is sufficient authority for any police officer to arrest the named person and to bring the named person before the Civil and Administrative Tribunal to be dealt with under section 73.
- (5) In this section, **authorised warrants officer** means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**72 Arrest of escapee** (cf 1991 Act, s 33)

- (1) A public health detainee or person arrested under section 71 who escapes from the place where he or she is detained may be arrested at any time:
  - (a) by the person for the time being in charge of that place, or
  - (b) by an authorised medical practitioner, or
  - (c) by a police officer, or
  - (d) by any person assisting a person referred to in paragraphs (a)–(c).
- (2) On being arrested, the escapee must be returned to the place from which he or she has escaped.

**73 Action following arrest or surrender** (cf 1991 Act, s 30)

- (1) If a person in respect of whom an authorised medical practitioner has issued a certificate under section 71 (1) for an alleged contravention of a public health order is brought or otherwise appears before the Civil and Administrative Tribunal, the Tribunal is to conduct an inquiry into the allegation.
- (2) Following its inquiry, the Civil and Administrative Tribunal:
  - (a) may confirm the order, or
  - (b) may vary the order and confirm it as varied, or
  - (c) may caution the person and take no further action in the matter.
- (3) The Civil and Administrative Tribunal's power to **vary** a public health order under this section is a power:
  - (a) to omit a requirement from the order, or
  - (b) to include in the order a requirement that could have been included in the order

when it was made, or

(c) to substitute a requirement that could have been included in the order when it was made for any one or more of the requirements already included in the order.

(4) A person may be dealt with under this section for an alleged contravention of a public health order whether or not the person has been charged with an offence in relation to the same contravention.

**74 Conditions applicable if person detained pursuant to public health order** (cf 1991 Act, s 27)

(1) A public health detainee is to be detained in accordance with the conditions specified in the relevant public health order with respect to the person's security.

(2) Despite subsection (1), a public health detainee may, with the approval of an authorised medical practitioner, be permitted to leave the place of detention, but only under the constant personal supervision of a person, or one of a number of persons, nominated by the medical practitioner.

(3) A public health detainee who evades or attempts to evade any supervision to which he or she is subject under subsection (2) is taken to have failed to comply with a requirement of the relevant public health order.

**75 Unlawful release from detention** (cf 1991 Act, s 34)

(1) A person who, without lawful authority, releases, or attempts to release a public health detainee or a person arrested under this Division is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

(2) It is a defence to proceedings for an offence under this section if the defendant satisfies the court that the defendant's action was not a risk to public health and that the defendant knew this to be so.

**76 (Repealed)**

## **Part 5 Other disease control measures and notifications**

### **Division 1 Sexually transmitted infections**

**77 Definition**

In this Part:

***sexual intercourse*** means:

(a) sexual connection by the introduction into a person's vagina, anus or mouth of any part of another person's penis, or

(b) cunnilingus.

**78 Medical practitioners to provide information to patients with sexually transmitted infections** (cf 1991 Act, s 12)

- (1) A registered medical practitioner who suspects that a person receiving attention from the medical practitioner has a sexually transmitted infection must, as soon as practicable, provide the person with such information concerning the infection as is prescribed by the regulations.
- (2) A registered medical practitioner must not, without reasonable excuse, fail to comply with this section.

Maximum penalty: 50 penalty units.

- (3) It is a defence to proceedings for an offence under this section if the defendant satisfies the court that he or she believed that the relevant information had previously been supplied to the patient by some other registered medical practitioner.

**79 Duties of persons in relation to sexually transmitted infections** (cf 1991 Act, s 13)

- (1) A person who knows that he or she suffers from a sexually transmitted infection is guilty of an offence if he or she has sexual intercourse with another person unless, before the intercourse takes place, the other person:
  - (a) has been informed of the risk of contracting a sexually transmitted infection from the person with whom intercourse is proposed, and
  - (b) has voluntarily agreed to accept the risk.

Maximum penalty: 50 penalty units.

- (2) An owner or occupier of a building or place who knowingly permits another person to:
  - (a) have sexual intercourse at the building or place for the purpose of prostitution, and
  - (b) in doing so, commit an offence under subsection (1),is guilty of an offence.

Maximum penalty: 50 penalty units.

- (3) It is a defence to any proceedings for an offence under this section if the court is satisfied that the defendant took reasonable precautions to prevent the transmission of the sexually transmitted infection.
- (4) For the purposes of this section, a person is not presumed incapable of having sexual intercourse by reason only of the person's age.

- (5) A person (other than a member of the NSW Health Service) must notify the Secretary if the person commences proceedings against a person for an offence under this section.

**80 Proceedings for offences to be heard in closed court** (cf 1991 Act, s 37)

Proceedings for offences under this Division are to be heard and determined in the absence of the public.

## **Division 2 Notifiable diseases**

**81 Notifiable disease listings** (cf 1991 Act, s 68)

The Minister may, by order published on the NSW legislation website, amend or substitute Schedule 2.

**82 Health practitioners to make hospital CEO aware of notifiable diseases** (cf 1991 Act, s 69)

A health practitioner who is providing professional care or treatment at a hospital and who suspects that:

- (a) a patient at the hospital has a notifiable disease, or
- (b) a former patient has had a notifiable disease while a patient at the hospital,

has a duty, and is authorised, to ensure that the chief executive officer of the hospital is made aware of that fact.

**83 Hospital CEO to notify Secretary of notifiable diseases** (cf 1991 Act, s 69)

- (1) If the chief executive officer of a hospital suspects that:

- (a) a patient at the hospital has a notifiable disease, or
- (b) a former patient has had a notifiable disease while a patient at the hospital,

the chief executive officer must, as soon as practicable, provide the Secretary with such information as may be prescribed by the regulations in relation to the patient or former patient.

Maximum penalty: 50 penalty units.

- (2) The chief executive officer of the hospital must provide the Secretary with such additional information as the Secretary may request in a particular case.

Maximum penalty: 50 penalty units.

- (3) It is a defence to proceedings for an offence under this section if the chief executive officer satisfies the court that he or she believed that the relevant information had previously been provided to the Secretary.



## Division 3 Notification of certain deaths

### 84 Notification of deaths arising after anaesthesia or sedation for operations or procedures

- (1) This section applies if a patient or former patient dies while under, or as a result of, or within 24 hours after, the administration of an anaesthetic or a sedative drug administered in the course of a medical, surgical or dental operation or procedure or other health operation or procedure (other than a local anaesthetic or sedative drug administered solely for the purpose of facilitating a procedure for resuscitation from apparent or impending death).
- (2) The health practitioner who is responsible for the administration of the anaesthetic or sedative drug must, as soon as practicable:
  - (a) if it was administered at a hospital, ensure that the chief executive officer is notified of the death, or
  - (b) if it was not administered at a hospital, ensure that the Secretary is given notice in writing of the death in the approved form.
- (3) The chief executive officer of a hospital who is notified under this section of a death or otherwise becomes aware that a death of a patient or former patient of the hospital to which this section applies has occurred must, as soon as practicable, ensure that the Secretary is given notice in writing of the death in the approved form.
- (4) The chief executive officer, and any health practitioner who was responsible for the administration of the anaesthetic or sedative drug concerned, must provide the Secretary with such additional information as the Secretary may request in a particular case.
- (5) It is a defence to proceedings for an offence under this section if the chief executive officer or health practitioner satisfies the court that he or she reasonably believed that the relevant information had previously been provided to the Secretary.

Maximum penalty: 50 penalty units.

## Division 4 Vaccine preventable diseases

### 85 Definitions (cf 1991 Act, s 42A)

- (1) In this Division:

***authorised practitioner*** means:

- (a) a medical practitioner, or
- (b) a member of a class of health practitioners prescribed by the regulations for the purposes of this definition.

**child** means a child of a class (such as children of a specified age group) prescribed by the regulations.

**child at risk**, in relation to a vaccine preventable disease, means a child enrolled at a primary school or child care facility for whom no immunisation certificate or evidence of immunisation has been lodged or produced to the principal of the school or facility to show that the child has been immunised against, or has acquired immunity by infection from, the disease.

**child care facility** means:

- (a) an education and care service within the meaning of the *Children (Education and Care Services) National Law (NSW)*, or
- (b) a State regulated education and care service within the meaning of the *Children (Education and Care Services) Supplementary Provisions Act 2011*, or
- (c) a service or facility of a class declared by the regulations to be a child care facility for the purposes of this Division.

**immunisation** means the process of administering to a person a substance registered as a vaccine in the part of the Australian Register of Therapeutic Goods maintained under section 9A of the *Therapeutic Goods Act 1989* of the Commonwealth relating to registered goods.

**immunisation certificate** means:

- (a) a statement as to the immunisation history of a child issued by the Australian Childhood Immunisation Register, or
- (b) another report, in the approved form, by a person of a class approved by the Secretary to do so, as to the immunisation status of a child.

**immunisation status** of a child means whether or not the child has been immunised against, or has acquired immunity by infection from, all or specified vaccine preventable diseases.

**NSW Immunisation Schedule** means the NSW Immunisation Schedule approved by the Chief Health Officer from time to time and published by the Ministry of Health on its website.

**parent** of a child includes a guardian or other person having the care or custody of the child.

**primary school** means:

- (a) a government school established under the *Education Act 1990*, or
- (b) a non-government school registered under that Act,

being a school that provides primary education under Division 1 of Part 3 of that Act.

**principal** of a primary school or child care facility means the person in charge of the school or facility.

**vaccine preventable disease** means a disease listed in Schedule 3.

- (2) The Minister may, by order published on the NSW legislation website, amend or substitute Schedule 3.
- (3) In this Division, a reference to an immunisation certificate or other certificate includes a reference to a copy of any such certificate.

**86 Responsibilities of principals of primary schools with respect to immunisation** (cf 1991 Act, s 42B)

- (1) When a child is enrolled at a primary school, and on such other occasions as may be prescribed by the regulations, the principal of the school must ask a parent of the child to lodge with the principal an immunisation certificate for the child, unless satisfied that the certificate can be obtained under subsection (2).
- (2) If a child's immunisation certificate has been lodged with the principal and the child subsequently becomes enrolled at another primary school, the principal must, on being asked to do so by a parent of the child or the principal of the other school, forward the certificate to the principal of the other school.
- (3) The principal of a primary school must record in the approved form the immunisation status of each child enrolled at the school, as indicated by the child's immunisation certificate, and, for that purpose, a child for whom no immunisation certificate has been lodged is taken not to have been immunised against any of the vaccine preventable diseases.
- (4) The principal of a primary school must retain an immunisation certificate lodged with the principal in safe custody for such period as may be prescribed by the regulations and must produce it for inspection on request by the public health officer.

**87 Responsibilities of principals of child care facilities with respect to immunisation**

- (1) **Certificates for immunisation or exemption must be provided before enrolment** The principal of a child care facility must not enrol a child, or permit a child to enrol, at the child care facility unless the parent of the child, or the principal of another child care facility, has provided to the principal:
  - (a) a **vaccination certificate**, being an immunisation certificate indicating that the child is age appropriately immunised or a certificate in the approved form by an authorised practitioner certifying that the child is following an approved vaccination catch-up schedule, or

- (b) if a vaccination certificate does not cover some of the vaccine preventable diseases for which immunisation at the child's age is recommended by the NSW Immunisation Schedule, the vaccination certificate and a certificate of a kind specified in subsection (2) with respect to those vaccine preventable diseases, or
  - (c) if no vaccination certificate is provided, a certificate of a kind specified in subsection (2) with respect to the vaccine preventable diseases for which immunisation at the child's age is recommended by the NSW Immunisation Schedule.
- (2) Certificates of any of the following kinds may be provided in respect of any vaccine preventable disease not covered by a vaccination certificate:
- (a) a certificate in the approved form by an authorised practitioner certifying that the child should have an exemption for one or more vaccines for specified vaccine preventable diseases due to a medical contraindication to vaccination,
  - (b) a certificate in the approved form in which:
    - (i) the parent of the child certifies that the parent has a conscientious belief of a kind specified in the approved form that vaccination for specified vaccine preventable diseases should not take place, and
    - (ii) an authorised practitioner certifies that the practitioner has explained the benefits and risks associated with immunisation to the parent and has informed the parent of the potential danger if a child is not immunised.
- (3) **Exemptions from pre-enrolment requirement** A principal of a child care facility is not required to comply with subsection (1) before enrolling, or permitting the enrolment of, a child at the child care facility in the circumstances prescribed by the regulations for the purposes of this section.
- (4) **Other occasions when certificates may be required** The principal of a child care facility must, on such occasions as may be prescribed by the regulations, ask a parent of a child enrolled at the child care facility to provide for that child an updated certificate of a kind required to be provided under subsection (1).
- (5) **Immunisation register** The principal of a child care facility must keep an immunisation register, in the approved form, containing the following:
- (a) a record of the immunisation status of each child enrolled at the child care facility,
  - (b) immunisation certificates and other certificates provided to the principal under this section.
- (6) The principal of a child care facility must retain information about a child in the immunisation register for such period as may be prescribed by the regulations and must produce the register for inspection on request by the public health officer.

- (7) **Provision of certificates for enrolment at other child care facilities** The principal of a child care facility at which a child is currently or was previously enrolled must, on request, provide a copy of the record and certificates kept for that child in the immunisation register of the child care facility to:
- (a) the parent of the child, for the purpose of the enrolment of the child at another child care facility, or
  - (b) the principal of another child care facility at which the child proposes to enrol.
- (8) **Chief Health Officer may issue guidelines** The Chief Health Officer may publish guidelines on the website of the Ministry of Health to assist authorised practitioners who are requested to provide certificates under this section.

**88 Responsibilities of principals during outbreaks of vaccine preventable disease** (cf 1991 Act, s 42D)

- (1) On becoming aware that a child enrolled at a primary school or child care facility has a vaccine preventable disease, the principal of the school or facility must inform the public health officer.
- (2) On being informed that a child has a vaccine preventable disease, the public health officer may direct the principal of the primary school or child care facility to do either or both of the following, both in respect of the child that has the disease and any other child enrolled at the school or facility who is a child at risk:
  - (a) to give to a parent of each such child a notice to the effect that, unless specified requirements are complied with in respect of the child within a specified period, the child is not to attend the school or facility for the duration of the outbreak of the disease,
  - (b) to take other specified action with respect to each such child.
- (3) In giving any such direction, the public health officer must not fail to comply with any requirements prescribed by the regulations for the purposes of this section.
- (4) On receiving any such direction, the principal of the primary school or child care facility must not, without reasonable excuse, fail to comply with the direction.
- (5) A principal who has given a notice referred to in subsection (2) (a) in respect of a child must ensure that the child is excluded from the primary school or child care facility concerned for the duration of the outbreak of the disease unless the requirements specified in the notice have been duly complied with.
- (6) Subsections (1) and (2) do not apply while the primary school or child care facility is closed for a public holiday or vacation, unless the school or facility would reopen before the end of the duration of the outbreak of the disease.

- (7) For the purposes of this section, the duration of an outbreak of a vaccine preventable disease is to be as determined by the public health officer.
- (8) Except as provided by section 87 and this section, a member of the staff of a primary school or child care facility must not subject a child who attends or seeks to attend the school or facility to any detriment because of the child's immunisation status.

## Part 6 Public health registers

### Division 1 Preliminary

#### 89 Definitions (cf 1991 Act, s 42E)

In this Part:

**cervical cancer** means a malignant growth of human tissue in the cervix of the uterus that is likely to spread to tissue beyond its site of origin.

**cervical cancer test** means a test carried out to determine whether or not a woman has cervical cancer or any of its precursors, being:

- (a) a pathological examination of a specimen of any kind taken from the woman, or
- (b) a test prescribed by the regulations for the purposes of this paragraph.

**identifying particulars** of a person means the person's:

- (a) full name (and any previous name), and
- (b) residential, postal address or email address.

**Pap Test Register**—see section 90.

**Pap Test Registrar** means the Secretary or, if arrangements are in force for the maintenance of the Pap Test Register by some other person, that other person.

**pathology request form** means a form submitted to a pathology laboratory by or on behalf of a health practitioner requesting the laboratory to carry out a pathological or cytological examination of a specimen.

### Division 2 The Pap Test Register

#### 90 The Pap Test Register (cf 1991 Act, ss 42F, 42G and 42H)

- (1) The Secretary must maintain, or arrange for the maintenance of, the Pap Test Register.
- (2) The Secretary may enter into an agreement or arrangement with any other person for the maintenance of the Pap Test Register.

- (3) The object of the Pap Test Register is to reduce the incidence of, and mortality from, preventable cervical cancer by using the Register for the purposes specified in section 91.
- (4) Subject to Division 3, the Pap Test Register is to contain the following information in relation to a cervical cancer test:
  - (a) the identifying particulars of the woman who had the test,
  - (b) her date of birth and ethnicity,
  - (c) the date of the test,
  - (d) the result of the test,
  - (e) an indication of whether the test was carried out:
    - (i) because the woman had symptoms that warranted investigation, or
    - (ii) as a routine measure only,
  - (f) the identification number of the test,
  - (g) if the test consisted of a pathological or cytological examination of a specimen taken from the woman:
    - (i) the name, address and identification code of the health practitioner by or on whose behalf the relevant pathology request form was submitted, and
    - (ii) the identification code of the laboratory that examined the specimen,
  - (h) if the test was a test, or a test of a class, prescribed by the regulations:
    - (i) the name, address and identification code of the health practitioner who carried out the test, and
    - (ii) such clinical information as the regulations may prescribe,
  - (i) whether and when the woman was vaccinated against the human papilloma virus.

- (5) In this section:

**identification code** of a health practitioner or laboratory means a code used to identify the health practitioner or laboratory for the purposes of the Register.

**identification number** of a cervical cancer test means the number allocated uniquely to the test:

- (a) by the laboratory that carried out the test (in the case of a test consisting of a pathological or cytological examination of a specimen taken from a woman), or

(b) by the health practitioner (in any other case).

**91 Use of information in Pap Test Register** (cf 1991 Act, s 42I)

- (1) The information in the Pap Test Register may be used for the following purposes:
  - (a) to remind any woman who does not have a further cervical cancer test (or other appropriate investigation or treatment) within a reasonable time after a cervical cancer test that a further test (or investigation or treatment) is recommended,
  - (b) to provide a record of test results of cervical cancer tests that links each woman tested with her health practitioner and any laboratory that produces her test results,
  - (c) to monitor rates and patterns of cervical cancer tests to assist in the planning and evaluation of test programs,
  - (d) to provide information (being information that does not include any woman's identifying particulars):
    - (i) to the public—so as to increase public awareness of the Register and its objects, and
    - (ii) to health practitioners and laboratories—to assist them to monitor their quality control procedures in relation to cervical cancer tests, and
    - (iii) to the Department, and
    - (iv) to the Commonwealth,
  - (e) to maintain a database (being a database that does not contain any woman's identifying particulars) for use in research into the prevention and treatment of cervical cancer.
- (2) A person acting for the purposes of this Division does not, if acting in good faith, incur any liability because of any notice or advice to a woman, or any failure to notify or advise a woman, in relation to any matter included in or otherwise concerning the Pap Test Register.
- (3) In this section, **test results** means the results of a cervical cancer test.

**92 Circumstances in which identifying particulars may be disclosed** (cf 1991 Act, s 42J)

- (1) A person must not disclose the identifying particulars of a woman who has had a cervical cancer test, in conjunction with the result of the test, otherwise than:
  - (a) to the woman concerned, or
  - (b) with the written consent of the woman, or



- (c) to the woman's health practitioner, or
  - (d) to the person in charge of a laboratory that is, or has previously been, engaged on the woman's behalf to make a pathological or cytological examination of a specimen taken from her, or
  - (e) for a purpose specified in section 91 (1) (a), (b) or (c), or
  - (f) if permitted or required to do so under the terms of an order of a court or the provisions of an Act, or
  - (g) in accordance with the regulations.
- (2) The regulations may prescribe either or both of the following:
- (a) the persons, or class of persons, to whom the identifying particulars of a woman who has had a cervical cancer test may be disclosed in conjunction with the result of the test,
  - (b) the circumstances in which such a disclosure may be made.

**93 Provision of information for inclusion in Pap Test Register** (cf 1991 Act, s 42K)

- (1) Within 30 days after a cervical cancer test is carried out in a pathology laboratory, the person in charge of the laboratory must provide a report to the Pap Test Registrar, in the approved form, on the result of the test.

Maximum penalty: 50 penalty units.

- (2) Within 30 days after carrying out a cervical cancer test prescribed by the regulations (other than a test carried out in a pathology laboratory), a health practitioner must provide a report to the Pap Test Registrar, in the approved form, on the result of the test.

Maximum penalty: 50 penalty units.

- (3) The person in charge of a laboratory does not commit an offence against subsection (1) merely because the report concerned did not include information that it was not in the power of the laboratory to provide.
- (4) It is the duty of a health practitioner who takes a specimen from a woman for the purposes of a cervical cancer test to ensure that the relevant pathology request form contains as much of the information required by this section to be included in a report from a laboratory as it is in the power of the health practitioner to provide.
- (5) This section is subject to Division 3.

### **Division 3 Right to anonymity**

#### **94 Woman may elect not to be identified in Pap Test Register** (cf 1991 Act, ss 42M and 42N)

- (1) A woman who has a cervical cancer test may elect to have her identifying particulars withheld from the Pap Test Register by advising the health practitioner carrying out the test, or taking the specimen for the purposes of the test, that she does not want to be identified in the Register.
- (2) A woman may at any time request the Secretary, in writing, to remove her identifying particulars from the Pap Test Register.
- (3) The Secretary is to cause any such request to be complied with as soon as practicable after receiving it.

#### **95 Woman may elect to have identifying particulars withheld from Pap Test Register** (cf 1991 Act, s 42O)

- (1) If a woman elects to have her identifying particulars withheld from the Pap Test Register, the health practitioner to whom she makes the election:
  - (a) must note any relevant pathology request form accordingly, and
  - (b) must not provide those particulars to any person for the purpose of their inclusion in the Register.

Maximum penalty: 50 penalty units.

- (2) A person in charge of a laboratory that receives a pathology request form noted as referred to in subsection (1) must ensure that the laboratory does not provide the identifying particulars of the woman to whom the form relates to any person for the purpose of their inclusion in the Pap Test Register.

Maximum penalty: 50 penalty units.

- (3) A person who suspects that a woman has elected to have her identifying particulars withheld from the Pap Test Register is not to include those particulars in the Register.

#### **96 Health practitioner to provide information about Pap Test Register** (cf 1991 Act, s 42P)

- (1) Before carrying out a cervical cancer test, or taking a specimen from a woman for the purposes of any such test, the health practitioner who is to carry out the test or take the specimen must advise the woman as to the following:
  - (a) the object of the Pap Test Register,
  - (b) the information that is recorded in the Pap Test Register,
  - (c) the purposes for which information in the Pap Test Register may be used,

- (d) the way in which the confidentiality of the Pap Test Register is protected.
- (2) If the health practitioner's records do not indicate that the woman has previously been provided with the advice referred to in subsection (1), the health practitioner must also advise the woman:
  - (a) that she may elect to have her identifying particulars withheld from the Pap Test Register, and
  - (b) that if she does not so elect, she may have those particulars removed from the Pap Test Register at any time after they are recorded in it.
- (3) This section does not apply if the health practitioner's records indicate that the woman has previously been provided with the advice referred to in this section. In that case the health practitioner is merely to remind the woman of her right to have her identifying particulars removed from the Register.

## **Division 4 Other public health and disease registers**

### **97 Registers that may be established**

- (1) A public health or disease register may be established and maintained under this Part for any of the following purposes:
  - (a) to facilitate the care, treatment and the follow up of persons who have diseases or have been exposed to diseases,
  - (b) to facilitate the identification of sources of infection and the control of outbreaks of diseases,
  - (c) to facilitate the identification and monitoring of risk factors for diseases or conditions that have a substantial adverse impact on the population,
  - (d) to facilitate the measurement and monitoring of outcomes of specified population health interventions,
  - (e) to facilitate the identification and monitoring of exposure to chemicals or other environmental factors that impact, or may impact, adversely on the health of individuals.
- (2) The Minister may, by order published in the Gazette, specify public health or disease registers, or classes of public health or disease registers, that may be established and maintained under this Division.
- (3) The order may specify the following:
  - (a) the information that a specified register may contain,
  - (b) the particular objects or purposes of a specified register.

## 98 Public health and disease registers

- (1) The Secretary may establish and maintain, or arrange for the establishment and maintenance of, a register of a kind specified by an order under this Division.
- (2) The Secretary may enter into an agreement or arrangement with any other person for the establishment or maintenance, or both, of any such register.
- (3) The Secretary may enter into an agreement or arrangement with a local government authority or government or non-government agency, or any other person, for the provision and use of information for the purposes of any such register.
- (4) A public health organisation must, if directed to do so in writing by the Secretary, provide information for the purposes of any such register.
- (5) A register must not contain identifying particulars of a person, except with the consent of the person.
- (6) The Secretary or a person authorised in writing by the Secretary for that purpose may provide personal information about a person to a health records linkage organisation for the purpose of establishing and providing a unique identifier number to be used for the purposes of a register.
- (7) In this section:

**health records linkage organisation** means a body approved as a health records linkage organisation by the Secretary from time to time for the purposes of this section.

**personal information** has the same meaning as in the [Health Records and Information Privacy Act 2002](#).

## Part 7 Miscellaneous health services

### Division 1 Provision and promotion of health services

#### 99 Advertisement or promotion of health services (cf 1991 Act, s 10AN)

A person must not advertise or otherwise promote the provision of a health service in a manner that:

- (a) is false, misleading or deceptive, or
- (b) is likely to mislead or deceive, or
- (c) creates, or is likely to create, an unjustified expectation of beneficial treatment.

Maximum penalty:

- (a) in the case of an individual—100 penalty units for a first offence or 200 penalty units for a second or subsequent offence, or
- (b) in the case of a corporation—500 penalty units for a first offence or 1,000 penalty units for a second or subsequent offence.

## **Division 2 Provision of health services for which no registration is required**

### **100 Codes of conduct for non-registered health practitioners** (cf 1991 Act, s 10AM)

- (1) The regulations may prescribe codes of conduct for the provision of health services by:
  - (a) health practitioners who are not subject to the scheme for registration under the Health Practitioner Regulation National Law (including de-registered health practitioners), and
  - (b) health practitioners who are registered under the Health Practitioner Regulation National Law for the provision of health services and who provide health services that are unrelated to their registration.
- (2) Before a code of conduct is prescribed, the Minister is to:
  - (a) give public notice of the code in a form and manner determined by the Minister, specifying where the code can be inspected and the time and manner in which submissions may be made, and
  - (b) place the code and an impact assessment statement for the code on public exhibition for not less than 21 days, and
  - (c) consider any submission received within 21 days (or such longer period as the Minister may determine) after the end of that exhibition period.

#### **Note—**

Section 41A of the [Health Care Complaints Act 1993](#) permits the Health Care Complaints Commission to make a prohibition order in respect of a health practitioner if the Commission finds that the health practitioner has breached the code of conduct and poses a substantial risk to the health of members of the public. The Commission is also able to cause a public statement to be issued in such circumstances identifying and giving warnings about the health practitioner.

## **Division 3 Provision of health services by health practitioners who are de-registered or subject to prohibition orders**

### **101 Definitions**

- (1) In this Division:

***corresponding interstate prohibition order*** means an order made under a law of

another State or Territory prescribed by the regulations for the purposes of this Division.

**de-registered health practitioner** means a health practitioner whose registration as a health practitioner under the Health Practitioner Regulation National Law or interstate health registration legislation has been cancelled, or is suspended, as a result of disciplinary proceedings under the Health Practitioner Regulation National Law, the [Health Practitioner Regulation National Law \(NSW\)](#) or interstate health registration legislation.

**interstate health registration legislation** means legislation of another State or Territory (other than the Health Practitioner Regulation National Law) that provides for the registration of health practitioners.

**prohibition order** means a prohibition order made under the [Health Practitioner Regulation National Law \(NSW\)](#) or section 41A of the [Health Care Complaints Act 1993](#), and includes an interim prohibition order made under section 41AA of that Act and any corresponding interstate prohibition order.

- (2) For the purposes of this Division, a person's **registration as a health practitioner is cancelled under the Health Practitioner Regulation National Law or interstate health registration legislation** if any of the following happen as a result of an action, decision, determination or order of a registration board, tribunal or court under that Law or legislation:
- (a) the person's registration is cancelled,
  - (b) the person is de-registered,
  - (c) the person's name is removed from, or struck off, a register or a roll,
  - (d) the person's practising certificate is cancelled.
- (3) For the purposes of this Division, a health practitioner is subject to a prohibition order if the health practitioner is, because of the order, subject to conditions when providing health services or is prohibited from providing some or all health services.

## **102 Provision of health services by persons who are de-registered or subject to prohibition orders** (cf 1991 Act, s 10AK)

- (1) Before providing a health service, a de-registered health practitioner must ensure that:
- (a) the person to whom the health practitioner intends to provide the health service or, if that person is under 16 years of age or under guardianship, a parent or guardian of the person, and
  - (b) if the health service is to be provided by the health practitioner as an employee,

the health practitioner's employer,

are notified, in accordance with the regulations, that the health practitioner's registration under the Health Practitioner Regulation National Law or interstate health registration legislation has been cancelled, or is suspended, as the case may be.

Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.

(2) Before providing a health service, a health practitioner who is subject to a prohibition order must ensure that:

(a) the person to whom the health practitioner intends to provide the health service or, if that person is under 16 years of age or under guardianship, a parent or guardian of the person, and

(b) if the health service is to be provided by the health practitioner as an employee, the health practitioner's employer,

are notified, in accordance with the regulations, that the health practitioner is subject to the order.

Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.

(3) A person must not provide a health service in contravention of a prohibition order.

Maximum penalty: 200 penalty units, or imprisonment for 12 months, or both.

**103 Advertising of health services if person is de-registered or subject to a prohibition order** (cf 1991 Act, s 10AL)

(1) A person must not advertise a health service that is to be provided by a de-registered health practitioner unless the advertisement specifies that the health practitioner's registration under the Health Practitioner Regulation National Law or interstate health registration legislation has been cancelled, or is suspended, as the case may be.

Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.

(2) A person must not advertise a health service that is to be provided by a health practitioner who is subject to a prohibition order unless the advertisement specifies that the health practitioner is subject to the order.

Maximum penalty: 100 penalty units, or imprisonment for 6 months, or both.

(3) A person is not guilty of an offence under this section if he or she did not know, and could not reasonably have known, that the health practitioner had been de-registered or was subject to a prohibition order.

## Division 4 Nursing homes

### 104 Nursing homes to be staffed by registered nurses (cf 1991 Act, s 52)

- (1) A person who operates a nursing home must ensure that:
  - (a) a registered nurse is on duty in the nursing home at all times, and
  - (b) a registered nurse is appointed as a director of nursing of the nursing home, and
  - (c) any vacancy in the position of director of nursing of the nursing home is filled within 7 days.

Maximum penalty: 100 penalty units.

- (2) The regulations may prescribe the minimum qualifications for appointment as director of nursing at a nursing home.
- (3) In this section, **director of nursing** of a nursing home means the person responsible for the overall care of the residents of the nursing home.

## Part 8 Enforcement of Act

### Division 1 General inspections and inquiries

#### 105 Inspection of documents (cf 1991 Act, s 70)

- (1) The Secretary may inspect a public authority's documents in relation to public health and, for that purpose, may direct the public authority:
  - (a) to make any such document available for inspection, or
  - (b) in the case of a document that is not in writing but is capable of being reduced to writing, to produce, and make available for inspection, a written copy of the document.
- (2) The Secretary may make copies of, or take extracts from, any documents made available under this section.

#### 106 Inquiries by Secretary (cf 1991 Act, s 71)

- (1) The Secretary may inquire into:
  - (a) any matter relating to public health, or
  - (b) any matter that, under this Act, authorises an order or direction by, or that requires the approval or consent of, the Minister, the Secretary or the Chief Health Officer, or
  - (c) any alleged offence under this Act or the regulations.



- (2) The Secretary may authorise a person in writing to exercise the functions specified by the authority for the purposes of assisting the inquiry.
- (3) The person's authority may authorise the person to exercise any of the functions of an authorised officer under this Part that are specified in the authority.
- (4) For the purposes of an inquiry, the Secretary may obtain, use and disclose any information obtained by the Secretary under this Act, if the Secretary is of the opinion that it is reasonably necessary to do so for the purposes of the inquiry or for the purposes of protecting the health of the public.
- (5) This section has effect despite any law.

**107 Inspection of, and extracts from, births, deaths and marriages registers** (cf 1991 Act, s 64)

- (1) A public health officer or an officer of the Department authorised by the Secretary may, at any reasonable time, request access to the Register kept under the *Births, Deaths and Marriages Registration Act 1995*.
- (2) The Registrar of Births, Deaths and Marriages is to make such arrangements as are necessary for the supply of information from the Register if required by a public health officer or any such officer of the Department.

**108 Powers of authorised officers to enter premises**

- (1) For the purposes of this Act, an authorised officer:
  - (a) may enter and inspect any premises, either alone or together with such other persons as the authorised officer considers necessary, and
  - (b) may inspect any documents that are on the premises and, for that purpose, may direct the occupier of the premises:
    - (i) to make available for inspection any documents that are in the possession, or under the control, of the occupier, or
    - (ii) in the case of a document that is not in writing but is capable of being reduced to writing, to produce, and make available for inspection, a written copy of the document, and
  - (c) may make copies of, or take extracts from, any such documents, and
  - (d) may, for the purpose of analysis, take samples of any substance found on the premises, and
  - (e) may examine and inspect any apparatus or equipment on any premises, and
  - (f) may take such photographs, films and audio, video and other recordings as the

authorised officer considers necessary, and

(g) may, for the purpose of collecting evidence of a contravention of this Act or the regulations, take samples of any substance or take possession of any thing that the authorised officer believes may constitute such evidence.

(2) An authorised officer may not exercise a power conferred by subsection (1) unless the authorised officer:

(a) is in possession of a search warrant or a certificate of authority that identifies him or her as an authorised officer, and

(b) produces the warrant or certificate of authority if required to do so by the occupier of the premises, and

(c) gives reasonable notice to the occupier of the premises of intention to exercise the power, unless the giving of notice would defeat the purpose for which it is intended to exercise the power, and

(d) exercises the power at a reasonable time, unless it is being exercised in an emergency.

(3) A certificate of authority is to be issued by the person who appoints the authorised officer and must:

(a) state that it is issued under the *Public Health Act 2010*, and

(b) give the name of the person to whom it is issued, and

(c) describe the nature of the powers conferred and the source of the powers, and

(d) state the date, if any, on which it expires, and

(e) describe the kind of premises to which the power extends, and

(f) bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate.

(4) This section does not authorise entry into any part of premises that is used solely for residential purposes, except:

(a) with the consent of the occupier of the premises, or

(b) under the authority of a search warrant.

(5) An authorised officer who enters any premises in pursuance of this section may do so without paying any admission fee.

## 109 Search warrants

- (1) An authorised officer may apply to an authorised warrants officer for a search warrant if the authorised officer suspects that a provision of this Act or the regulations has been or is being contravened on premises.
- (2) An authorised warrants officer to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the authorised officer named in the warrant and such other person (if any) as is named in the warrant:
  - (a) to enter the premises concerned, and
  - (b) to search the premises for evidence of a contravention of this Act or the regulations.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) Without limiting the generality of section 71 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, a police officer:
  - (a) may accompany an authorised officer executing a search warrant issued under this section, and
  - (b) may take all reasonable steps to assist the authorised officer in the exercise of the person's functions under this section.
- (5) In this section, **authorised warrants officer** means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

## Division 2 Power to demand information

### 110 Power of authorised officers to require answers

- (1) An authorised officer may, by notice in writing, direct a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters about which he or she requires information in connection with the exercise of his or her functions:
  - (a) to answer questions in relation to those matters, and
  - (b) if a meeting with the authorised officer is reasonably necessary to enable questions in relation to those matters to be properly asked and answered, to meet with the authorised officer to answer such questions.
- (2) The Secretary or authority that appointed an authorised officer may, by notice in writing, direct a corporation to nominate, in writing and within a specified time, a director or officer of the corporation to represent the corporation for the purpose of answering any such questions.

- (3) Answers given by the nominated person bind the corporation.
- (4) The place and time at which a person may be required to attend under subsection (1) (b) is to be:
  - (a) a place or time nominated by the person, or
  - (b) if the place and time so nominated is unreasonable in the circumstances or if the person fails to nominate a place and time, a place and time nominated by the authorised officer.
- (5) An authorised officer may record any questions and answers under this section if the person to be questioned has been informed that the record is to be made.
- (6) A record may be made by any method, including sound or video recording.
- (7) A copy of any such record must be provided to the person who is questioned as soon as practicable after the record is made.

#### **111 Requirement to provide information and documents**

- (1) An authorised officer may, by notice in writing, direct a person to furnish to the authorised officer such information or documents as the authorised officer requires in connection with the exercise of the authorised officer's functions.
- (2) A notice under this section must specify the manner in which, and the time by which, the information or documents to which the notice relates must be furnished.
- (3) A notice under this section may only require a person to furnish existing documents that are in the person's possession or that are within the person's power to obtain lawfully.
- (4) The person to whom a document is furnished under this section may take copies of it.
- (5) If any document required to be furnished under this section is in electronic, mechanical or other form, the notice requires the document to be furnished in written form, unless the notice otherwise provides.

#### **112 Power of authorised officers to direct name and address to be provided**

An authorised officer may direct a person whom the authorised officer suspects to have contravened or to be contravening any provision of this Act or the regulations, or who is apparently in charge of premises where such a contravention is occurring or evidently has occurred, to state his or her full name and residential address and (if the person is not the occupier of the premises) the name of the occupier of the premises.

## **Division 3 Offences**

### **113 Offence not to comply with direction**

- (1) A person must not, without reasonable excuse, fail to comply with a direction under this Part.

Maximum penalty: 50 penalty units.

- (2) A person who furnishes any information in purported compliance with a direction under this Part, knowing that the information is false or misleading in a material respect, is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

### **114 Provisions relating to requirements to furnish documents, information or answer questions**

- (1) A person is not guilty of an offence of failing to comply with a direction under this Part to furnish documents or information, or to answer a question, unless the person was warned on that occasion that a failure to comply is an offence.

- (2) A person is not excused from a direction under this Part to furnish documents or information, or to answer a question, on the ground that the document, information or answer might incriminate the person or make the person liable to a penalty.

- (3) However, any information furnished or answer given by a natural person in compliance with a direction under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under section 113 (2)) if:

- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or

- (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.

- (4) Any document furnished by a person in compliance with a direction under this Part is not inadmissible in evidence against the person in criminal proceedings by reason only that the document incriminates the person.

- (5) Further information obtained as a result of a document or information furnished, or of an answer given, in compliance with a direction under this Part is not inadmissible by reason only:

- (a) that the document or information had to be furnished or the answer had to be given, or

(b) that the document or information furnished or answer given incriminates the person.

(6) This section extends to a request under this Part to state a person's name and address.

#### **115 Offence to impersonate authorised officer**

A person who impersonates an authorised officer is guilty of an offence.

Maximum penalty: 100 penalty units.

#### **116 Offence to obstruct or assault persons exercising their functions** (cf 1991 Act, ss 10F (2) and 74)

(1) A person who intimidates or wilfully obstructs or hinders another person exercising, or attempting to exercise, a function under this Act or the regulations is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

(2) A person who assaults an authorised officer exercising, or attempting to exercise, a function under this Act or the regulations is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

#### **117 Proceedings for offences**

(1) Proceedings for an offence under a provision of this Act or the regulations may be disposed of in a summary manner before the Local Court or before the Supreme Court in its summary jurisdiction.

(2) Subject to subsection (3), proceedings for an offence under such a provision may be commenced at any time within 12 months after the offence was allegedly committed.

(3) Proceedings for an offence under a provision of Division 5 of Part 3 or section 83 or 84 may be commenced at any time within 2 years after the date on which the offence was allegedly committed.

(4) The maximum monetary penalty that may be imposed by the Local Court for an offence under a provision referred to in subsection (1) is 100 penalty units or the maximum monetary penalty elsewhere provided in the provision concerned, whichever is the lesser.

#### **118 Penalty notices**

(1) An authorised officer may serve a penalty notice on a person if it appears to the authorised officer that the person has committed an offence against a provision of this Act or the regulations, being an offence prescribed by the regulations as a penalty

notice offence.

- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The regulations:
  - (a) may prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) may prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) may prescribe different amounts of penalties for different offences or classes of offences.
- (8) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

**119 Offences by corporations** (cf 1991 Act, s 78)

- (1) If a corporation commits an offence under a provision of this Act or the regulations, each person who is a director of the corporation, or who is concerned in the management of the corporation, is to be taken to have committed the same offence if the person knowingly authorised or permitted the act or omission constituting the offence.
- (2) Subsection (1) does not apply in respect of an offence under a provision of this Act or the regulations that is declared by the regulations to be an excluded provision for the purposes of this section.

- (3) A person may be proceeded against and convicted under such a provision whether or not the corporation has been proceeded against or convicted under that provision.
- (4) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under such a provision.

### **120 Continuing offences**

- (1) A person who is guilty of an offence because the person fails to comply with a requirement made by or under this Act or the regulations (whether the requirement is imposed by a notice or otherwise) to do or cease to do something (whether or not within a specified period or before a particular time):
  - (a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and
  - (b) is guilty of a continuing offence for each day the contravention continues.
- (2) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.
- (3) This section does not apply to the extent that a requirement of a notice is revoked.

## **Part 9 Administration**

### **Division 1 Public health officers**

#### **121 Appointment of public health officers**

The Secretary may appoint an individual to be the public health officer for a part of the State or for the purpose of exercising particular public health functions.

#### **122 Functions of public health officers**

- (1) The public health officer for a part of the State has the following functions:
  - (a) to investigate, and furnish reports to the Secretary on, matters affecting public health in that part of the State, if directed to do so by the Secretary,
  - (b) to co-ordinate activities and local government authorities in that part of the State in relation to the reduction of any risks to public health in that part of the State,
  - (c) to co-ordinate the activities of authorised officers in relation to the enforcement of this Act and the regulations within that part of the State,
  - (d) such other functions as are conferred or imposed on the public health officer by or under this Act.



- (2) In the exercise of any such function, the public health officer is subject to the control and direction of the Secretary.
- (3) The public health officer for a part of the State may not exercise any function except in relation to matters concerning, or arising within, that part of the State.

**123 Public health officers may give certain orders under [Local Government Act 1993](#)**

- (1) For the purpose of protecting public health, the public health officer for a part of the State may exercise the functions of a council to give orders Nos 7, 15, 16, 17, 18, 21, 22, 22A and 25 under the Table to section 124 of the [Local Government Act 1993](#).
- (2) The [Local Government Act 1993](#) applies to and in respect of the exercise of such a function by a public health officer in the same way as it applies to and in respect of the exercise of such a function by a council.

**124 Exercise by public health officers of functions of authorised officers**

The public health officer for a part of the State may exercise any of the functions of an authorised officer.

**125 Delegation of public health officer's functions**

The public health officer for a part of the State may delegate to any member of the NSW Health Service any of the public health officer's functions, other than this power of delegation.

**Division 2 Authorised officers**

**126 Appointment of authorised officers**

- (1) The Secretary may appoint any:
  - (a) member of staff of the Department, or
  - (b) member of the NSW Health Service, or
  - (c) member, or member of staff, of a body prescribed by the regulations,to be an authorised officer, either generally or in relation to any particular function exercisable by authorised officers under this or any other Act relating to public health.
- (2) A local government authority may appoint any member of its staff or a member of the staff of another government authority to be an authorised officer, either generally or in relation to any particular function exercisable by authorised officers under this Act or the [Local Government Act 1993](#) relating to public health.
- (3) The Secretary, or a local government authority, may only appoint a person as an authorised officer if the person has, in the opinion of the Secretary or authority,

appropriate qualifications or experience for such an appointment.

### **127 Functions of authorised officers**

- (1) Subject to the terms of his or her appointment, an authorised officer has such functions as are conferred or imposed on an authorised officer by or under this or any other Act.
- (2) An authorised officer appointed by a local government authority may not exercise any such function except in relation to matters concerning, or arising within, the authority's area.

## **Division 3 Miscellaneous**

### **128 Delegation of Chief Health Officer's functions**

The Chief Health Officer may delegate any of the Chief Health Officer's functions under this Act, other than this power of delegation, to any person.

### **129 Revocation or variation of notices or directions**

- (1) A notice or direction under this Act may be revoked or varied by a subsequent notice or notices or direction or directions.
- (2) A notice or direction may be varied by modification of, or addition to, its terms and specifications.
- (3) Without limiting the above, a notice or direction may be varied by extending the time for complying with the notice or direction.
- (4) A notice or direction may only be revoked or varied by the authority or person that gave it and in the manner required for the giving of the notice or direction.

### **130 Disclosure of information**

A person who discloses any information obtained in connection with the administration or execution of this Act is guilty of an offence unless the disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act or the regulations, or
- (c) for the purposes of any legal proceedings arising out of this Act or the regulations, or of any report of any such proceedings, or
- (d) with the approval of the Chief Health Officer, or a person authorised by the Chief Health Officer to give the approval, to a person specified in the approval and the information consists of epidemiological data specified in the approval, or
- (e) in other prescribed circumstances, or

(f) with other lawful excuse.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

### **131 Service of documents**

(1) A notice or other document referred to in this Act or the regulations may be served on any person:

(a) in the case of a natural person:

(i) by delivering it to the person personally, or

(ii) by sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or

(iii) by sending it by facsimile transmission to the facsimile number of the person, or

(b) in the case of a body corporate:

(i) by leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or

(ii) by sending it by facsimile transmission to the facsimile number of the body corporate.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising or requiring a document to be served on a person in any other manner.

### **132 Exclusion of liability of the State and others**

(1) This section applies to civil proceedings for damages or other compensation brought against the State or any authority of the State.

(2) Damages or other compensation is not payable in any such civil proceedings to which this section applies to the extent that the claim is based on alleged negligence or other breach of duty (including statutory duty) arising because of the exercise of, or the failure to exercise, in good faith any function under this Act.

(3) This section does not affect any entitlement to compensation expressly conferred by this Act.

**133 Exclusion of personal liability** (cf 1991 Act, s 77)

- (1) A person who exercises a function under this Act in good faith and for the purpose of executing this Act is not subject personally to any action, liability, claim or demand based on the exercise of the function.
- (2) Without affecting the generality of subsection (1), a person is not subject personally to any legal proceedings, civil or criminal, for sending, giving or serving, in good faith, without negligence and for the purposes of this Act, a certificate, notice or other communication.

**134 Regulations** (cf 1991 Act, s 82)

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

**Note—**

Section 100 requires a code of conduct prescribed by the regulations under that section to have undergone public consultation before the regulation is made.

- (2) In particular, the regulations may make provision for or with respect to any of the following:
  - (a) the prevention, mitigation and eradication of risks to public health,
  - (b) the places at which, and the conditions subject to which, a person may be detained under a public health order,
  - (c) regulating public health standards for public swimming pools and spa pools and premises where skin penetration procedures are carried out, including standards for cleanliness, hygiene and infection control,
  - (d) the closure of public swimming pools and spa pools for any period during which they are a risk to public health,
  - (e) the installation, operation, maintenance and inspection of a regulated system,
  - (f) the functions (including powers of entry and inspection) of local government authorities and authorised officers in relation to a regulated system,
  - (g) the directions that, in relation to a regulated system, may be given by a local government authority or an authorised officer during, or as a result of, an investigation of an occurrence of Legionnaires' disease,
  - (h) compliance with directions referred to in paragraph (g),
  - (i) the provision of information by the owner or occupier of premises in relation to a regulated system which is installed on the premises,

- (j) the provision and keeping of operation manuals, and maintenance manuals, for a regulated system,
- (k) the keeping of records, and the making of reports, in relation to a regulated system,
- (l) the provision of information by the owner or occupier of premises at which a public swimming pool or spa pool is situated,
- (m) the provision of information by persons who carry out skin penetration procedures,
- (n) the cases in which, the manner in which, and the conditions under which, cremations of human remains may take place,
- (o) matters preliminary to, and consequential on, cremations of human remains,
- (p) other public health matters relating to the disposal and handling of human remains,
- (q) the registration of cremations and burials and (with any necessary modifications) the application to the registration of cremations of the provisions of any other Act, or of any law, in force in relation to the registration of a burial of the body of a deceased person,
- (r) the embalming, interment, disposal and exhumation of the bodies of deceased persons,
- (s) the preparation rooms, equipment and apparatus in mortuaries, crematories and cemeteries, and any other matter relating to mortuaries, crematories and cemeteries that is for the protection of the health of the public,
- (t) the inspection of mortuaries, crematories and cemeteries and of premises that may reasonably be suspected of being mortuaries, crematories or cemeteries,
- (u) the records to be kept in relation to mortuaries, crematories and cemeteries, and the inspection of records (including the making of copies or extracts from such records by or for authorised officers and the public), equipment and apparatus in mortuaries, crematories and cemeteries or premises that may reasonably be suspected of being mortuaries, crematories or cemeteries,
- (v) the fees that may be charged for the cremation of human remains, for the preservation or disposal of the ashes and for related services,
- (w) the payment of specified fees in relation to applications made, approvals given, improvement notices and prohibition orders given, and other matters arising, under this Act.

- (3) A regulation may apply, adopt or incorporate a publication as in force for the time being.
- (4) The regulations may create offences punishable by a penalty not exceeding 20 penalty units.

**135 (Repealed)**

**136 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**Schedule 1 Scheduled medical conditions**

(Section 51)

**Definitions**

In this Schedule:

**birth** means the birth of a child who has breathed after delivery.

**delivery**, in relation to a child or still-born child, means the complete expulsion or extraction of the child or still-born child from the mother.

**perinatal death** means:

- (a) the death of a child on the day of his or her birth or within the next succeeding 28 days, or
- (b) a still-birth.

**still-birth** means the birth of a child that exhibits no sign of respiration or heartbeat, or other sign of life, after delivery and that:

- (a) is of at least 20 weeks' gestation, or
- (b) if it cannot be reliably established whether the period of gestation is more or less than 20 weeks, has a body mass of at least 400 grams at birth.

**Category 1**

Acute rheumatic fever

Birth

Congenital malformation (as described in the *International Statistical Classification of Diseases and Related Health Problems*) in a child under the age of one year

Cystic fibrosis in a child under the age of one year

Hypothyroidism in a child under the age of one year

Perinatal death

Phenylketonuria in a child under the age of one year

Pregnancy with a child having a congenital malformation (as described in the *International Statistical Classification of Diseases and Related Health Problems*), cystic fibrosis, hypothyroidism, thalassaemia major or phenylketonuria

Rheumatic heart disease in a person under the age of 35 years

Sudden Infant Death Syndrome

Thalassaemia major in a child under the age of one year

## **Category 2**

Acquired Immune Deficiency Syndrome (AIDS)

Acute viral hepatitis

Adverse event following immunisation

Avian influenza in humans

Creutzfeldt-Jakob disease (CJD) and variant Creutzfeldt-Jakob disease (vCJD)

Foodborne illness in two or more related cases

Gastroenteritis among people of any age in an institution (for example, among persons in educational or residential institutions)

Human Immunodeficiency Virus (HIV) Infection

Leprosy

Measles

Middle East respiratory syndrome coronavirus

Pertussis (whooping cough)

Severe Acute Respiratory Syndrome

Smallpox

Syphilis

Tuberculosis

Viral haemorrhagic fevers

**Category 3**

Anthrax

Arboviral infections

Avian influenza in humans

Botulism

Brucellosis

Cancer

Chancroid

Chlamydia

Cholera

Congenital malformation (as described in the *International Statistical Classification of Diseases and Related Health Problems*)

Creutzfeldt-Jakob disease (CJD) and variant Creutzfeldt-Jakob disease (vCJD)

Cryptosporidiosis

Cystic fibrosis

Diphtheria

Donovanosis

Giardiasis

Gonorrhoea

*Haemophilus influenzae* type b

Hendra virus infection

Hepatitis A

Hepatitis B

Hepatitis C

Hepatitis D (delta)

Hepatitis E



Human Immunodeficiency Virus (HIV) infection

Hypothyroidism in a child under the age of one year

Influenza

Invasive pneumococcal infection

Lead in blood (as defined by a blood lead level of or above 5µg/dL)

*Legionella* infections

Leptospirosis

Listeriosis

Lymphogranuloma venereum

Lyssavirus

Malaria

Measles

Meningococcal infections

Middle East respiratory syndrome coronavirus

Mumps

Paratyphoid

Pertussis (whooping cough)

Phenylketonuria

Plague

Poliomyelitis

Pregnancy with a child having a congenital malformation (as described in the *International Statistical Classification of Diseases and Related Health Problems*), cystic fibrosis, hypothyroidism, thalassaemia major or phenylketonuria

Psittacosis

Q fever

Rabies

Rotavirus

Rubella

Salmonella infections

Severe Acute Respiratory Syndrome

Shiga toxin-producing and Vero toxin-producing *Escherichia coli* infection (STEC/VTEC)

Shigellosis

Smallpox

Syphilis

Thalassaemia major

Tuberculosis

Tularaemia

Typhoid

Typhus (epidemic)

Viral haemorrhagic fevers

Yellow fever

**Category 4**

Avian influenza in humans

Middle East respiratory syndrome coronavirus

Severe Acute Respiratory Syndrome

Tuberculosis

Typhoid

Viral haemorrhagic fevers

**Category 5**

Acquired Immune Deficiency Syndrome (AIDS)

Human Immunodeficiency Virus (HIV) infection

**Schedule 2 Notifiable diseases**

(Section 81)

Acquired Immune Deficiency Syndrome (AIDS)

Acute rheumatic fever

Acute viral hepatitis

Adverse event following immunisation

Avian influenza in humans

Botulism

Cancer

Cholera

Congenital malformation (as described in the *International Statistical Classification of Diseases and Related Health Problems*) in a child under the age of one year

Creutzfeldt-Jakob disease (CJD) and variant Creutzfeldt-Jakob disease (vCJD)

Cystic fibrosis in a child under the age of one year

Diphtheria

Foodborne illness in two or more related cases

Gastroenteritis among people of any age, in an institution (for example, among persons in educational or residential institutions)

Haemolytic Uraemic Syndrome

*Haemophilus influenzae* type b

Hypothyroidism in a child under the age of one year

Legionnaires' disease

Leprosy

Lyssavirus

Measles

Meningococcal disease

Middle East respiratory syndrome coronavirus

Paratyphoid

Pertussis (whooping cough)

Phenylketonuria in a child under the age of one year

Plague

Poliomyelitis

Pregnancy with a child having a congenital malformation (as described in the *International Statistical Classification of Diseases and Related Health Problems*), cystic fibrosis, hypothyroidism, thalassaemia

major or phenylketonuria

Rabies

Rheumatic heart disease in a person under the age of 35 years

Severe Acute Respiratory Syndrome

Smallpox

Syphilis

Tetanus

Thalassaemia major in a child under the age of one year

Tuberculosis

Typhoid

Typhus (epidemic)

Viral haemorrhagic fevers

Yellow fever

### **Schedule 3 Vaccine preventable diseases**

(Section 85)

Diphtheria

*Haemophilus influenzae* type b

Measles

Meningococcal type C

Mumps

Pertussis (whooping cough)

Poliomyelitis

Rubella

Tetanus

### **Schedule 4 (Repealed)**

## Schedule 5 Savings, transitional and other provisions

### Part 1 General

#### 1 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

    this Act

    any Act that amends this Act

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:

    (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

    (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on enactment of this Act

#### 2 Definitions

In this Part:

***appointed day***, in its application to any act, matter, thing or circumstance arising under this Part, means:

(a) in relation to a provision of the 1991 Act that is repealed by this Act, the day on which the provision is repealed, or

(b) in relation to a provision of this Act, the day on which the provision commences.

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

#### 3 Construction of other references

Subject to this Schedule and the regulations, in any Act or instrument:

(a) a reference to a provision of the 1991 Act for which there is a corresponding provision in this Act extends to the corresponding provision of this Act, and

- (b) a reference to any act, matter or thing referred to in a provision of the 1991 Act for which there is a corresponding provision in this Act extends to the corresponding act, matter or thing referred to in the corresponding provision of this Act.

#### **4 General saving**

Subject to this Schedule and the regulations:

- (a) anything begun before the appointed day under a provision of the 1991 Act for which there is a corresponding provision in this Act may be continued and completed under the 1991 Act as if this Act had not been enacted, and
- (b) subject to paragraph (a), anything done under a provision of the 1991 Act for which there is a corresponding provision in this Act (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of this Act.

#### **5 Pap Test Register**

The New South Wales Pap Test Register under the 1991 Act is taken to be the Pap Test Register under this Act.

#### **6 Delegations**

Any delegation that was in force immediately before the appointed day under a provision of the 1991 Act for which there is a corresponding provision in this Act is taken to be a delegation in force under the corresponding provision of this Act.

#### **7 Authorised officers and authorised medical practitioners**

- (1) A person who held office as an environmental health officer immediately before the commencement of section 126 is taken to have been appointed as an authorised officer under that section on that commencement.
- (2) A person who held office as an authorised medical practitioner immediately before the commencement of section 60 is taken to have been appointed as an authorised medical practitioner under that section on that commencement.
- (3) A reference in any Act or instrument to an environmental health officer appointed under the 1991 Act is taken to be a reference to an authorised officer appointed under this Act.