

# Public Health Regulation 2012

[2012-311]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Authorisation

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New South Wales

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# Public Health Regulation 2012



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Public Health Regulation 2012*.

### 2 Commencement

- (1) Except as provided by this clause, this Regulation commences on 1 September 2012 and is required to be published on the NSW legislation website.
- (2) Clauses 15, 19 and 20 and Schedule 1 commence on 1 March 2013.
- (3) Clause 34 commences on 1 September 2014.

### 3 Interpretation

- (1) In this Regulation:

**the Act** means the *Public Health Act 2010*.

- (2) A reference in this Regulation to a publication is a reference to the publication as in force for the time being.
- (3) Notes included in this Regulation do not form part of this Regulation.

## Part 2 Legionella control

### 4 Interpretation

- (1) Unless otherwise defined in the Act or this Part, an expression used in this Part and in any of the following publications has the same meaning as it has in that publication:
  - (a) AS/NZS 3666.1:2011*Air-handling and water systems of buildings—Microbial control—Design, installation and commissioning*,
  - (b) AS/NZS 3666.2:2011*Air-handling and water systems of buildings—Microbial control—Operation and maintenance*,

(c) *AS/NZS 3666.3:2011Air-handling and water systems of buildings—Microbial control—Performance-based maintenance of cooling water systems.*

(2) In this Part, **competent person** means a person who is a tertiary qualified chemist, chemical engineer, engineer or microbiologist and who has relevant expertise.

## 5 Exemption of regulated systems

(1) For the purposes of section 27 of the Act, the following are exempt from the operation of Division 2 of Part 3 of the Act:

(a) a regulated system (other than a water-cooling system) installed in a dwelling,

(b) a warm-water system that is installed in any premises other than a hospital,

**Note—**

**Hospital** is defined in the Act to include a nursing home.

(c) a water-cooling system installed in any premises and used solely for making snow.

(2) In this clause, **dwelling** means a single occupancy dwelling that does not have common property and is not controlled by an owners corporation (within the meaning of the *Strata Schemes Management Act 1996*).

## 6 Prescribed installation requirements

(1) For the purposes of Division 2 of Part 3 of the Act, the prescribed installation requirements are the requirements set out in this clause.

(2) Air-handling systems, hot-water systems, warm-water systems and water-cooling systems must be installed in accordance with *AS/NZS 3666.1:2011Air-handling and water systems of buildings—Microbial control—Design, installation and commissioning*, as applicable to the specific system.

(3) An air-handling system must be fitted with supply air filters.

(4) A warm-water system must not be installed in a hospital unless it is of a kind approved in writing by the Director-General. An application for an approval by the Director-General is to be accompanied by a fee of \$160.

## 7 Prescribed operating requirements

(1) For the purposes of Division 2 of Part 3 of the Act, the prescribed operating requirements are the requirements set out in this clause.

(2) A regulated system must be operated as required by *AS/NZS 3666.2:2011Air-handling and water systems of buildings—Microbial control—Operation and maintenance*.

(3) There must be safe and easy access to a regulated system for the purpose of the cleaning, inspection and maintenance of the system.



- (4) A water-cooling system must be equipped with a disinfection procedure that is in operation at all times and that is designed to control microbial growth so that:
  - (a) the level of Legionella in the system is not more than 10 colony-forming units per millilitre, and
  - (b) the heterotrophic plate count in the system is not more than 100,000 colony-forming units per millilitre.
- (5) If a level set out in subclause (4) (a) or (b) is exceeded, remedial action must be taken as soon as practicable by a competent person or a person acting under the supervision of a competent person.

## **8 Prescribed maintenance requirements**

- (1) For the purposes of Division 2 of Part 3 of the Act, the prescribed maintenance requirements are the requirements set out in this clause.
- (2) A regulated system (other than a water-cooling system) must be maintained in accordance with *AS/NZS 3666.2:2011 Air-handling and water systems of buildings—Microbial control—Operation and maintenance*.
- (3) A water-cooling system must be maintained in accordance with:
  - (a) *AS/NZS 3666.2:2011 Air-handling and water systems of buildings—Microbial control—Operation and maintenance*, or
  - (b) *AS/NZS 3666.3:2011 Air-handling and water systems of buildings—Microbial control—Performance-based maintenance of cooling water systems* but only if the occupier of the premises on which the water-cooling system is installed has notified the local government authority for the area.
- (4) For the purposes of subclause (3) (b), a reference in *AS/NZS 3666.3:2011 Air-handling and water systems of buildings—Microbial control—Performance-based maintenance of cooling water systems* to a person competent to evaluate the condition of a cooling water system is a reference to a competent person or a person acting under the supervision of a competent person.
- (5) All tests carried out in the course of complying with the prescribed maintenance requirements for a regulated system must be carried out in a laboratory accredited by the National Association of Testing Authorities for that purpose.
- (6) **Additional maintenance requirement for hot-water systems** Maintenance must be carried out on a hot-water system to ensure that at any time when the system is in operation it delivers water at each outlet each time the outlet is turned on at not less than 60 degrees Celsius, once any water standing in the pipe to that outlet before it was turned on has been expelled.

- (7) **Additional maintenance requirement for warm-water systems** Maintenance carried out on a warm-water system must comply with the document entitled *Requirements for the provision of cold and heated water* published by the Ministry of Health.

## **9 Maintenance precautions**

If maintenance of a regulated system is being carried out on the premises on which it is installed, the contractor, or any other person carrying out the maintenance otherwise than as an employee, is guilty of an offence if appropriate measures are not taken:

- (a) to minimise contamination of adjoining areas and the ambient environment by aerosols, dust, particulate matter or effluent, and
- (b) to prevent public access to the area in which the maintenance is being carried out.

Maximum penalty: 20 penalty units.

## **10 Certification of water-cooling systems**

- (1) The occupier of a premises on which a water-cooling system is installed must ensure that the system is certified annually by a competent person as being equipped with a disinfection procedure that is effective under the range of operating conditions that could ordinarily be expected for the system concerned.
- (2) The occupier must keep a copy of the most recent certificate at the premises and make it available for inspection on request by an authorised officer.

Maximum penalty: 20 penalty units.

## **11 Notification of installation of water-cooling and warm-water systems**

- (1) For the purposes of section 31 of the Act, the local government authority for the area in which the premises are located is prescribed and the notice is to be in writing and is to be accompanied by the fee (not exceeding \$100) determined by the local government authority.
- (2) The occupier of premises at which a water-cooling or warm-water system is installed must notify the local government authority for the area in which the premises are located within 7 days of any change in the particulars provided to the authority in the approved form under section 31 of the Act. No fee is payable for such a notification.

Maximum penalty: 10 penalty units.

## **12 Register of water-cooling and warm-water systems**

- (1) Each local government authority is to maintain a register of water-cooling systems and warm-water systems installed on premises in its area.
- (2) The register must contain the following particulars relating to each regulated system:

- (a) the address and telephone number of the premises on which the system is installed,
  - (b) the name and contact details of the occupier of the premises (including residential address, e-mail address and home, business and mobile telephone numbers),
  - (c) the Australian Business Number (ABN) or Australian Company Number (ACN) (if any) of the occupier of the premises,
  - (d) the type of regulated system,
  - (e) details of any inspections carried out by the local government authority for the purposes of the Act.
- (3) A local government authority must on request make its register available for inspection without charge by the Director-General, a public health officer or an officer of the Ministry of Health authorised by the Director-General.

### **13 Display of prohibition orders**

The occupier of premises at which a regulated system is installed who has been served with 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.

## **Part 3 Control of public swimming pools and spa pools**

### **14 Definition**

In this Part, ***natural swimming pool*** means a swimming pool that only contains untreated water that is supplied directly to the pool from the ocean or other natural water source and that does not have a circulation system.

### **15 Prescribed operating requirements**

For the purposes of Division 3 of Part 3 of the Act, the prescribed operating requirements for public swimming pools and spa pools (other than natural swimming pools) are the requirements set out in Schedule 1.

### **16 Disinfection standards**

For the purposes of section 36 (3) of the Act, the requirements set out in Schedule 1 are the prescribed standards for public swimming pools and spa pools (other than natural swimming pools).

### **17 Director-General may order temporary closure of public swimming pools and spa pools**

- (1) The Director-General may, by order in writing served on the occupier of premises at

which a public swimming pool or spa pool is situated, direct the pool to be closed for use by members of the public until the order is revoked if satisfied on reasonable grounds that the pool is a risk to public health.

- (2) An order must be accompanied by a statement in writing of the reasons for the making of the order.
- (3) A person on whom an order has been served must comply with the terms of the order while it remains in force.

Maximum penalty: 20 penalty units.

- (4) A person on whom an order has been served must, while the order remains in force, display a copy of the order in a conspicuous place at or near each entrance to the pool.

Maximum penalty: 10 penalty units.

- (5) The Director-General must, by notice in writing served on the occupier of the premises concerned, revoke an order if satisfied on reasonable grounds that the public swimming pool or spa pool in relation to which the order is in force is no longer a risk to public health.

#### **18 Director-General may order pool disinfection or other action**

- (1) The Director-General may, by notice in writing, direct the occupier of premises at which a public swimming pool or spa pool is situated to disinfect the pool, or to take any other action, in accordance with the direction if satisfied that the pool is a risk to public health.
- (2) An occupier of premises to whom a direction is given must not, without reasonable excuse, fail to comply with the direction.

Maximum penalty: 20 penalty units.

#### **19 Notification of public swimming pools and spa pools**

- (1) For the purposes of section 35 (2) of the Act, the local government authority for the area in which the public swimming pool or spa pool is located is prescribed and the notice is to be in writing and is to be accompanied by the fee (not exceeding \$100) determined by the local government authority.
- (2) The occupier of premises at which a public swimming pool or spa pool is situated must notify the local government authority for the area in which the pool is located within 7 days of any change in the particulars provided to the authority in the approved form under section 35 (2) of the Act. No fee is payable for such a notification.

Maximum penalty: 10 penalty units.

(3) This clause does not apply to natural swimming pools.

## **20 Register of public swimming pools and spa pools**

- (1) Each local government authority is to maintain a register of public swimming pools and spa pools (other than natural swimming pools) in its area.
- (2) The register must contain the following particulars relating to each public swimming pool or spa pool:
  - (a) the address and telephone number of the premises on which the public swimming pool or spa pool is located,
  - (b) the name and contact details of the occupier of the premises (including residential address, e-mail address and home, business and mobile telephone numbers),
  - (c) the Australian Business Number (ABN) or Australian Company Number (ACN) (if any) of the occupier of the premises,
  - (d) details of any inspections carried out by the local government authority for the purposes of the Act.
- (3) A local government authority must on request make its register available for inspection without charge by the Director-General, a public health officer or an officer of the Ministry of Health authorised by the Director-General.

## **Part 4 Control of skin penetration procedures**

### **Division 1 Preliminary**

#### **21 Skin penetration procedures**

- (1) Colonic lavage is declared to be a skin penetration procedure.
- (2) Laser hair removal is declared not to be a skin penetration procedure.

#### **22 Prescribed requirements for premises where skin penetration procedures are carried out**

For the purposes of section 38 (1) of the Act, the requirements set out in Divisions 2 and 3 are prescribed.

### **Division 2 Requirements for premises where skin penetration procedures are carried out**

#### **23 Premises must be properly equipped**

- (1) Any premises where skin penetration procedures are carried out must:
  - (a) be clean and hygienic, and

- (b) have a waste disposal bin, and
  - (c) have a hand basin that has a supply of clean, warm, potable water, and
  - (d) have a separate sink that has a supply of clean, warm water for cleaning equipment (if equipment used in skin penetration procedures at the premises is cleaned at the premises), and
  - (e) have available for use by persons carrying out skin penetration procedures at the premises:
    - (i) liquid soap (or an alcohol-based hand cleaner), and
    - (ii) single-use towels or an automatic hand dryer, and
    - (iii) disposable gloves, clean linen and gowns or aprons that are appropriate for the skin procedures carried out at the premises.
- (2) Any equipment at premises where skin penetration procedures are carried out must be in good working order, be cleaned and dried after use and be kept in a clean and dry condition.

#### **24 Additional requirement for colonic lavage procedures**

Premises at which a colonic lavage procedure is carried out must have a toilet, being a toilet that is available for use by clients and not by the general public, that is:

- (a) in the case of a procedure using a closed system—located in close proximity to the room in which the procedure is being carried out, or
- (b) in the case of a procedure using an open system—located in the immediate vicinity of the room in which the procedure is being carried out.

#### **25 Premises must have sharps containers and supply of sterile disposable needles**

- (1) If skin penetration procedures that involve the use of sharps are carried out at the premises, there must be an appropriate sharps container at the premises.
- (2) If skin penetration procedures that involve the use of needles are carried out at the premises, there must be an adequate supply of sterile disposable needles at the premises.
- (3) In this clause, ***appropriate sharps container*** means:
  - (a) if skin penetration procedures that involve the use of reusable sharps are carried out at the premises—a sharps container that complies with AS/NZS 4261:1994 *Reusable containers for the collection of sharp items used in human and animal medical applications*, or

- (b) if skin penetration procedures that involve the use of non-reusable sharps are carried out at the premises—a sharps container that complies with AS 4031-1992 *Non-reusable containers for the collection of sharp medical items used in health care areas*.

## **26 Reusable articles must be sterilised**

- (1) All reusable articles used to penetrate a person's skin for skin penetration procedures must be sterilised, whether at the premises or off-site.
- (2) If reusable articles are sterilised at the premises:
  - (a) a bench top autoclave, maintained in accordance with AS 2182-1998 *Sterilizers—Steam—Benchtop*, must be used, and
  - (b) there must be at least one person present at the time the autoclave is used who is adequately trained in the operation of the autoclave, and
  - (c) the sterilisation must be carried out in accordance with AS/NZS 4815:2006 *Office-based health care facilities—Reprocessing of reusable medical and surgical instruments and equipment, and maintenance of the associated environment*.
- (3) If reusable articles are sterilised at the premises, the occupier of the premises must make, and keep for at least 12 months, a record of:
  - (a) the time and date when each article was sterilised, and
  - (b) the length of time that the article was autoclaved and the temperature and pressure levels of the autoclave.
- (4) If reusable articles are sterilised off-site, the occupier of the premises must make, and keep for at least 12 months, a record of:
  - (a) the date on which each article was sent off-site for sterilisation, and
  - (b) the name and address of the person who sterilised the article.

## **Division 3 Requirements for carrying out skin penetration procedures**

### **27 Use of needles, sharps and other articles**

- (1) A person who carries out a skin penetration procedure must not use a needle that has previously been used in a skin penetration procedure.
- (2) A person who uses a needle in a skin penetration procedure must dispose of the needle in the appropriate sharps container immediately after completing the procedure.
- (3) A person who uses any article in a skin penetration procedure that is manufactured

for a single use only must dispose of the article immediately after completing the procedure.

- (4) A person who uses a non-reusable sharp in a skin penetration procedure must dispose of the sharp in the appropriate sharps container immediately after completing the procedure.
- (5) A person must not use an article that may penetrate the skin of a person in a skin penetration procedure unless it is clean and has been sterilised and kept in a sterile environment.
- (6) A person must not use an article in a skin penetration procedure if the article has previously been used in a skin penetration procedure but did not penetrate the skin of the person undergoing the previous procedure unless the article has been cleaned and kept in a clean condition.
- (7) In this clause, ***appropriate sharps container*** means a sharps container that complies with AS 4031-1992 *Non-reusable containers for the collection of sharp medical items used in health care areas*.

Maximum penalty: 20 penalty units.

## **28 Protective equipment to be worn**

- (1) A person who carries out a skin penetration procedure must:
  - (a) wear gloves that have never been used before, and
  - (b) appropriately dispose of the gloves immediately after completing the procedure.
- (2) A person who carries out a skin penetration procedure (other than colonic lavage) must wear a clean gown or apron during the procedure.
- (3) A person who carries out colonic lavage must wear a clean gown made of impermeable material during the procedure.
- (4) This clause does not apply to a person carrying out a skin penetration procedure that involves the use of wax for the purposes of hair removal unless the person reasonably suspects that he or she will be exposed to human bodily substances during the procedure.

Maximum penalty: 20 penalty units.

## **29 Use of inks and pigments**

- (1) A person who carries out a skin penetration procedure that involves the use of ink, pigment or other liquid must decant the liquid into a single use container, and use a single use applicator, for each person undergoing the procedure.



Maximum penalty: 20 penalty units.

- (2) This clause does not apply to skin penetration procedures involving the use of wax for the purposes of hair removal.

### **30 Use of wax for hair removal**

A person who carries out a skin penetration procedure using wax for the purposes of hair removal must dispose of that wax, and any instrument used to apply the wax (such as a spatula), immediately after completing the procedure.

Maximum penalty: 20 penalty units

## **Division 4 Miscellaneous**

### **31 Notification of carrying out of skin penetration procedures**

- (1) For the purposes of section 38 (2) of the Act, the local government authority for the area in which the premises are located is prescribed and the notice is to be in writing and is to be accompanied by the fee (not exceeding \$100) determined by the local government authority.
- (2) In the case of skin penetration procedures carried out in mobile premises, the local government authority for the area in which the occupier resides is prescribed.
- (3) The occupier of premises where skin penetration procedures are carried out must notify the local government authority for the area in which the premises are located within 7 days of any change in the particulars provided to the authority in the approved form under section 38 (2) of the Act. No fee is payable for such a notification.

Maximum penalty: 10 penalty units.

### **32 Register of premises where skin penetration procedures are carried out**

- (1) Each local government authority must keep a register of premises in its area where skin penetration procedures are carried out.
- (2) The following details must be entered in the register in relation to each premises:
  - (a) the address and telephone number of the premises,
  - (b) the name and contact details of the occupier of the premises (including residential address and home, business and mobile telephone numbers),
  - (c) the Australian Business Number (ABN) or Australian Company Number (ACN) (if any) of the occupier,
  - (d) the type of skin penetration procedures carried out at the premises,

- (e) details of any inspections of the premises carried out by the local government authority,
  - (f) in the case of skin penetration procedures that are carried out in mobile premises, the local government areas in which the occupier of the premises intends to carry out the procedures.
- (3) A local government authority must on request make its register available for inspection without charge by the Director-General, a public health officer or an officer of the Ministry of Health authorised by the Director-General.

### **33 Display of prohibition orders**

The occupier of premises where skin penetration procedures are carried out who has been served with 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.

## **Part 5 Safety measures for drinking water**

### **34 Quality assurance programs**

- (1) For the purposes of section 25 (1) of the Act, a quality assurance program must address the elements of the Framework for Management of Drinking Water Quality (as set out in the *Australian Drinking Water Guidelines* published by the National Health and Medical Research Council) that are relevant to the operations of the supplier of drinking water concerned.
- (2) A supplier of drinking water must provide the Director-General with a copy of its most recent quality assurance program.
- (3) The Director-General may arrange for the review of a quality assurance program of a supplier of drinking water at any time.

### **35 Records to be kept by suppliers of drinking water**

- (1) A water carter must make, and keep for at least 6 months, a record of the following:
  - (a) the name of each supplier of drinking water from whom the water carter receives water and the place, date and time at which the water is supplied to the water carter by that supplier,
  - (b) the name and address of each person to whom the water carter supplies water, the place, date and time at which the water is supplied to that person and the volume of water supplied to that person,
  - (c) details of any substances other than drinking water transported in any water tank used by the water carter,

(d) the dates on which any water tank used by the water carter is cleaned.

Maximum penalty: 10 penalty units.

(2) A supplier of drinking water (other than a water carter) must make, and keep for at least 6 months, a record of the name, address and telephone number of each water carter to whom the supplier of drinking water supplies water.

Maximum penalty: 10 penalty units.

(3) In this clause, **water carter** means a person referred to in paragraph (i) of the definition of **supplier of drinking water** in section 5 (1) of the Act.

## Part 6 Scheduled medical conditions

### 36 Notification of death arising from scheduled medical condition

For the purposes of section 53 (d) of the Act, the following particulars are prescribed:

- (a) the date of birth and sex of the deceased,
- (b) the date, place and cause of death of the deceased,
- (c) the address of the person who certified the cause of death.

### 37 Notification of category 1 and 2 conditions

For the purposes of section 54 (2) (a) of the Act, the following particulars are prescribed:

- (a) in relation to birth—the particulars required to be included in the *NSW Perinatal Data Collection Form* published by the Ministry of Health,
- (b) in relation to perinatal death—the particulars in Part 1 of Schedule 2,
- (c) in relation to sudden infant death syndrome—the particulars in Part 2 of Schedule 2,
- (d) in relation to all Category 2 medical conditions (including AIDS)—the particulars required to be included in the *Doctor/Hospital Notification Form* published by the Ministry of Health,
- (e) in relation to AIDS—the particulars required to be included in the *AIDS Notification Form* published by the Ministry of Health,
- (f) in relation to a congenital malformation, cystic fibrosis, hypothyroidism, thalassaemia major or phenylketonuria in a child under the age of 1 year or pregnancy with a child having a such a condition—the particulars required to be included in the *Notification of a scheduled congenital condition diagnosed in an infant* or *Notification of a scheduled congenital condition diagnosed by prenatal diagnosis*, as applicable, both published by the Ministry of Health.

### **38 Period for keeping records**

For the purposes of section 54 (3) (a) of the Act, the prescribed period for keeping records is:

- (a) in the case of a person who is 18 years of age or over—7 years, and
- (b) in the case of a person who is less than 18 years of age—7 years starting on the person's eighteenth birthday, and
- (c) in the case of a person who was still-born—7 years starting on the date of birth, and
- (d) in the case of a person who died before turning 18—7 years starting on the date of the person's death.

### **39 Public health orders—matters for consideration**

- (1) The following matters must be taken into account by an authorised medical practitioner in deciding whether or not to make a public health order in respect of a person:
  - (a) whether reasonable attempts have been made to provide the person with information about the effects of the Category 4 or 5 condition the person has and the risks to public health of that condition,
  - (b) the options other than a public health order that are available to deal with the risk to public health posed by the person,
  - (c) if the proposed public health order will require the person to undergo treatment—the availability and effectiveness of the proposed treatment and the likely side effects of the proposed treatment on the person,
  - (d) if the proposed public health order will require the person to be detained—the likely social, economic, physical and psychological effects of the detention on the person,
  - (e) if the proposed public health order relates to a person with tuberculosis—the guidelines entitled *Tuberculosis Management of People Knowingly Placing Others at Risk of Infection* published by the Ministry of Health,
  - (f) if the proposed public health order relates to a person with HIV or AIDS—the guidelines entitled *HIV—Management of People with HIV Infection Who Risk Infecting Others* published by the Ministry of Health.
- (2) These matters do not need to be taken into account in the case of an emergency or if it is otherwise not reasonably practicable.

### **39A Advice to Category 2 or 3 patients**

The Director-General, or a registered medical practitioner authorised under this clause by the Director-General, may notify a person suffering from a Category 2 or 3 condition of measures to be taken, and activities to be avoided, in order to minimise the danger of passing the medical condition to another person.

### **39B Advice to Category 2, 3 or 4 contacts**

The Director-General may notify a person who the Director-General believes may have been in contact with a person suffering from a Category 2, 3 or 4 condition of measures to be taken, and activities to be avoided, in order to minimise the danger of the first person contracting the condition or passing it to a third person.

## **Part 7 Other disease control measures**

### **Division 1 Sexually transmitted infections and notifiable diseases**

#### **40 Information for patients with sexually transmitted infections**

For the purposes of section 78 (1) of the Act, the following information is prescribed in relation to a sexually transmitted infection:

- (a) the means of minimising the risk of infecting other people,
- (b) the public health implications of the infection,
- (c) the responsibilities the patient has under section 52 of the Act, including any precautions considered reasonable,
- (d) the responsibilities the patient has under section 79 (1) of the Act,
- (e) diagnosis and prognosis,
- (f) treatment options.

#### **41 Notification to Director-General of notifiable diseases**

For the purposes of section 83 (1) of the Act, the following information is prescribed:

- (a) in relation to a patient who has cancer—the particulars required to be included in the *Cancer Notification Form* published by the Ministry of Health,
- (b) in relation to a patient under the age of 1 year who has a congenital malformation, cystic fibrosis, hypothyroidism, thalassaemia major or phenylketonuria or a patient who is or was pregnant with a child having such a condition—the particulars required to be included in the *Notification of a scheduled congenital condition diagnosed in an infant* or *Notification of a scheduled congenital condition diagnosed by prenatal diagnosis*, as applicable, both published by the Ministry of Health,

- (c) in relation to a patient with any other notifiable disease—the particulars required to be included in the *Doctor/Hospital Notification Form* published by the Ministry of Health.

## **Division 2 Immunisation of children**

### **42 Application of Division 4 of Part 5 of Act**

For the purposes of Division 4 of Part 5 of the Act, children who are enrolled at a primary school or a child care facility are prescribed.

### **43 Immunisation certificates and evidence of immunisation status**

- (1) For the purposes of section 86 (1) of the Act, the principal of a primary school must ask a parent of a child to lodge with the principal an immunisation certificate for the child whenever the child concerned reaches the age, designated by the Director-General for a specified vaccine preventable disease, at which it is appropriate for a child to be immunised or further immunised against that disease.
- (2) For the purposes of section 87 (1) of the Act, the principal of a child care facility must ask a parent of a child to produce to the principal evidence in the approved form as to the child's immunisation status whenever the child concerned reaches the age, designated by the Director-General for a specified vaccine preventable disease, at which it is appropriate for a child to be immunised or further immunised against that disease.

### **44 Period for which immunisation certificates and register entries are to be retained**

- (1) For the purposes of section 86 (4) of the Act, the principal of a primary school must retain an immunisation certificate for 3 years from the date on which the child concerned ceases to attend the school, unless the principal is earlier required to forward the certificate under section 86 (2) of the Act.
- (2) For the purposes of section 87 (4) of the Act, the principal of a child care facility must retain an entry in the register for 3 years from the date on which the child concerned ceases to attend the facility, unless the principal is earlier required to forward the certificate under section 87 (2) of the Act.

## **Division 3 Offences**

### **45 Vermin**

An occupier of premises must take reasonable measures to keep the premises free from fleas, other disease-carrying insects, rats and mice (except any such animals kept as pets).

Maximum penalty: 20 penalty units.

#### **46 Sleeping accommodation**

- (1) The occupier of premises must not allow any room or cubicle in the premises to be used for the purposes of sleeping accommodation unless:
  - (a) the room or cubicle has a floor area of 5.5 square metres or more for each person sleeping in it (in the case of long-term sleeping accommodation) or 2 square metres or more for each person sleeping in it (in any other case), or
  - (b) the room or cubicle has been exempted by the Minister under this clause and complies with any conditions attached to the exemption, or
  - (c) the premises are private domestic premises.

Maximum penalty: 5 penalty units.

- (2) The Minister may, by order in writing, exempt an occupier in relation to any room or cubicle from the requirements of this clause, either conditionally or unconditionally, if satisfied that the exemption will not have an adverse effect on the health of persons sleeping in the room or cubicle.
- (3) An order made by the Minister under clause 22 of the *Public Health (General) Regulation 2002* that was in force immediately before the commencement of this clause:
  - (a) is taken to be an order made under this clause, and
  - (b) continues in force for a period of 2 years from that commencement, unless sooner revoked.
- (4) In this clause, **long-term sleeping accommodation** means accommodation that is provided to the same person for a period of more than 28 consecutive days.

#### **47 Anthrax**

A person must not sell, offer for sale, consign, transmit, deliver for sale, use in any manufacturing process or receive for the purposes of business any hide, portion of a hide, hair or wool of any animal that is suffering or has died from anthrax or that the person has reason to believe is suffering or has died from anthrax.

Maximum penalty: 20 penalty units.

### **Division 4 General**

#### **48 Public authorities to notify public health risks**

If a public authority considers, on reasonable grounds, that a situation has arisen in which the health of the public is, or is likely to be, at risk, the public authority is to notify the public health officer for the part of the State concerned.

## Part 8 Disposal of bodies

### Division 1 Definitions

#### 49 Definitions

In this Part:

**body** means the body of a dead person, but does not include the cremated remains of the person.

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

**burial** includes putting in a vault.

**cemetery authority** means the person or body that directs the operations of a cemetery.

**coroner** means a person who exercises or performs the functions of a coroner in accordance with the [Coroners Act 2009](#).

**cremation** includes disposal of a body by alkaline hydrolysis.

**cremation authority**, in relation to a crematory, means the person or body that directs the operations of the crematory.

**crematory** includes premises in which bodies are disposed of by alkaline hydrolysis.

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

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

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

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

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

**mortuary** means premises that are used, or intended to be used, for the preparation or storage of bodies as part of the arrangements for their burial or cremation, but does not



include any premises (such as a hospital) in which bodies may be temporarily stored pending their transfer to a mortuary.

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

**nearest surviving relative** means:

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

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

## Division 2 Facilities

### 50 Premises for handling of bodies

- (1) A person must not, without the approval of the Director-General, use any premises other than a mortuary that complies with the relevant standards for mortuaries under the [Local Government Act 1993](#) for the embalming or other preparation of bodies for burial or cremation or for the placing of bodies in coffins for burial or cremation.
- (2) A person must not, without the approval of the Director-General, use any premises other than a holding room or a mortuary for the storage of bodies for burial or cremation.
- (3) A person must not store a body in a vehicle except during the transport of the body or with the approval of the Director-General.
- (4) A person must not use a holding room for any purpose other than the storage of bodies.
- (5) A person must not, without the approval of the Director-General, use the facilities of a hospital for the purpose of the business of a funeral director or of the operator of a mortuary transport service except for the removal of bodies of persons who died in the hospital.
- (6) The Director-General may give approval:
  - (a) under subclause (1), (2) or (3)—either generally or in a particular case, or
  - (b) under subclause (5)—in a particular case.

Maximum penalty: 15 penalty units.

### **51 Facilities of body preparation rooms**

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

Maximum penalty: 15 penalty units.

### **52 Vehicles**

- (1) A funeral director or the operator of a mortuary transport service must not use for the transport of bodies the part of a vehicle that is used by the funeral director or service for other purposes.
- (2) A funeral director or the operator of a mortuary transport service must not use for any other purpose the part of a vehicle that is used by the funeral director or service for the transport of bodies.
- (3) If part of a vehicle has been used to transport a body, a person must not use, or permit the use of, that part for the transport of another body until it has been cleaned of any exudates from the first body.
- (4) A person must not dispose of a vehicle that the person has used for the transport of a body unless the vehicle has been cleaned since that use to remove any body exudates.
- (5) A person must not transport an unembalmed body unless:

- (a) during that transport, the body is refrigerated at a temperature of less than 10 degrees Celsius, or
- (b) the duration of the transport is 8 hours or less and the person reasonably believes that transporting the body without refrigeration will not be a risk to public health.

Maximum penalty: 5 penalty units.

## **Division 3 Handling of bodies**

### **53 Prescribed infectious diseases**

In this Division, ***prescribed infectious disease*** means any of the following diseases:

- (a) avian influenza in humans,
- (b) diphtheria,
- (c) plague,
- (d) respiratory anthrax,
- (e) Severe Acute Respiratory Syndrome,
- (f) smallpox,
- (g) tuberculosis,
- (h) any viral haemorrhagic fever (including Lassa, Marburg, Ebola and Crimean-Congo fevers).

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

- (1) A person who is not a funeral director must not retain a body if more than 5 days have passed since death.

Maximum penalty: 20 penalty units.

- (2) The Director-General may approve, in a particular case, of a body being retained for longer than 5 days, subject to any conditions that the Director-General considers appropriate.
- (3) This clause does not apply to a body that is stored at premises licensed under the [Anatomy Act 1977](#) or the subject of an inquest under the [Coroners Act 2009](#).

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

- (1) A funeral director must retain a body:
  - (a) in a refrigerated body storage facility, and

(b) in a mortuary or a holding room.

Maximum penalty: 20 penalty units.

(2) However, a funeral director may cause the body to be removed from a refrigerated body storage facility:

(a) to another part of the mortuary, for a maximum of 8 hours a day for the purposes of preparing the body for burial or cremation, embalming the body or viewing of the body by mourners, or

(b) for the purpose of transporting the body for burial, interment or cremation, or

(c) for the purpose of transporting the body to another mortuary.

### **56 Embalming of bodies**

(1) A person must not embalm a body unless that person has successfully completed a course in embalming provided by a training provider accredited by the Australian Skills Quality Authority or approved by the Director-General.

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

Maximum penalty: 20 penalty units.

### **57 Infection control procedures**

(1) A person must, when carrying out any procedure on a body, comply with the guidelines specified in Part B of the *Australian Guidelines for the Prevention and Control of Infection in Healthcare* published by the National Health and Medical Research Council.

Maximum penalty: 15 penalty units.

(2) A person must, when placing a body in a bag or wrapping a body, comply with the document entitled *Infection Control Policy* published by the Ministry of Health.

Maximum penalty: 15 penalty units.

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

(1) A responsible person must ensure that the body of a dead person is not removed from a place unless:

(a) the body has been placed and secured in a bag or wrapping in a manner that prevents the leakage of any body exudate or other substance, and

(b) the name of, or an identification of, the dead person is clearly and indelibly written on the top outer surface of the bag or wrapping, and

- (c) if the person has reason to believe that the body is infected with a prescribed infectious disease—the bag or wrapping is clearly and indelibly marked with the words “PRESCRIBED INFECTIOUS DISEASE—HANDLE WITH CARE”.

Maximum penalty: 15 penalty units.

- (2) For the purposes of this clause, a **responsible person** means:

- (a) if the body is at a hospital—the chief executive officer of the hospital or a person authorised by the chief executive officer, or
- (b) if the body is at any other premises or place—the funeral director or other person removing the body.

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

- (1) A funeral director may only remove a body from a body bag if:

- (a) the funeral director has no reason to believe it is infected with a prescribed infectious disease, and
- (b) the removal is for the purpose of:
  - (i) embalming the body, or
  - (ii) preparing the body for viewing, transport, burial or cremation, or
  - (iii) transferring the body to a coffin.

Maximum penalty: 20 penalty units.

- (2) After a funeral director has embalmed or prepared a body, the funeral director must place it in a coffin or in a new body bag.

Maximum penalty: 20 penalty units.

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

### **60 Body viewing**

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

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

Maximum penalty: 10 penalty units.

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

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

Maximum penalty: 5 penalty units.

### **61 Bodies in holding rooms**

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

Maximum penalty: 15 penalty units.

- (2) The Director-General may approve, generally or in a particular case, of a body being kept in a holding room for more than 48 hours, subject to any conditions that the Director-General considers appropriate.
- (3) A person (other than a funeral director) who keeps a body in a holding room and who has reason to believe that not refrigerating the body will be a risk to public health must put the body in the refrigerated body storage facility of the holding room.

Maximum penalty: 15 penalty units.

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

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

inspection on request by an authorised officer.

Maximum penalty: 10 penalty units.

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

Unless otherwise approved by the Director-General, generally or in a particular case, a person must not bury or cremate (other than by alkaline hydrolysis) a body unless:

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

Maximum penalty: 10 penalty units.

### **64 Burial of bodies**

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

Maximum penalty: 5 penalty units.

### **65 Transporting bodies**

- (1) A person must not use, or agree to the use of, a vehicle (other than a hearse or body collection vehicle) for transporting a body that the person has reason to believe is infected with a prescribed infectious disease without informing the owner or driver of the vehicle that the body is so infected.
- (2) A funeral director must, before despatching a body by a carrier other than a funeral director or the operator of a mortuary transport service:
  - (a) if the funeral director has reason to believe the body is infected with a prescribed infectious disease—ensure that the bag or wrapping in which the body is placed is clearly and indelibly marked with the words “PRESCRIBED INFECTIOUS DISEASE—HANDLE WITH CARE”, and
  - (b) enclose the body in a watertight coffin.

Maximum penalty: 10 penalty units.

### **66 Burials in certain areas prohibited**

- (1) A person must not place a body in any grave or vault unless that grave or vault is located:
  - (a) in a public cemetery, or
  - (b) in a private cemetery or other place approved for that purpose by a local

government authority, or

- (c) on private land, where the area of landholding is 5 hectares or more and the location has been approved for that purpose by a local government authority, or
- (d) on land reserved under the *National Parks and Wildlife Act 1974* or acquired under Part 11 of that Act, where the location has been approved for that purpose by:
  - (i) a person or body (including a local council, trust board or board of management within the meaning of that Act) in which the care, control and management of the land is vested, or
  - (ii) if no such person or body has been vested with the care, control and management of the land—the Director-General of the Department of Premier and Cabinet.

- (2) A person must not bury a body in or on any land if to do so would make likely the contamination of a drinking water supply or a domestic water supply.

Maximum penalty: 10 penalty units.

#### **67 Burials in vaults**

- (1) A person must not place a body in a vault unless:
  - (a) the body has been embalmed and hermetically enclosed with material approved by the Director-General and there is no viewing panel in the enclosure, and
  - (b) the body and enclosure are placed in a coffin and the lid secured in position.

Maximum penalty: 5 penalty units.

- (2) The Director-General may, generally or in a particular case, approve other conditions under which a body may be placed in a vault.

#### **68 Register of burials**

- (1) A cemetery authority must maintain a register of all burials carried out at the cemetery.
- (2) The cemetery authority must make in the register an entry relating to each burial immediately after the burial has been carried out.
- (3) Each entry must include the following:
  - (a) the name, age and last address of the person whose body or remains have been buried,
  - (b) the date of the person's death,



- (c) the date of the burial,
  - (d) the section and allotment where the burial has been made,
  - (e) the name of the person (if any) who continues to hold any right of burial in that allotment,
  - (f) the name of the funeral director who transported the body to the cemetery,
  - (g) the fees paid to the cemetery authority for the burial.
- (4) The cemetery authority must keep a copy of the register at the cemetery and make it available for inspection on request by an authorised officer.
- (5) If a cemetery authority ceases to direct the operations of a cemetery, the chief executive officer of the authority must ensure that the register of burials for the cemetery is sent to the Director-General or otherwise disposed of as the Director-General may direct.

Maximum penalty: 10 penalty units.

## **Division 4 Exhumations**

### **69 Exhumation without approval prohibited**

- (1) A person must not exhume the remains of a body unless the exhumation of those remains has been:
- (a) ordered by a coroner, or
  - (b) approved by the Director-General.

Maximum penalty: 20 penalty units.

- (2) However, a funeral director may, without a coroner's order or Director-General's approval, transfer a coffin from a vault in a cemetery to a mortuary for the purpose of the coffin being immediately repaired and returned to the vault.
- (3) A funeral director must return the coffin to the cemetery within 24 hours of its transfer.

Maximum penalty: 10 penalty units.

### **70 Application to exhume remains**

- (1) An application for approval to exhume the remains of the body of a dead person may be made to the Director-General by:
- (a) an executor of the estate of the dead person, or

- (b) the nearest surviving relative of the dead person, or
  - (c) if there is no such executor or relative available to make the application—a person who, in the opinion of the Director-General, is a proper person in all the circumstances to make the application.
- (2) An application is to be made in the approved form and is to be accompanied by:
- (a) a certified copy of the death certificate relating to the dead person, and
  - (b) a statutory declaration as to the relationship of the applicant to the dead person and the dead person's wishes, if any, regarding the disposal of his or her body (so far as any such wishes are known to the applicant), and
  - (c) an application fee of \$320.
- (3) In this clause, **death certificate** means a certificate given by a medical practitioner as to the cause of death or issued under the *Births, Deaths and Marriages Registration Act 1995*.

#### **71 Approval to exhume remains**

- (1) The Director-General may:
- (a) grant an approval to exhume the remains of a body, subject to any conditions specified in the approval, or
  - (b) refuse the application.
- (2) An approval granted under this clause remains valid for 3 months from the date of the approval or for a period agreed to by the Director-General.

#### **72 Exhumation not to take place without authorised officer present**

- (1) A person must not proceed with an exhumation unless an authorised officer or a member of staff of the Ministry of Health is present at the exhumation.
- (2) A person must not proceed with an exhumation if the authorised officer or Ministry staff member who is present at the exhumation orders the exhumation to stop.

Maximum penalty: 15 penalty units.

### **Division 5 Cremation**

#### **73 Definitions**

In this Division:

**cremation certificate** means a certificate issued under clause 81.

**cremation permit** means a permit issued under clause 82, 83 or 84.

**medical referee** means:

- (a) a public health officer, or
- (b) a medical superintendent of a public hospital (within the meaning of the [Health Services Act 1997](#)), or
- (c) a registered medical practitioner who has been appointed by the Director-General as a medical referee for the purposes of this Part.

#### **74 No refusal to cremate**

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

Maximum penalty: 10 penalty units.

#### **75 Bodies to be cremated separately**

- (1) Unless otherwise approved by the Director-General, generally or in a particular case, a person must not cremate more than one body in the same crematory retort at any one time.

Maximum penalty: 10 penalty units.

- (2) In this clause, **crematory retort** means the receptacle into which a body is placed for cremation.

#### **76 Cremation within 4 hours**

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

Maximum penalty: 5 penalty units.

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

- (1) A person must not cremate the body of a dead person if the person is aware that the proposed cremation would be contrary to a written direction left by the dead person.
- (2) A person must not cremate the body of a dead person otherwise than in accordance with any written direction left by the dead person about the particular method of cremation that was or was not to be used.

Maximum penalty: 10 penalty units.

#### **78 No cremation without documentation**

- (1) A person must not cremate the remains of a body that has not been identified.

Maximum penalty: 20 penalty units.

- (2) A cremation authority must not cremate the body of a dead person unless the authority has in its possession:
  - (a) an application for cremation of the body of the dead person, and
  - (b) a cremation permit, and
  - (c) in the case of the body of a dead person who is not a still-born child—a cremation certificate (unless a cremation permit has been issued by a coroner).

Maximum penalty: 20 penalty units.

- (3) Subclause (2) does not apply to a cremation of an organ or part of a body that has been subject to an anatomical examination under the [Anatomy Act 1977](#) or a post-mortem examination under the [Human Tissue Act 1983](#) if the cremation is carried out in accordance with an exemption granted by the Director-General generally or in a particular case.
- (4) Subclause (2) does not apply to a cremation of the body of a dead person that has been buried for at least 10 years if the cremation is carried out in accordance with an exemption granted by the Director-General following an application to the Director-General by:
  - (a) an executor of the estate of the dead person, or
  - (b) the nearest surviving relative of the dead person, or
  - (c) if there is no such executor or relative available to make the application—a person who, in the opinion of the Director-General, is a proper person in all the circumstances to make the application.
- (5) An application under subclause (4) is to be made in the approved form and is to be accompanied by a fee of \$100.
- (6) The form may require any information contained in the form to be supported by a statutory declaration.

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

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

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

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

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

#### **81 Cremation certificate**

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

- (4) In this clause, **attending practitioner**, in relation to a dead person, means a medical practitioner who attended the person immediately before, or during the illness terminating in, the death of the person.

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

- (1) A medical referee who receives:
- (a) an application for cremation of the body of a dead person who is not a still-born child, and
  - (b) a cremation certificate for the body,
- may issue a cremation permit for the body in the approved form.
- (2) However, a medical referee must not issue a cremation permit for the body of a dead person if:
- (a) the death of the person is examinable under the [Coroners Act 2009](#) by a coroner, or
  - (b) the proposed cremation would be contrary to a written direction left by the dead person, or
  - (c) the medical referee has not made an external examination of the body, or
  - (d) the medical referee is not satisfied that the identity of the body has been correctly disclosed in the application for cremation or in the cremation certificate, or
  - (e) the medical referee is not satisfied that the cause of death has been correctly identified in the cremation certificate, or
  - (f) the application for cremation or the cremation certificate appears to the medical referee to be otherwise incorrect or incomplete, or
  - (g) the same medical referee issued a cremation certificate in respect of the body.
- (3) A medical referee who issues a cremation permit for the body of a dead person must include in the permit any written direction left by the dead person about the particular method of cremation that was or was not to be used.

## **83 Coroner's cremation permit**

- (1) A coroner who receives an application for cremation of the body of a person whose death is examinable under the [Coroners Act 2009](#) by the coroner may issue a cremation permit in the approved form.
- (2) However, a coroner must not issue a cremation permit for the body of a dead person if:

- (a) the proposed cremation would be contrary to a written direction left by the dead person, or
  - (b) the application for cremation appears to the coroner to be incorrect or incomplete.
- (3) A coroner who issues a cremation permit for the body of a dead person must include in the permit any written direction left by the dead person about the particular method of cremation that was or was not to be used.
- (4) A cremation permit issued for the body of the dead person by a person who exercises or performs the functions of a coroner in another State or Territory under legislation of that State or Territory regulating the cremation of bodies is taken to have been issued under this clause.

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

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

#### **85 Cremated remains**

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

Maximum penalty: 10 penalty units.

## **86 Register of cremations**

- (1) A cremation authority must maintain in the approved form a register of all cremations carried out at the crematory.
- (2) A cremation authority must:
  - (a) make in the register an entry relating to each cremation immediately after the cremation has taken place, and
  - (b) make in the register an entry relating to the disposal of cremated remains as soon as they have been disposed of.

Maximum penalty: 10 penalty units.

## **87 Keeping of register and documents**

- (1) A cremation authority must keep all applications, certificates, permits and other documents relating to any cremation carried out by it and mark them with a number corresponding to the number allocated to the cremation in the register of cremations.

Maximum penalty: 20 penalty units.

- (2) Those documents (other than the register of cremations or any part of it) may be destroyed by the cremation authority after 15 years from the date of the cremation to which they relate.
- (3) When a crematory is closed, the cremation authority concerned must send all registers and documents relating to the cremations that have taken place at the crematory to the Director-General or otherwise dispose of them as the Director-General may direct.

Maximum penalty: 20 penalty units.

## **88 Closing of crematories**

- (1) The Minister may, on giving 28 days' notice in writing to a cremation authority, order the closing of a crematory whose operations are directed by the authority.
- (2) A cremation authority must not, after the 28-day period has expired, direct or permit the operation of a crematory the subject of such an order until the order is revoked by the Minister.
- (3) Except where an order has been given pursuant to subclause (1), a cremation authority must, not less than 28 days before temporarily or permanently closing a crematory whose operations it directs:
  - (a) forward to the Minister notice of the intended closure, and
  - (b) publish a notice giving details of the intended closure in a newspaper circulating



in the district where the crematory is located, and

(c) prominently display a copy of the notice at the entrance of the crematory.

(4) A person must not re-open a crematory closed by a cremation authority without the approval of the Minister.

Maximum penalty: 20 penalty units.

## **Division 6 Miscellaneous**

### **89 Register of mortuaries and crematories**

(1) The Director-General is to maintain a register of mortuaries and crematories.

(2) A person who operates a mortuary or crematory must notify the Director-General of the following matters for inclusion on the register:

(a) the name and location of the mortuary or crematory,

(b) the name and address of the person who operates the mortuary or crematory,

(c) the telephone number of the mortuary or crematory or of the person who operates the mortuary or crematory,

(d) in the case of a mortuary—the name and address of any funeral director that has access to the mortuary.

Maximum penalty: 20 penalty units.

(3) The notification is to be accompanied by the fee (not exceeding \$100) determined by the Director-General.

(4) The person who operates the mortuary or crematory must notify the Director-General of any change in the particulars notified to the Director-General. No fee is payable for such a notification.

Maximum penalty: 20 penalty units.

### **90 Public access to registers**

(1) A cemetery authority must make its register of burials available for public inspection free of charge.

(2) A cremation authority must make its register of cremations available for public inspection free of charge.

(3) An authority must also provide a copy of an entry in its register at the request of a member of the public, but may charge the reasonable cost of providing the copy.

### **91 Powers of authorised officers**

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

### **92 Guidelines as defence**

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

### **93 Offences by corporations**

Clauses 52, 74, 76, 77, 85 and 89 (2) (and (4)) are declared to be excluded provisions for the purposes of section 119 of the Act.

## **Part 9 Miscellaneous**

### **94 Notice to be given by health practitioners who are de-registered or subject to prohibition orders**

- (1) For the purposes of section 102 (1) of the Act, the notification to be given by a de-registered health practitioner to a person to whom the health practitioner intends to provide a health service or, if that person is under 16 years of age or under guardianship, to a parent or guardian of that person, is a notice in writing that sets out the following:
  - (a) the type of registration the health practitioner held prior to becoming a de-registered health practitioner,
  - (b) the date the health practitioner became a de-registered health practitioner,
  - (c) the reason the health practitioner became a de-registered health practitioner,

- (d) the period for which the health practitioner will be a de-registered health practitioner.
- (2) For the purposes of section 102 (1) of the Act, the notification to be given by a de-registered health practitioner to the health practitioner's employer is a copy of the relevant decision and orders relating to the de-registration of the health practitioner.
- (3) For the purposes of section 102 (2) of the Act, the notification to be given by a health practitioner who is subject to a prohibition order to a person to whom the health practitioner intends to provide a health service or, if that person is under 16 years of age or under guardianship, to a parent or guardian of that person, is a notice in writing that sets out the following:
  - (a) the type of health service or services the practitioner provided prior to becoming subject to the prohibition order,
  - (b) the date of the prohibition order,
  - (c) any health service the health practitioner has been prohibited from practising under the prohibition order,
  - (d) the reason the health practitioner is subject to the prohibition order,
  - (e) the period for which the health practitioner is subject to the prohibition order.
- (4) For the purposes of section 102 (2) of the Act, the notification to be given by a health practitioner who is subject to a prohibition order to the health practitioner's employer is a copy of the relevant decision and orders relating to the prohibition order.

#### **95 Minimum qualifications for director of nursing at nursing home**

The minimum qualifications for appointment as director of nursing at a nursing home are:

- (a) 5 years post-basic or post-graduate nursing experience, and
- (b) 2 years experience in a management position in a hospital.

#### **96 Local government authority to notify Director-General of improvement notices and prohibition orders**

A local government authority must, on or before 1 August in each year, provide the Director-General with the following information:

- (a) details of each improvement notice served during the previous financial year on an occupier of premises in the local government authority's area by an authorised officer appointed by the authority,
- (b) details of each prohibition order served during the previous financial year on an occupier of premises in the local government authority's area by the authority (or in

the case of a council, by the General Manager).

**97 Fee for improvement notices and prohibition orders**

- (1) A person who is given an improvement notice or a prohibition order must, within 60 days after the notice is given, pay the prescribed fee to the relevant agency if the notice or order contains a requirement to do so.
- (2) The relevant agency may:
  - (a) extend the time for payment of the fee, on the application of the person to whom the improvement notice or prohibition order was given, or
  - (b) waive payment of the whole or any part of the fee, on the relevant agency's own initiative or on the application of the person to whom the improvement notice or prohibition order was given.
- (3) A person to whom an improvement notice or prohibition order is given must pay the fee required by this clause within the time provided under this clause.

Maximum penalty: 20 penalty units.

- (4) In this clause:

***prescribed fee*** means:

- (a) in the case of an improvement notice or a prohibition order given to an occupier of premises at which there is a regulated system:
  - (i) before 1 July 2013—\$500, and
  - (ii) on or after 1 July 2013 and before 1 July 2014—\$515, and
  - (iii) on or after 1 July 2014 and before 1 July 2015—\$530, and
  - (iv) on or after 1 July 2015 and before 1 July 2016—\$545, and
  - (v) on or after 1 July 2016—\$560, or
- (b) in any other case:
  - (i) before 1 July 2013—\$250, and
  - (ii) on or after 1 July 2013 and before 1 July 2014—\$255, and
  - (iii) on or after 1 July 2014 and before 1 July 2015—\$260, and
  - (iv) on or after 1 July 2015 and before 1 July 2016—\$265, and
  - (v) on or after 1 July 2016—\$270.

**relevant agency** means:

- (a) in the case of an improvement notice given by an authorised officer appointed by the Director-General or a prohibition order given by the Director-General—the Director-General, or
- (b) in the case of an improvement notice given by an authorised officer appointed by a local government authority or a prohibition order given by a local government authority—the local government authority, or
- (c) in the case of a prohibition order given by a General Manager of a council—the council.

### **98 Fee for re-inspection of premises subject to prohibition order**

The fee payable by an occupier of premises who is subject to a prohibition order for an inspection of the premises by an authorised officer under section 46 (1) of the Act is \$250 per hour with a minimum charge of half an hour and a maximum charge of 2 hours (excluding time spent travelling).

### **99 Code of conduct for certain health practitioners**

The code of conduct set out in Schedule 3 is prescribed under section 100 of the Act as a code 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.

### **100 Penalty notice offences and penalties**

(1) For the purposes of section 118 of the Act:

- (a) each offence created by a provision specified in Column 1 of Schedule 4 is an offence for which a penalty notice may be served, and
- (b) the penalty for each such offence is:
  - (i) in the case of a penalty payable by an individual—the amount specified opposite that provision in Column 2 of Schedule 4, and
  - (ii) in the case of a penalty payable by a corporation—the amount specified opposite that provision in Column 3 of Schedule 4.

(2) If the reference to a provision in Column 1 of Schedule 4 is qualified by words that

restrict its operation to specified kinds of offence or to offences committed in specified circumstances, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or is committed in the circumstances so specified.

## 101 Savings

Any act, matter or thing that, immediately before the repeal of any of the following Regulations, had effect under those Regulations continues to have effect under this Regulation:

- (a) *Public Health (Disposal of Bodies) Regulation 2002*,
- (b) *Public Health (General) Regulation 2002*,
- (c) *Public Health (Microbial Control) Regulation 2000*,
- (d) *Public Health (Skin Penetration) Regulation 2000*,
- (e) *Public Health (Swimming Pools and Spa Pools) Regulation 2000*.

## Schedule 1 Requirements for public swimming pools and spa pools

(Clause 15)

### 1 Definitions

In this Schedule:

**bromine disinfected pool** means a public swimming pool or spa pool that is disinfected with bromine.

**chlorine disinfected pool** means a public swimming pool or spa pool that is disinfected with chlorine.

**combined chlorine** means chloramines.

**free available chlorine** means chlorine that is not combined with any other chemical compound.

**oxidation reduction potential system** (or **ORP system**), in relation to a bromine or chlorine disinfected pool, means an electronic system that monitors and controls water quality by measuring the oxidation reduction potential in the water.

**total chlorine level** of the water in a chlorine disinfected pool means the total of the concentration of free available chlorine and combined chlorine.

### 2 Temperature

The temperature of the water must not exceed 38 degrees Celsius.

### **3 Disinfection**

- (1) A pool must be fitted with an automated or a continuous metered disinfectant dosing system.
- (2) A pool must be disinfected with chlorine or bromine.

### **4 Chlorine disinfected pools**

- (1) This clause does not apply to a chlorine disinfected pool that is equipped with an ORP system.
- (2) Except as provided by subclause (3), the concentration of free available chlorine in the water in a chlorine disinfected pool must be equal to or greater than the following:
  - (a) for an outdoor public swimming pool—1.0 mg/L,
  - (b) for an outdoor public swimming pool in which cyanuric acid is used—3.0 mg/L,
  - (c) for an indoor swimming pool—2.0 mg/L,
  - (d) for a spa pool—2.0 mg/L.
- (3) The concentration of free available chlorine in the water in a chlorine disinfected pool in which the water has a pH level greater than 7.6 must be equal to or greater than the following:
  - (a) for an outdoor public swimming pool—2.0 mg/L,
  - (b) for an outdoor public swimming pool in which cyanuric acid is used—4.0 mg/L,
  - (c) for an indoor swimming pool—3.0 mg/L,
  - (d) for a spa pool—3.0 mg/L.
- (4) The concentration of combined chlorine in the water in a chlorine disinfected pool must not exceed 1.0 mg/L.
- (5) The total chlorine level of the water in a chlorine disinfected pool must not exceed 10.0 mg/L.

### **5 Bromine disinfected pools**

- (1) This clause does not apply to a bromine disinfected pool that is equipped with an ORP system.
- (2) The concentration of bromine in the water in a bromine disinfected pool must be equal to or greater than the following:
  - (a) for an outdoor public swimming pool—2.25 mg/L,

(b) for an indoor swimming pool—4.5 mg/L,

(c) for a spa pool—4.5 mg/L.

(3) The concentration of bromine in the water in a bromine disinfected pool must not exceed 9.0 mg/L.

## 6 Chlorine and bromine disinfected pools with ORP systems

(1) In a chlorine disinfected pool in which an ORP system is used, the oxidation reduction potential of the water must be at least 720 mV.

(2) In a bromine disinfected pool in which an ORP system is used, the oxidation reduction potential of the water must be at least 700 mV.

## 7 Levels of pH

The pH level of the water must be:

(a) in the case of a chlorine disinfected pool—between 7.0 and 7.8, and

(b) in the case of a bromine disinfected pool—between 7.0 and 8.0.

## 8 Testing of disinfectants and pH levels

(1) The disinfectant level and the pH level of the water in a bromine or chlorine disinfected pool with a continuous metered disinfectant dosing system must be tested manually once each day before the pool opens for use.

(2) The disinfectant level and the pH level of the water in a bromine or chlorine disinfected pool with an automated disinfectant dosing system must:

(a) be recorded each day once before the pool opens for use by the public and once during the period in which the pool is being used, and

(b) be tested manually once each day.

(3) The disinfectant level and the pH level of the water in a pool must be tested more frequently than provided for by subclauses (1) and (2) if the occupier of the premises at which the pool is situated considers it necessary, taking into account the number of people swimming in the pool at a particular time, the hours of operation of the pool, the depth of the pool and the effect of sunlight on disinfectant levels.

(4) In this clause, **disinfectant level** means:

(a) in the case of a bromine disinfected pool—the concentration of bromine in the water, and

(b) in the case of a chlorine disinfected pool—the concentration of free available chlorine and the total chlorine level of the water.



## **9 Alkalinity**

- (1) The alkalinity of the water must be between 80 mg/L and 200 mg/L.
- (2) The alkalinity of the water must be tested once a day.
- (3) However, if liquid chlorine (sodium hypochlorite) is used as a disinfectant in the pool or a carbon dioxide-based pH control is used, the alkalinity must be tested once a month only.

## **10 Ozone**

- (1) Ozone may be used in the circulation system of a pool but must not be present in the pool.
- (2) If ozone is used in the circulation system of the pool, the pool must be tested once a week for the presence of ozone.

## **11 Cyanuric acid—outdoor chlorine disinfected pools**

- (1) Cyanuric acid may only be used in an outdoor chlorine disinfected pool and must not be used in a spa pool.
- (2) If cyanuric acid is used, the concentration of cyanuric acid in the water must be tested once a week and must not exceed 50 mg/L.

## **12 Records**

A record must be made, and kept for at least 6 months, of the results of any testing required under this Schedule.

## **Schedule 2 Notification of certain deaths: particulars**

(Clause 37)

### **Part 1 Perinatal death**

Full name of mother of deceased infant.

Usual residential address of mother at time of birth of deceased infant.

Date of birth of mother.

Date of first day of mother's last menstrual period (if known) and estimated gestational age of deceased infant at time of birth.

Date of birth of infant.

Vital status at time of birth: liveborn or stillborn.

Date of death (if liveborn).

Name of hospital of birth, or address of place of birth (if not a hospital).

For liveborn infant, name of hospital where death occurred, or address of place of death (if not a hospital).

Sex of infant.

Plurality: single or multiple birth.

If multiple birth: total number of infants at that birth.

If multiple birth: the number of the deceased infant in the birth order.

Birth weight in grams.

Cause of death, as recorded on Medical Certificate of Cause of Perinatal Death.

## **Part 2 Sudden infant death syndrome**

Full name of mother of deceased infant.

Usual residential address of mother at time of birth of infant.

Date of birth of mother.

Full name of infant.

Date of birth of infant.

Name of hospital of birth, or address of place of birth (if not a hospital).

Sex of infant.

Usual residential address of infant.

Address of place at which infant was found deceased or moribund.

Date of death of infant.

## **Schedule 3 Code of conduct**

(Clause 99)

### **1 Definitions**

In this code of conduct:

**health practitioner** and **health service** have the same meanings as they have in the [Health Care Complaints Act 1993](#).

**Note—**

The [Health Care Complaints Act 1993](#) defines those terms as follows:

**health practitioner** means a natural person who provides a health service (whether or not the person is

registered under the Health Practitioner Regulation National Law).

**health service** includes the following services, whether provided as public or private services:

- (a) medical, hospital and nursing services,
- (b) dental services,
- (c) mental health services,
- (d) pharmaceutical services,
- (e) ambulance services,
- (f) community health services,
- (g) health education services,
- (h) welfare services necessary to implement any services referred to in paragraphs (a)–(g),
- (i) services provided by podiatrists, chiropractors, osteopaths, optometrists, physiotherapists and psychologists,
- (j) services provided by optical dispensers, dietitians, massage therapists, naturopaths, acupuncturists, occupational therapists, speech therapists, audiologists, audiometrists and radiographers,
- (k) services provided in other alternative health care fields,
- (l) forensic pathology services,
- (m) a service prescribed by the regulations as a health service for the purposes of the [Health Care Complaints Act 1993](#).

## **2 Application of code of conduct**

This code of conduct applies to 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.

### **Note—**

Health practitioners may be subject to other requirements relating to the provision of health services to which this Code applies, including, for example, requirements imposed by Divisions 1 and 3 of Part 7 of the Act and by Part 4 of this Regulation.

## **3 Health practitioners to provide services in safe and ethical manner**

- (1) A health practitioner must provide health services in a safe and ethical manner.
- (2) Without limiting subclause (1), health practitioners must comply with the following

principles:

- (a) a health practitioner must maintain the necessary competence in his or her field of practice,
- (b) a health practitioner must not provide health care of a type that is outside his or her experience or training,
- (c) a health practitioner must not provide services that he or she is not qualified to provide,
- (d) a health practitioner must not use his or her possession of particular qualifications to mislead or deceive his or her clients as to his or her competence in his or her field of practice or ability to provide treatment,
- (e) a health practitioner must prescribe only treatments or appliances that serve the needs of the client,
- (f) a health practitioner must recognise the limitations of the treatment he or she can provide and refer clients to other competent health practitioners in appropriate circumstances,
- (g) a health practitioner must recommend to his or her clients that additional opinions and services be sought, where appropriate,
- (h) a health practitioner must assist his or her clients to find other appropriate health care professionals, if required and practicable,
- (i) a health practitioner must encourage his or her clients to inform their treating medical practitioner (if any) of the treatments they are receiving,
- (j) a health practitioner must have a sound understanding of any adverse interactions between the therapies and treatments he or she provides or prescribes and any other medications or treatments, whether prescribed or not, that the health practitioner is aware the client is taking or receiving,
- (k) a health practitioner must ensure that appropriate first aid is available to deal with any misadventure during a client consultation,
- (l) a health practitioner must obtain appropriate emergency assistance (for example, from the Ambulance Service) in the event of any serious misadventure during a client consultation.

#### **4 Health practitioners diagnosed with infectious medical condition**

- (1) A health practitioner who has been diagnosed with a medical condition that can be passed on to clients must ensure that he or she practises in a manner that does not put clients at risk.

- (2) Without limiting subclause (1), a health practitioner who has been diagnosed with a medical condition that can be passed on to clients should take and follow advice from an appropriate medical practitioner on the steps to be taken to modify his or her practice to avoid the possibility of transmitting that condition to clients.

#### **5 Health practitioners not to make claims to cure certain serious illnesses**

- (1) A health practitioner must not hold himself or herself out as qualified, able or willing to cure cancer or other terminal illnesses.
- (2) A health practitioner may make a claim as to his or her ability or willingness to treat or alleviate the symptoms of those illnesses if that claim can be substantiated.

#### **6 Health practitioners to adopt standard precautions for infection control**

- (1) A health practitioner must adopt standard precautions for the control of infection in his or her practice.
- (2) Without limiting subclause (1), a health practitioner who carries out a skin penetration procedure must comply with the relevant provisions of this Regulation in relation to the carrying out of the procedure.

**Note—**

The Act defines **skin penetration procedure** as 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.

#### **7 Appropriate conduct in relation to treatment advice**

- (1) A health practitioner must not attempt to dissuade clients from seeking or continuing with treatment by a registered medical practitioner.
- (2) A health practitioner must accept the right of his or her clients to make informed choices in relation to their health care.
- (3) A health practitioner should communicate and co-operate with colleagues and other health care practitioners and agencies in the best interests of their clients.
- (4) A health practitioner who has serious concerns about the treatment provided to any of his or her clients by another health practitioner must refer the matter to the Health Care Complaints Commission.

#### **8 Health practitioners not to practise under influence of alcohol or drugs**

- (1) A health practitioner must not practise under the influence of alcohol or unlawful

drugs.

- (2) A health practitioner who is taking prescribed medication must obtain advice from the prescribing health practitioner on the impact of the medication on his or her ability to practice and must refrain from treating clients in circumstances where his or her ability is or may be impaired.

#### **9 Health practitioners not to practise with certain physical or mental conditions**

A health practitioner must not practise while suffering from a physical or mental impairment, disability, condition or disorder (including an addiction to alcohol or a drug, whether or not prescribed) that detrimentally affects, or is likely to detrimentally affect, his or her ability to practise or that places clients at risk of harm.

#### **10 Health practitioners not to financially exploit clients**

- (1) A health practitioner must not accept financial inducements or gifts for referring clients to other health practitioners or to the suppliers of medications or therapeutic goods or devices.
- (2) A health practitioner must not offer financial inducements or gifts in return for client referrals from other health practitioners.
- (3) A health practitioner must not provide services and treatments to clients unless they are designed to maintain or improve the clients' health or wellbeing.

#### **11 Health practitioners required to have clinical basis for treatments**

A health practitioner must not diagnose or treat an illness or condition without an adequate clinical basis.

#### **12 Health practitioners not to misinform their clients**

- (1) A health practitioner must not engage in any form of misinformation or misrepresentation in relation to the products or services he or she provides or as to his or her qualifications, training or professional affiliations.
- (2) A health practitioner must provide truthful information as to his or her qualifications, training or professional affiliations if asked for information about those matters by a client.
- (3) A health practitioner must not make claims, either directly or in advertising or promotional material, about the efficacy of treatment or services provided if those claims cannot be substantiated.

#### **13 Health practitioners not to engage in sexual or improper personal relationship with clients**

- (1) A health practitioner must not engage in a sexual or other close personal relationship

with a client.

- (2) Before engaging in a sexual or other close personal relationship with a former client, a health practitioner must ensure that a suitable period of time has elapsed since the conclusion of their therapeutic relationship.

#### **14 Health practitioners to comply with relevant privacy laws**

A health practitioner must comply with the relevant legislation of the State or the Commonwealth relating to his or her clients' health information, including the *Privacy Act 1988* of the Commonwealth and the *Health Records and Information Privacy Act 2002*.

#### **15 Health practitioners to keep appropriate records**

A health practitioner must maintain accurate, legible and contemporaneous clinical records for each client consultation.

#### **16 Health practitioners to keep appropriate insurance**

A health practitioner should ensure that appropriate indemnity insurance arrangements are in place in relation to his or her practice.

#### **17 Certain health practitioners to display code and other information**

- (1) A health practitioner must display a copy of each of the following documents at all premises where the health practitioner carries on his or her practice:
  - (a) this code of conduct,
  - (b) a document that gives information about the way in which clients may make a complaint to the Health Care Complaints Commission, being a document in a form approved by the Director-General.
- (2) Copies of those documents must be displayed in a position and manner that makes them easily visible to clients entering the relevant premises.
- (3) This clause does not apply to any of the following premises:
  - (a) the premises of any body within the public health system (as defined in section 6 of the *Health Services Act 1997*),
  - (b) private health facilities (as defined in the *Private Health Facilities Act 2007*),
  - (c) premises of the Ambulance Service of NSW (as defined in the *Health Services Act 1997*),
  - (d) premises of approved providers (within the meaning of the *Aged Care Act 1997* of the Commonwealth).

## 18 Sale and supply of optical appliances

- (1) A health practitioner must not sell or supply an optical appliance (other than cosmetic contact lenses) to a person unless he or she does so in accordance with a prescription from a person authorised to prescribe the optical appliance under section 122 of the Health Practitioner Regulation National Law.
- (2) A health practitioner must not sell or supply contact lenses to a person unless the health practitioner:
  - (a) was licensed under the *Optical Dispensers Act 1963* immediately before its repeal, or
  - (b) has a Certificate IV in optical dispensing or an equivalent qualification.
- (3) A health practitioner who sells or supplies contact lenses to a person must provide the person with written information about the care, handling and wearing of contact lenses, including advice about possible adverse reactions to wearing contact lenses.
- (4) This clause does not apply to the sale or supply of the following:
  - (a) hand-held magnifiers,
  - (b) corrective lenses designed for use only in diving masks or swimming goggles,
  - (c) ready made spectacles that:
    - (i) are designed to alleviate the effects of presbyopia only, and
    - (ii) comprise 2 lenses of equal power, being a power of plus one diopetre or more but not exceeding plus 3.5 dioptries.
- (5) In this clause:

**cosmetic contact lenses** means contact lenses that are not designed to correct, remedy or relieve any refractive abnormality or defect of sight.

**optical appliance** has the same meaning as it has in section 122 of the Health Practitioner Regulation National Law.

## Schedule 4 Penalty notice offences

(Clause 100)

Column 1	Column 2	Column 3
Offence	Penalty for an individual	Penalty for a corporation
Part 1 Offences under the Act		



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Section 28, for an offence involving a contravention of clause 6 (3) of this Regulation	\$550	\$1,100
Section 31	\$220	\$440
Section 35 (1), for an offence involving a contravention of clause 3 (1) of Schedule 1 to this Regulation	\$550	\$1,100
Section 35 (2)	\$220	\$440
Section 37	\$220	\$440
Section 38 (1), for an offence involving a contravention of clause 23 (1) (b) of this Regulation	\$110	\$220
Section 38 (1), for an offence involving a contravention of clause 23 (1) (c) of this Regulation	\$550	\$1,100
Section 38 (1), for an offence involving a contravention of clause 25 (1) of this Regulation	\$550	\$1,100
Section 38 (2)	\$220	\$440
Section 47, for an offence in respect of a public swimming pool or spa pool or premises where skin penetration procedures are carried out	\$1,100	\$2,200
Section 47, for an offence in respect of a regulated system	\$1,650	\$3,300
Part 2 Offences under this Regulation		
Clause 10 (1)	\$220	\$440
Clause 13	\$220	\$440
Clause 17 (4)	\$220	\$440
Clause 33	\$220	\$440