**PROHIBITION ORDER - Public Swimming Pools or Spa Pools**

# Section 45 of the *Public Health Act 2010*

I, ………………………………………………. *(name of delegate)*

acting pursuant to powers delegated to me by the Secretary of the NSW Ministry of Health, or Local Government Authority, or General Manager of XYZ Council hereby order that

…………………………........................... *(occupier’s name*) as the occupier of premises at:

……………........................................................................................ *(address of premises*)

at which a public swimming pool or spa pool is located, known as: ………………………………………………………………………………………… *(name and if necessary location within premises if more than one pool is present).*

shall be immediately **shut down and not be operated** until a Certificate of Clearance is issued. A Certificate of Clearance will be issued if an authorised officer is satisfied, after an inspection of the premises subject to the order, that there is no serious danger to public health.

This order is effective from …………………………………………… (*date and time order is served*)

This order is being issued because the Secretary, Local Government Authority or General Manager believes on reasonable grounds—

(a)  that any of the circumstances in which an improvement notice may be issued exist and that—

(i)  the occupier has not complied with an improvement notice within the time required under the notice, and

(ii)  the issue of the prohibition order is necessary to prevent or mitigate a serious risk to public health, or

(b)  that any of the circumstances in which an improvement notice may be issued exist and that the issue of the order (without first issuing an improvement notice) is urgently necessary to prevent or mitigate a serious risk to public health.

Specifically, (*detail the reasons for the order below*)

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**Display of Prohibition Order**

In accordance with section 44 of the Public Health Regulation 2022, a copy of this Prohibition Order must be displayed in a conspicuous place at or near each entrance to the premises.

Not displaying a copy of the Prohibition Order in accordance with Section 44 is an offence, maximum penalty not exceeding $1100. In addition, on-the-spot penalty notices may also be issued for this offence.

**Prescribed Fee payable**

In accordance with section 124 of the Public Health Regulation 2022, a prescribed fee of....................................... is payable on this prohibition order in relation to the Regulated System. The prescribed fee must be paid to the relevant agency within 60 days after the notice is given. Application may be made to the relevant agency for an extension of time to pay the fee or for a part or whole waiver of the fee. Failure to pay any outstanding fee within the required period, or after an extension period allowed by the relevant agency, is an offence under section 124 of the *Public Health Regulation 2022*. An invoice will be issued for payment.

The relevant agency for this prohibition notice is:

1. The Secretary of the Ministry of Health, **or**
2. .......................................................................Local Government Authority, **or**
3. ........................................................................Council

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| **Note**: A Clearance Certificate can only be issued if, after an inspection of the premises subject to the order, an Authorised Officer is satisfied that there is no serious danger to public health.  The Occupier may, at any time after the prohibition order has been served, make a written request to the Secretary or a delegate to cause the premises to be inspected by an Authorised Officer.  If a request for inspection is made and, through no fault of the Occupier who made the request, the inspection does not take place within 2 working days of the request being received by the Secretary or delegate, a Clearance Certificate is taken to have been given.  You are advised that under the provisions of section 48 of the *Public Health Act 2010* you may apply to the Administrative Decisions Tribunal for a review of a decision not to issue a clearance certificate.  If you contravene or fail to comply with this Prohibition Order the maximum penalty is:  (a)  in the case of an individual—200 penalty units, or 12 months imprisonment, or both, and, in the case of a continuing offence, a further 100 penalty units for each day the offence continues, or  (b)  in the case of a corporation—1000 penalty units and, in the case of a continuing offence, a further 500 penalty units for each day the offence continues. |

If you require any further information in this matter please contact:

...................................................(Officer) on.....................................(telephone number)

….................................................................

Delegate of the Secretary of the Ministry of Health / Local Government Authority / General Manager of XYZ Council

Dated: ……………………….

| **Information on Prohibition Orders and Requirements for Public Swimming Pools and Spa Pools** |
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| **Public Health Act 2010**  **Part 3, Division 5:** **Improvement notices and prohibition orders**  **40**   **Definitions**  In this Division:  ***enforceable requirement*** means:  (a)  a prescribed installation requirement, prescribed maintenance requirement or prescribed operating requirement with respect to a regulated system under Division 2, or  (b)  a prescribed operating requirement with respect to a public swimming pool or spa pool under Division 3, or  (c)  a requirement prescribed with respect to premises at which skin penetration procedures are carried out under section 38.  ***public swimming pool or spa pool*** has the same meaning as it has in Division 3.  **41**   **Non-complying premises or procedures**  An authorised officer may serve an improvement notice on the occupier of premises at which there is a regulated system or a public swimming pool or spa pool or premises at which a person carries out skin penetration procedures if the officer believes, on reasonable grounds, that:  (a)  the premises, or a regulated system, public swimming pool or spa pool at those premises, does not comply with an enforceable requirement, or  (b)  a regulated system, public swimming pool or spa pool at the premises is not being maintained or operated in accordance with an enforceable requirement.  **42**   **Improvement notices**  (1)  An improvement notice is to take the form of a direction that requires a specified enforceable requirement to be complied with within a period of 72 hours (or such longer period as is specified in the notice) after the service of the notice on the occupier or person.  (2)  The notice may specify the actions to be taken to comply with the requirement.  (3)  An improvement notice is to state that it is issued under this section and to specify any provision of the regulations to which it relates.  **43**   **Compliance with improvement notice**  (1)  If an improvement notice is complied with, an authorised officer is to note the date of compliance on the notice.  (2)  An authorised officer must give a copy of an improvement notice, noted in accordance with this section, to the person on whom the improvement notice was served if requested to do so by the person.  **45**   **Prohibition order**  (1)  The Secretary, a local government authority or a General Manager of a council may serve a prohibition order on the occupier of premises if the Secretary, authority or General Manager believes on reasonable grounds:  (a)  that any of the circumstances in which an improvement notice may be issued exist and that:  (i)  the occupier has not complied with an improvement notice within the time required under the notice, and  (ii)  the issue of the prohibition order is necessary to prevent or mitigate a serious risk to public health, or  (b)  that any of the circumstances in which an improvement notice may be issued exist and that the issue of the order (without first issuing an improvement notice) is urgently necessary to prevent or mitigate a serious risk to public health.  (2)  A prohibition order made against the occupier of premises at which there is a regulated system is to take the form of an order that the system must not be operated until the occupier has been given a clearance certificate stating that the system may be operated.  (3)  A prohibition order made against the occupier of premises at which there is a public swimming pool or spa pool is to take the form of an order that the swimming pool or spa pool must not be opened for use by the public until the occupier has been given a clearance certificate stating that the swimming pool or spa pool may be opened for use by the public.  (4)  A prohibition order made against the occupier of premises at which skin penetration procedures are carried out is to take the form of an order that such procedures must not be carried out at the premises until the occupier has been given a clearance certificate stating that skin penetration procedures may be carried out at the premises.  (5)  A prohibition order is to state that it is issued under this section and to specify any provision of the regulations to which it relates.  (6)  The Secretary, local government authority or General Manager who made the prohibition order must give a certificate of clearance if, after an inspection of the premises subject to the order, an authorised officer is satisfied that there is no serious danger to public health.  **46**   **Request for re-inspection**  (1)  An occupier of premises who is subject to a prohibition order may at any time after the order has been served make a written request to the person who made the order to cause the premises to be inspected by an authorised officer.  (2)  If a request for inspection is made under this section and, through no fault of the person who made the request, the inspection does not take place within 2 working days of the request being received by the person who made the prohibition order, a certificate of clearance is taken to have been given under this Division to the person who made the request.  **47**   **Contravention of prohibition order**  A person must not fail to comply with a prohibition order served on the person under this Part.  Maximum penalty (for an offence in respect of a public swimming pool or spa pool or premises where skin penetration procedures are carried out):  (a)  in the case of an individual—200 penalty units, or 12 months imprisonment, or both, and, in the case of a continuing offence, a further 100 penalty units for each day the offence continues, or  (b)  in the case of a corporation—1,000 penalty units and, in the case of a continuing offence, a further 500 penalty units for each day the offence continues.  Maximum penalty (for an offence in respect of a regulated system):  (a)  in the case of an individual—500 penalty units, or 12 months imprisonment, or both, and, in the case of a continuing offence, a further 250 penalty units for each day the offence continues, or  (b)  in the case of a corporation—2,500 penalty units and, in the case of a continuing offence, a further 1,250 penalty units for each day the offence continues.  **48**   **Review of decision to refuse certificate of clearance**  An occupier of premises on whom a prohibition order has been served may apply to the Administrative Decisions Tribunal for a review of a decision of the person who made the order to refuse to give a certificate of clearance under this Part to the occupier.  **49**   **Compensation**  (1)  A person against whom a prohibition order is made who suffers loss as a result of the making of the order may apply to the person who made the order for compensation if the person against whom the order is made considers that the order was not made in good faith or that there were no grounds for the making of the order.  (2)  If the order was not made in good faith or there were no grounds for the making of the order, the Secretary, the local government authority or the council (if the order was issued by the General Manager of the council) is to pay such compensation to the applicant as is just and reasonable.  (3)  The person who made the prohibition order is to determine the compensation payable in accordance with subsection (2).  (4)  The person who made the prohibition order is to send written notification of its determination as to the payment of compensation under this section to each applicant for the payment of such compensation.  (5)  If an application for compensation under this section is not determined by the person who made the prohibition order within 28 days of receiving the application, the application is taken to have been refused.  (6)  An applicant for the payment of compensation under this section who is dissatisfied with a determination as to the refusal to pay compensation or as to the amount of compensation may apply to the Administrative Decisions Tribunal for a review of the determination:  (a)  within 28 days after the day on which notification of the determination was received, or  (b)  in a case to which subsection (5) applies, within 28 days after the expiration of the 28-day period referred to in that subsection.  ......................................................................................................................................................  **Public Health Regulation 2022:**  **124 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 fee specified in Schedule 5 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 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 section within the time provided under this section.  Maximum penalty—20 penalty units.  (4) In this section—  *relevant agency* means—  (a) for an improvement notice given by an authorised officer appointed by the  Secretary or a prohibition order given by the Secretary—the Secretary, or  (b) for 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) for a prohibition order given by a General Manager of a council—the council.    **Schedule 5 Fees—**  Improvement notice or prohibition order in any other case—  (a) on or after 1 July 2022 and before 1 July 2023 $285  (b) on or after 1 July 2023 and before 1 July 2024 $290  (c) on or after 1 July 2024 and before 1 July 2025 $295  Re-inspection of premises subject to prohibition order—per hour $255  (4) In this section-  ***relevant agency*** means-   (a) for an improvement notice given by an authorised officer appointed by the Secretary or a prohibition order given by the Secretary—-the Secretary, or  (b)  for 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)  for a prohibition order given by a General Manager of a council—the council. |
| **Prescribed Requirements - Public Health Regulation 2022**  **Schedule 1 of Public Health Regulation 2022 - Requirements for public swimming pools and spa pools**, as below  **Schedule 1**  **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.  ***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) Except as provided by subsection (2), 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.  (2) 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.  (3) The concentration of combined chlorine in the water in a chlorine disinfected pool must not exceed 1.0 mg/L.  (4) The total chlorine level of the water in a chlorine disinfected pool must not exceed 10.0 mg/L.  **5 Bromine disinfected pools**  (1) 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.  (2) The concentration of bromine in the water in a bromine disinfected pool must not exceed 9.0 mg/L.  **6 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.  **7 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 section, disinfectant level means:  (a) for a bromine disinfected pool—the concentration of bromine in the water, and  (b) for a chlorine disinfected pool—the concentration of free available chlorine and the total chlorine level of the water.  **8 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.  **9 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.  **10 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.  **11 Records**  A record must be made, and kept for at least 6 months, of the results of any testing required under this Schedule. |