



**Health**

Corporate Governance and Risk Management  
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## **PUBLIC HEALTH DELEGATIONS MANUAL**

### **Secretary delegations**

Amendment 149 (26/08/22)

### **Chief Health Officer delegations**

Amendment 150 (29/08/22)

## **Chapter 3 – Mandatory Disease Testing Act**

New delegations made by the Secretary and Chief Health Officer under the *Mandatory Disease Testing Act 2021*.

<b>NEW PAGE(S)</b>
TOC and pages 3.1 to 3.14

Attached is a copy of the new pages incorporated into the Public Health Delegations Manual.

**Manuals are available on the Internet at**

<http://www.health.nsw.gov.au/policies/manuals/Pages/default.aspx>

If you require details of any past amendment, please email [MOH-CGRM@health.nsw.gov.au](mailto:MOH-CGRM@health.nsw.gov.au)

**CHAPTER 3 – MANDATORY DISEASE TESTING ACT**

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**MANDATORY TESTING ORDER – UNDER PART 3**

**Power** to make a mandatory testing order for a worker under part 3 of the Mandatory Disease Testing Act

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**Refer** section 5(2)(a) Mandatory Disease Testing Act 2021

**Authority** for this delegation comes from the Health Secretary under section 35(1) of the Mandatory Disease Testing Act 2021

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**DELEGATES:**

*CHIEF EXECUTIVE LOCAL HEALTH DISTRICT*

*CHIEF EXECUTIVE STATUTORY HEALTH CORPORATION* specified in Schedule 2 Health Services Act 1997

*CHIEF EXECUTIVE NSW AMBULANCE*

*CHIEF EXECUTIVE HEALTHSHARE NSW*

**CONTENT OF APPLICATION FOR MANDATORY TESTING ORDER**

**Power to:**

1. discuss the consultation under section 9 of the Act, with the relevant medical practitioner concerned, and
  2. obtain the worker's medical records that relate to the contact, if the application does not include a copy of written advice received from the relevant medical practitioner as referred to in subsection 10(1)(h).
- 

**Condition:**

This delegation must only be exercised to the extent necessary for determining an application for a mandatory testing order and with the consent of the worker being included in the application for a mandatory testing order.

**Note:**

An application for a mandatory testing order must contain a statement that the worker consents to the senior officer or delegate, discussing the consultation with the medical practitioner and obtaining the worker's medical records in relation to the contact.

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**Refer** section 10(2) Mandatory Disease Testing Act 2021

**Authority** for this delegation comes from the Health Secretary under section 35(1) of the Mandatory Disease Testing Act 2021

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**DELEGATES:**

*CHIEF EXECUTIVE LOCAL HEALTH DISTRICT*

*CHIEF EXECUTIVE STATUTORY HEALTH CORPORATION* specified in Schedule 2 Health Services Act 1997

*CHIEF EXECUTIVE NSW AMBULANCE*

*CHIEF EXECUTIVE HEALTHSHARE NSW*

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**DETERMINATION OF APPLICATION FOR MANDATORY TESTING ORDER**

1. Determine an application for a mandatory testing order by:
    - a) if it appears, on the information available, that the third party is a vulnerable third party
      - i. deciding to apply to the Court for a mandatory testing order, or
      - ii. refusing the application, or
    - b) if it does not appear, on the information available, that the third party is a vulnerable third party
      - i. making a mandatory testing order, or
      - ii. refusing the application.
  2. Before determining an application under subsection 11(1)(a),
    - i. provide the third party and the third party's parent or guardian, if any, with an opportunity to make submissions, and
    - ii. consider the submissions received.
  3. Before determining an application under subsection 11(1)(b),
    - i. seek the third party's consent to voluntarily provide blood to be tested for blood-borne diseases, and
    - ii. provide the third party with an opportunity to make submissions and consider the submissions received.
  4. Decide to apply to the Court for a mandatory testing order for a vulnerable third party only if satisfied that testing the third party's blood for blood-borne diseases is justified in all the circumstances.
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**Conditions:**

1. An application must be determined within 3 business days after receiving the application unless a longer period is necessary in the circumstances.
  2. In determining an application, consider:
    - a) the guidelines issued by the Chief Health Officer under section 33, and
    - b) other matters considered relevant, including a report made in relation to the incident during which the contact occurred.
  3. Make a mandatory testing order for a third party only if satisfied that:
    - a) the third party will not voluntarily provide blood to be tested for blood-borne diseases, and
    - b) testing the third party's blood for blood-borne diseases is justified in all the circumstances.
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**Refer** section 11 Mandatory Disease Testing Act 2021

**Authority** for this delegation comes from the Health Secretary under section 35(1) of the Mandatory Disease Testing Act 2021

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**DELEGATES:**

*CHIEF EXECUTIVE LOCAL HEALTH DISTRICT*

*CHIEF EXECUTIVE STATUTORY HEALTH CORPORATION* specified in Schedule 2 Health Services Act 1997

*CHIEF EXECUTIVE NSW AMBULANCE*

*CHIEF EXECUTIVE HEALTHSHARE NSW*

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**REFUSAL OF APPLICATION FOR MANDATORY TESTING ORDER**

Refuse an application for a mandatory testing order:

1. if, after making reasonable inquiries, the third party in relation to whom the application relates, cannot be located.
  2. on other grounds considered appropriate in the circumstances.
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**Refer** section 12 Mandatory Disease Testing Act 2021

**Authority** for this delegation comes from the Health Secretary under section 35(1) of the Mandatory Disease Testing Act 2021

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**DELEGATES:**

*CHIEF EXECUTIVE LOCAL HEALTH DISTRICT*

*CHIEF EXECUTIVE STATUTORY HEALTH CORPORATION* specified in Schedule 2 Health Services Act 1997

*CHIEF EXECUTIVE NSW AMBULANCE*

*CHIEF EXECUTIVE HEALTHSHARE NSW*

**NOTICE OF DETERMINATION OF APPLICATION FOR MANDATORY TESTING ORDER**

Give written notice of the determination and the reasons for the determination to the following:

- a) the worker,
- b) the third party,
- c) if the application relates to a third party who appears to the delegate to be a vulnerable third party, the third party's parent or guardian, if any,
- d) the Ombudsman.

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**Condition:**

Notice must be given as soon as practicable after determining an application for a mandatory testing order.

**Note:**

Written notice is not required under subsection 13(1)(b) or (c) if the person cannot be located.

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**Refer** section 13 Mandatory Disease Testing Act 2021

**Authority** for this delegation comes from the Health Secretary under section 35(1) of the Mandatory Disease Testing Act 2021

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**DELEGATES:**

*CHIEF EXECUTIVE LOCAL HEALTH DISTRICT*

*CHIEF EXECUTIVE STATUTORY HEALTH CORPORATION* specified in Schedule 2 Health Services Act 1997

*CHIEF EXECUTIVE NSW AMBULANCE*

*CHIEF EXECUTIVE HEALTHSHARE NSW*

**APPLICATION TO COURT FOR MANDATORY TESTING ORDER FOR  
VULNERABLE THIRD PARTY**

Notify the following, as soon as practicable after making an application to court for a mandatory testing order for a third party who appears to be a vulnerable third party:

- a) the worker,
  - b) the third party and the third party's parent or guardian, if any,
  - c) the Chief Health Officer.
- 

**Conditions:**

1. An application to the Court must be made in writing.
  2. The application must include the following—
    - a) a copy of the application for a mandatory testing order made by the worker,
    - b) the blood-borne diseases for which the vulnerable third party's blood is to be tested,
    - c) other information considered relevant.
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**Refer** section 14(3) Mandatory Disease Testing Act 2021

**Authority** for this delegation comes from the Health Secretary under section 35(1) of the Mandatory Disease Testing Act 2021

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**DELEGATES:**

*CHIEF EXECUTIVE LOCAL HEALTH DISTRICT*

*CHIEF EXECUTIVE STATUTORY HEALTH CORPORATION* specified in Schedule 2 Health Services Act 1997

*CHIEF EXECUTIVE NSW AMBULANCE*

*CHIEF EXECUTIVE HEALTHSHARE NSW*

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**SERVICE OF A MANDATORY TESTING ORDER**

**Power** to cause a copy of the mandatory testing order to be personally served on the third party in relation to whom it is made where the order is made by the delegate or given to the delegate by a registrar of the Court.

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**Condition:**

A mandatory testing order must be personally served as soon as reasonably practicable but no later than 5 business days after a mandatory testing order is made.

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**Refer** section 19(1) and (3) Mandatory Disease Testing Act 2021

**Authority** for this delegation comes from the Health Secretary under section 35(1) of the Mandatory Disease Testing Act 2021

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**DELEGATES:**

*CHIEF EXECUTIVE LOCAL HEALTH DISTRICT*

*CHIEF EXECUTIVE STATUTORY HEALTH CORPORATION* specified in Schedule 2 Health Services Act 1997

*CHIEF EXECUTIVE NSW AMBULANCE*

*CHIEF EXECUTIVE HEALTHSHARE NSW*

**DETERMINATION OF APPLICATION FOR REVIEW BY CHIEF HEALTH OFFICER**

Provide to the Chief Health Officer relevant material, including the material relied on to make the decision, for the Chief Health Officer to determine an application for review

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**Refer** section 25(3) Mandatory Disease Testing Act 2021

**Authority** for this delegation comes from the Health Secretary under section 35(1) of the Mandatory Disease Testing Act 2021

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**DELEGATES:**

*CHIEF EXECUTIVE LOCAL HEALTH DISTRICT*

*CHIEF EXECUTIVE STATUTORY HEALTH CORPORATION* specified in Schedule 2 Health Services Act 1997

*CHIEF EXECUTIVE NSW AMBULANCE*

*CHIEF EXECUTIVE HEALTHSHARE NSW*

**OVERSIGHT OF ACT BY OMBUDSMAN**

Provide to the Ombudsman for the purpose of preparing the report under section 36 of the Act:

1. information relating to an application for a mandatory testing order made by any other worker.
  2. demographic information about third parties subject to orders and applications for orders.
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**Refer** section 36(3)(b) and (4) Mandatory Disease Testing Act 2021

**Authority** for this delegation comes from the Health Secretary under section 35(1) of the Mandatory Disease Testing Act 2021

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**DELEGATES:**

*CHIEF EXECUTIVE LOCAL HEALTH DISTRICT*

*CHIEF EXECUTIVE STATUTORY HEALTH CORPORATION* specified in Schedule 2 Health Services Act 1997

*CHIEF EXECUTIVE NSW AMBULANCE*

*CHIEF EXECUTIVE HEALTHSHARE NSW*

**MANDATORY TESTING ORDER – UNDER PART 7**

**Power** to make a mandatory testing order under part 7 of the Mandatory Disease Testing Act

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**Refer** section 5(2)(c) Mandatory Disease Testing Act 2021

**Authority** for this delegation comes from the Chief Health Officer under section 35(2) of the Mandatory Disease Testing Act 2021

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**DELEGATES:**

*EXECUTIVE DIRECTOR HEALTH PROTECTION*

**SUBMISSIONS TO COURT**

**Power** to make submissions to the Court in relation to an application for a mandatory testing order made by a senior officer for a vulnerable third party.

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**Refer** section 14(4) Mandatory Disease Testing Act 2021

**Authority** for this delegation comes from the Chief Health Officer under section 35(2) of the Mandatory Disease Testing Act 2021

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**DELEGATES:**

*EXECUTIVE DIRECTOR HEALTH PROTECTION*

**DETERMINATION OF APPLICATION FOR REVIEW**

**Power to,**

1. determine an application for review of a senior officer's decision by:
    - a) affirming the decision, or
    - b) setting aside the decision.
  2. if the determination sets aside a decision to refuse mandatory testing order
    - a) for a third party who appears to be a vulnerable third party, decide to apply to the Court for a mandatory testing order for the vulnerable third party, or
    - b) for a third party who does not appear to be a vulnerable third party, make a mandatory testing order.
  3. require the senior officer to provide relevant material, including the material the senior officer relied on to make the decision.
  4. determine other information considered relevant to include in an application to the Court.
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**Condition:**

1. Determination of an application must be made within 3 business days after receiving the application.
  2. Before taking action under subsection 25(2)(a) or (b):
    - a) provide the third party, and, in the case of a third party who appears to be a vulnerable third party, the third party's parent or guardian, if any, an opportunity to make submissions, and
    - b) consider the submissions received.
  3. An application to the Court for a mandatory testing order must be made in writing.
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**Refer** section 25 Mandatory Disease Testing Act 2021

**Authority** for this delegation comes from the Chief Health Officer under section 35(2) of the Mandatory Disease Testing Act 2021

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**DELEGATES:**

*EXECUTIVE DIRECTOR HEALTH PROTECTION*

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**NOTICE OF DETERMINATION OF REVIEW**

**Power** to give notice of the determination and the reasons for the determination to the following:

- a) the worker,
- b) the third party,
- c) if the third party is a vulnerable third party, the vulnerable third party's parent or guardian, if any,
- d) the senior officer,
- e) the Ombudsman.

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**Condition:** The notice must be in writing and given as soon as practicable after determining a review.

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**Refer** section 26 Mandatory Disease Testing Act 2021

**Authority** for this delegation comes from the Chief Health Officer under section 35(2) of the Mandatory Disease Testing Act 2021

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**DELEGATES:**

*EXECUTIVE DIRECTOR HEALTH PROTECTION*

### **ISSUE GUIDELINES**

**Power** to issue guidelines to assist the following:

- a) Senior officers exercising functions under this Act,
  - b) relevant medical practitioners who may consult with workers for the purposes of section 9,
  - c) persons taking blood from third parties under a mandatory testing order.
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**Condition:**

1. Before issuing guidelines, consult with:
    - a) the Secretary,
    - b) the Commissioner of Police,
    - c) the Commissioner of Corrective Services,
    - d) the Commissioner of Fire and Rescue NSW,
    - e) the Commissioner of the State Emergency Service,
    - f) the Commissioner of the NSW Rural Fire Service.
  
  2. The guidelines are to be made publicly available.
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**Refer** section 33 Mandatory Disease Testing Act 2021

**Authority** for this delegation comes from the Chief Health Officer under section 35(2) of the Mandatory Disease Testing Act 2021

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**DELEGATES:**

*EXECUTIVE DIRECTOR HEALTH PROTECTION*

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