**PROHIBITION ORDER - Premises at which skin penetration procedures are carried out**

# 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*),

being a premises at which skin penetration procedures are carried out,

shall immediately **cease carrying out skin penetration procedures at the premises** until a Certificate of Clearance is issued. A Clearance Certificate will be issued if an authorised officer is satisfied, after an inspection of the premises subject to the order, that there is no serious risk 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 Premises conducting skin penetration procedures** |
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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.  **41**   **Non-complying premises or procedures**  An authorised officer may serve an improvement notice on the occupier of premises at which there is a regulated system or a public swimming pool or spa pool or premises at which a person carries out skin penetration procedures if the officer believes, on reasonable grounds, that:  (a)  the premises, or a regulated system, public swimming pool or spa pool at those premises, does not comply with an enforceable requirement, or  (b)  a regulated system, public swimming pool or spa pool at the premises is not being maintained or operated in accordance with an enforceable requirement.  **42**   **Improvement notices**  (1)  An improvement notice is to take the form of a direction that requires a specified enforceable requirement to be complied with within a period of 72 hours (or such longer period as is specified in the notice) after the service of the notice on the occupier or person.  (2)  The notice may specify the actions to be taken to comply with the requirement.  (3)  An improvement notice is to state that it is issued under this section and to specify any provision of the regulations to which it relates.  **43**   **Compliance with improvement notice**  (1)  If an improvement notice is complied with, an authorised officer is to note the date of compliance on the notice.  (2)  An authorised officer must give a copy of an improvement notice, noted in accordance with this section, to the person on whom the improvement notice was served if requested to do so by the person.  **44**   **Failure to comply with notice relating to regulated system**  (1)  The Secretary, a local government authority or the General Manager of a council may take action under this section or section 45 if the occupier of premises at which there is a regulated system fails to comply with an improvement notice.  (2)  The Secretary, local government authority or General Manager may take the action referred to in the notice and:  (a)  unless the occupier represents the Crown, may recover an amount equal to the cost of doing so as a debt owed by the person to the Crown or to the local government authority, as the case may be, or  (b)  if the occupier represents the Crown, may require the occupier to pay to the Secretary or to the local government authority an amount equal to the cost of doing so.  (3)  An employee assigned, or a contractor engaged, by the Secretary or a local government authority to do any work on regulated premises under this section may, at any reasonable time, enter the premises and do the work or have it done.  **45**   **Prohibition order**  (1)  The Secretary, a local government authority or a General Manager of a council may serve a prohibition order on the occupier of premises if the Secretary, authority or General Manager believes on reasonable grounds:  (a)  that any of the circumstances in which an improvement notice may be issued exist and that:  (i)  the occupier has not complied with an improvement notice within the time required under the notice, and  (ii)  the issue of the prohibition order is necessary to prevent or mitigate a serious risk to public health, or  (b)  that any of the circumstances in which an improvement notice may be issued exist and that the issue of the order (without first issuing an improvement notice) is urgently necessary to prevent or mitigate a serious risk to public health.  (2)  A prohibition order made against the occupier of premises at which there is a regulated system is to take the form of an order that the system must not be operated until the occupier has been given a clearance certificate stating that the system may be operated.  (3)  A prohibition order made against the occupier of premises at which there is a public swimming pool or spa pool is to take the form of an order that the swimming pool or spa pool must not be opened for use by the public until the occupier has been given a clearance certificate stating that the swimming pool or spa pool may be opened for use by the public.  (4)  A prohibition order made against the occupier of premises at which skin penetration procedures are carried out is to take the form of an order that such procedures must not be carried out at the premises until the occupier has been given a clearance certificate stating that skin penetration procedures may be carried out at the premises.  (5)  A prohibition order is to state that it is issued under this section and to specify any provision of the regulations to which it relates.  (6)  The Secretary, local government authority or General Manager who made the prohibition order must give a certificate of clearance if, after an inspection of the premises subject to the order, an authorised officer is satisfied that there is no serious danger to public health.  **46**   **Request for re-inspection**  (1)  An occupier of premises who is subject to a prohibition order may at any time after the order has been served make a written request to the person who made the order to cause the premises to be inspected by an authorised officer.  (2)  If a request for inspection is made under this section and, through no fault of the person who made the request, the inspection does not take place within 2 working days of the request being received by the person who made the prohibition order, a certificate of clearance is taken to have been given under this Division to the person who made the request.  **47**   **Contravention of prohibition order**  A person must not fail to comply with a prohibition order served on the person under this Part.  Maximum penalty (for an offence in respect of a public swimming pool or spa pool or premises where skin penetration procedures are carried out):  (a)  in the case of an individual—200 penalty units, or 12 months imprisonment, or both, and, in the case of a continuing offence, a further 100 penalty units for each day the offence continues, or  (b)  in the case of a corporation—1,000 penalty units and, in the case of a continuing offence, a further 500 penalty units for each day the offence continues.  Maximum penalty (for an offence in respect of a regulated system):  (a)  in the case of an individual—500 penalty units, or 12 months imprisonment, or both, and, in the case of a continuing offence, a further 250 penalty units for each day the offence continues, or  (b)  in the case of a corporation—2,500 penalty units and, in the case of a continuing offence, a further 1,250 penalty units for each day the offence continues.  **48**   **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**  **Part 4 Skin penetration procedures**  **Division 1 Preliminary**  **32 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.  **33 Requirements for premises where skin penetration procedures are carried out**  For the Act, section 38 (1), the requirements set out in Divisions 2 and 3 are prescribed.  **Division 2 Requirements for premises where skin penetration procedures are carried out**  **34 Premises must be properly equipped**  (1) 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  (i) has a supply of clean, warm, potable water, and  (ii) is not obstructed or used for storage, and  (d) if equipment used in skin penetration procedures at the premises is cleaned at the premises - have a separate sink that has a supply of clean, warm water that is used only for cleaning equipment, and  (e) have the following available for use by persons carrying out skin penetration procedures at the premises:  (i) liquid soap,  (ii) an alcohol-based hand cleaner, (iii) single use towels or a working automatic hand dryer,  (iv) single use gloves, clean linen and gowns or aprons that are appropriate for the skin procedures carried out at the premises.  (2) Equipment at premises where skin penetration procedures are carried out must – (a) be in good working order, and  (b) be cleaned and dried after use, and  (c) be kept in a clean and dry condition.  **35 Toilets for colonic lavage procedures**  Premises at which a colonic lavage procedure is carried out must have a toilet, that is:  (a) available for use by clients and not by the general public, and  (b) for a procedure using a closed system—located close to the room in which the procedure is being carried out, and  (b) for a procedure using an open system—located in the immediate area of the room in which the procedure is being carried out.  **36 Premises must have sharps containers and sterile disposable needles**  (1) If skin penetration procedures involving 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 involving 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 section, ***appropriate sharps container*** means:  (a) if skin penetration procedures involving 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*.  **37 Reusable articles must be sterilised**  (1) All reusable articles used to penetrate a person’s skin for skin penetration procedures must be sterilised at the premises or off-site.  (2) If reusable articles are sterilised at the premises-  (a) an autoclave must be used, and  (b) there must be at least 1 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, and  (d) the autoclave must be calibrated at least every 12 months in accordance with AS/NSZ 4815:2006.  (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 -  (a) make, and keep for at least 12 months, a record of the date on which each article was sent off-site for sterilisation and the contact details of the person who sterilised the article, and  (b) keep, for at least 12 months, a copy of the report on the sterilisation by the person who sterilised the article.  (5) In this section-  ***AS/NZS 4815:2006*** means AS/NZS 4815:2006, Office-based health care facilities-Reprocessing of reusable medical and surgical instrument and equipment, and maintenance of the associated environment.  ***autoclave*** means a bench top autoclave that uses steam under pressure.  **Division 3 Requirements for carrying out skin penetration procedures**  **38 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.  Maximum penalty-20 penalty units  (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.  Maximum penalty-20 penalty units  (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.  Maximum penalty-20 penalty units  (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.  Maximum penalty-20 penalty units  (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.  Maximum penalty-20 penalty units  (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.  Maximum penalty-20 penalty units  (7) In this section-  ***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.*  **39 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.  Maximum penalty-20 penalty units  (2) A person who carries out a skin penetration procedure, other than colonic lavage, must wear a clean gown or apron during the procedure.  Maximum penalty-20 penalty units  (3) A person who carries out colonic lavage must wear a clean gown made of impermeable material during the procedure.  Maximum penalty-20 penalty units  (4) This section does not apply to a person carrying out a skin penetration procedure involving 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.  **40 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, for each person undergoing the procedure-  (a) decant the liquid into a single use container, and  (b) use a single use applicator.  Maximum penalty-20 penalty units.  (2) This section does not apply to skin penetration procedures involving the use of wax for the purposes of hair removal.  **41 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  **44 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.  Maximum penalty—10 penalty units. |