

**PUBLIC HEALTH (PROCLAIMED DISEASES) AMENDMENT  
ACT 1989 No. 206**

**NEW SOUTH WALES**



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**PUBLIC HEALTH (PROCLAIMED DISEASES) AMENDMENT  
ACT 1989 No. 206**

NEW SOUTH WALES



**Act No. 206, 1989**

An Act to amend the Public Health Act 1902 for the purpose of making further provision for preventing the spread of proclaimed diseases as defined by section 50F of that Act and for related purposes. [Assented to 21 December 1989]

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Public Health (Proclaimed Diseases) Amendment Act 1989.

**Commencement**

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

**Amendment of Public Health Act 1902 No. 30**

3. The Public Health Act 1902 is amended as set out in Schedule 1.

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**SCHEDULE 1 - AMENDMENTS**

(Sec. 3)

(1) Section 3 (**Definitions**):

(a) After the definition of "Department", insert:

**"Director-General"** means the Director-General of the Department.

(b) Omit the definition of "Secretary".

(2) Section 50F (**Definitions**):

Before the definition of "medical practitioner", insert:

**"appropriate court"**, in relation to a public health order made under section 50OA, means:

(a) where the order has been renewed by the Supreme Court - the Supreme Court; and

(b) where the order has not been so renewed - the Local Court that is apparently most convenient for the attendance of the person to whom the order applies;

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**"authorised medical practitioner"** means the Chief Health Officer of the Department or a medical practitioner authorised by the Director-General to exercise the functions of an authorised medical practitioner under this Part;

(3) Part 3B, Division 3A:

After Division 3 of Part 3B, insert:

**Division 3A - Public health orders**

**Authorised medical practitioner may make a public health order**

500A. (1) An authorised medical practitioner who is satisfied on reasonable grounds that:

- (a) a person is infected with a proclaimed disease; and
- (b) the person is behaving in a way that is, in consequence of the person's being so infected, endangering or likely to endanger the health of the public,

may make a public health order in respect of the person.

(2) A public health order made under this section:

(a) must specify:

- (i) the name of the person who is alleged to be infected with a proclaimed disease; and
- (ii) the period of duration of the order, being a period not exceeding 28 days from and including the date on which it is served on that person; and
- (iii) the circumstances purporting to justify the making of the order; and

(b) may:

- (i) require that person to refrain from specified conduct or to undergo specified treatment; or
- (ii) require that person to undergo counselling by a person, or a person belonging to a class

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of persons, specified by the authorised medical practitioner concerned; or

- (iii) direct that person to submit to the supervision of a specified person, or a person of a specified class, for the period that the order remains in force; or
- (iv) direct that person to be detained during that period at such place as is specified in the order; and

(c) may include other provisions of an ancillary or consequential nature.

(3) A public health order that contains a direction under subsection (2) (b) (iii) or (iv) may also include either or both of the requirements referred to in subsection (2) (b) (i) and (ii).

(4) A public health order containing a direction that a person be detained is sufficient authority for a member of the police force to take steps to apprehend and take, or assist in taking, the person to whom the order applies to the place of detention specified in the order.

(5) A member of the police force may enter premises, by force if necessary, for the purposes of apprehending a person in accordance with subsection (4) and may apprehend that person.

(6) A Justice's warrant for the apprehension of such a person is unnecessary.

(7) A person detained under the authority of a public health order is subject to such conditions with respect to the person's security as the authorised medical practitioner making the order considers necessary in the interests of public health.

(8) A person who is detained under the authority of a public health order may, for any special reason accepted by an authorised medical practitioner, be permitted to leave the place of detention, but only under the personal supervision of a person nominated by that medical practitioner.

SCHEDULE 1 - AMENDMENTS - *continued*

(9) A public health order made under this section takes effect when it is personally served on the person to whom it applies.

**Public health order to be confirmed by a Local Court**

500B. (1) A public health order ceases to have effect unless, within 3 business days after the order is made, an application seeking confirmation of the order is made to the appropriate Local Court and a copy of the application is served on the person to whom the order applies.

(2) As soon as practicable after an application is made to it under this section, the appropriate Local Court must inquire into the circumstances surrounding the making of the order concerned.

(3) After inquiring into the circumstances surrounding the making of a public health order, the appropriate Local Court must:

- (a) if satisfied that, having regard to the circumstances surrounding the making of such an order, the making of a public health order was justified:
  - (i) confirm the order without variation; or
  - (ii) confirm the order but substitute for any requirement, direction or other provision included in the order any other requirement, direction or other provision referred to in section 500A (2); or
- (b) if not so satisfied - quash the order.

(4) The Local Court concerned may, from time to time, adjourn an inquiry under this section for a period not exceeding 7 days.

(5) In determining any matter relating to an application for confirmation of a public health order, a Local Court may obtain the assistance of any person who has medical or other professional qualifications or expertise relevant to any issue pertaining to the matter and may receive in evidence the certificate of such a person.

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SCHEDULE 1 - AMENDMENTS - *continued*

- (6) In this section:
- (a) a reference to business days, in relation to a public health order, is a reference to days other than a Saturday, Sunday or a public holiday; and
  - (b) a reference to the appropriate Local Court is a reference to the Local Court which, being open for the conduct of ordinary court business within 3 business days after the order is made, is apparently most convenient for the attendance of the person to whom the public health order applies.

**Supreme Court may order public health order to be continued beyond 28 days**

500C. (1) If an authorised medical practitioner is satisfied on reasonable grounds that the person to whom a public health order applies would, if not subject to such an order, continue to be a danger to the health of the public in consequence of being infected with a proclaimed disease, the medical practitioner may, at any time before the order expires, make an application to the Supreme Court for an order renewing the public health order.

(2) A copy of the application must be served on the person to whom the public health order applies, otherwise the Supreme Court may decline to consider the application.

(3) The Supreme Court may make an order renewing a public health order without an inquiry if the person named in the public health order has notified the Court in writing that he or she does not wish to contest the renewal of that order.

(4) As soon as practicable after an application is made to it under this section, the Supreme Court must, subject to subsection (3), proceed to inquire into and determine the application.

(5) At the conclusion of the inquiry, the Supreme Court must either make an order renewing the public health order for a further period not exceeding 6 months or refuse the application.

SCHEDULE 1 - AMENDMENTS - *continued*

(6) In making an order renewing a public health order, the Supreme Court may vary the public health order:

- (a) by omitting any requirement, direction or other provision that is currently included in that order; or
- (b) by adding any requirement, direction or other provision referred to in section 50OA (2); or
- (c) by substituting for any requirement, direction or other provision that is currently included in that order any other requirement, direction or other provision so referred to.

(7) In determining any matter relating to the renewal of a public health order, the Supreme Court may obtain the assistance of any person who has medical or other professional qualifications or expertise relevant to any issue pertaining to the matter and may receive in evidence the certificate of such a person.

(8) If:

(a) an application for the renewal of a public health order is pending before the Supreme Court under this section; and

(b) the order would expire but for this subsection, then, despite any other provisions of this Division to the contrary, the order remains in force until the Court has disposed of the application.

**Cancellation of public health orders**

50OD. If an authorised medical practitioner is of the opinion that the person to whom a public health order applies is no longer a danger to the health of the public, the medical practitioner must cancel the order and immediately notify that person and the appropriate court of the cancellation.

**What happens if a public health order is contravened**

50OE. (1) If an authorised medical practitioner believes on reasonable grounds that the person to whom a public health order applies is contravening or has



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SCHEDULE 1 - AMENDMENTS - *continued*

contravened the order, the medical practitioner may direct that that person be apprehended and detained in a place specified in the direction.

(2) If a direction under subsection (1) has been brought to the attention of a member of the police force, that member must without delay:

- (a) take steps to apprehend and take, or assist in taking, the person to whom the direction applies to the place specified in the direction; or
- (b) cause or make arrangements for some other member of the police force to apprehend and take, or assist in taking, the person to that place.

(3) A member of the police force who believes on reasonable grounds that the person to whom a public health order applies is contravening or has contravened the order must apprehend that person and detain that person in custody pending an inquiry under this section.

(4) A member of the police force may enter premises, by force if necessary, for the purpose of apprehending a person in accordance with subsection (2) or (3) and may apprehend that person.

(5) A Justice's warrant for the apprehension of such a person is unnecessary.

(6) Subsection (3) has effect with respect to a person alleged to be contravening or to have contravened a public health order irrespective of whether or not a direction in respect of the person has been given under subsection (1).

(7) As soon as practicable after a person is apprehended under this section, the authorised medical practitioner who directed the apprehension of the person or, in any other case, the member of the police force who apprehended the person must take the person before the appropriate court.

(8) When a person alleged to be contravening or to have contravened a public health order is taken before the appropriate court, the court must, as soon as practicable, inquire into the allegation.

SCHEDULE 1 - AMENDMENTS - *continued*

(9) If, at the inquiry, the court is satisfied that the person taken before the court is contravening or has contravened a public health order, the court may:

- (a) make an order varying the public health order; or
- (b) caution that person but decide to take no other action in respect of the matter,

but if the court is not so satisfied, it must order that person to be discharged.

(10) In varying a public health order under this section, the court may:

- (a) add; or
- (b) substitute for any requirement, direction or other provision that is currently included in the public health order,

any requirement, direction or other provision referred to in section 500A (2).

(11) A person may be dealt with under this section in respect of an alleged contravention of a public health order irrespective of whether the person has been charged with an offence under section 500F arising out of the same matter.

**Offence to contravene a public health order**

500F. (1) If the person to whom a public health order applies contravenes the order, the person is guilty of an offence.

Maximum penalty: \$5,000 or imprisonment for 6 months, or both.

(2) Proceedings for an offence under subsection (1) may be brought only by the Director-General or a member of the police force.

**Rights of appeal**

500G. (1) If the person to whom a public health order applies is dissatisfied with the decision of a Local Court under section 500B or 500E, that person may, subject to

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and in accordance with the rules of Court of the Supreme Court, appeal to that Court against that decision.

(2) On the hearing of such an appeal, the Supreme Court may either confirm the decision appealed against or substitute for that decision any other decision that the Local Court concerned could have made under section 50OB or 50OE, as the case requires.

(3) Fresh evidence or evidence in addition to, or in substitution for, the evidence given at the inquiry in respect of which the appeal is made may be adduced at the appeal.

(4) If:

- (a) an appeal against a decision of a Local Court or the Supreme Court under section 50OB, 50OC or 50OE is pending or being heard; and
- (b) the public health order to which the appeal relates could or would expire before the appeal is determined,

the court that is hearing or is to hear the appeal may make an order extending the operation of the public health order until the appeal is finally determined.

**Restrictions on making further public health orders in respect of certain persons**

50OH. If

- (a) a public health order applicable to a person has been quashed under section 50OB (3); or
- (b) the Supreme Court has refused an application to renew such an order under section 50OC (5); or
- (c) such an order:
  - (i) has been quashed on appeal; or
  - (ii) has been cancelled under section 50OD,

a further order may be made against that person under section 50OA (1) only if the authorised medical practitioner is satisfied on reasonable grounds that, since the earlier order was quashed or otherwise ceased to have effect, there has been a change in the person's health or

SCHEDULE 1 - AMENDMENTS - *continued*

behaviour which increases the risk of the health of the public becoming endangered.

**Retaking of escapees**

50OI. (1) If a person detained under a public health order escapes from the place of detention, the person may be retaken at any time by:

- (a) the person who is for the time being in charge of the place of detention; or
- (b) an authorised medical practitioner; or
- (c) a member of the police force; or
- (d) any person assisting a person referred to in paragraphs (a) - (c).

(2) On being retaken, an escapee must be returned to the place where he or she was detained under the public health order.

**Offence to assist person to contravene a public health order**

50OJ. (1) Any person who:

- (a) without lawful authority, releases or attempts to release a person who is detained under the authority of a public health order or who is being conveyed to a place of detention under such an order; or
- (b) abets or connives at the escape of a person referred to in paragraph (a); or
- (c) knowing that a person is subject to a public health order, assists the person in committing a contravention of the order,

is guilty of an offence.

Maximum penalty: \$5,000 or imprisonment for 6 months, or both.

(2) In proceedings for an offence against subsection (1) (c), it is a defence to establish that the actions of the defendant did not endanger the health of the public.

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SCHEDULE 1 - AMENDMENTS - *continued*

**Restrictions on publishing details of certain court proceedings**

50OK. (1) Whenever:

- (a) an inquiry is held under section 50OB, 50OC or 50OE; or
- (b) proceedings for an offence against section 50OF are brought; or
- (c) any appeal from an inquiry or proceedings referred to in paragraph (a) or (b) is pending or being heard, the court concerned may make an order directing:
  - (d) that no report of the inquiry, proceedings or appeal may be published; or
  - (e) that a report of any matter arising in the inquiry, proceedings or appeal must not be published if it includes information which identifies, or could result in the identification of, any person to whom a public health order applies or has applied.

(2) A court may make an order under this section of its own volition or on the application of either party to the proceedings.

(3) If an application by a party is made under subsection (2), the onus is on the other party to show cause as to why the application should be refused.

(4) A person who contravenes an order in force under this section (whether the person is aware of the order or not) is guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate - \$10,000; and
- (b) in the case of any other person - \$5,000 or imprisonment for 6 months, or both.

(5) Nothing in this section restricts the power of the Supreme Court to deal with a contravention of an order made by that Court under this section as a contempt of that Court, but a person guilty of such a contravention is not liable to be punished both under this section and for contempt of that Court.

SCHEDULE 1 - AMENDMENTS - *continued*

(6) In this section, "**publish**" means:

- (a) publish in a newspaper, magazine or other periodical publication; or
- (b) publish by radio or television transmission; or
- (c) include in a cinematographic film or videotape that is or is to be available to the public; or
- (d) include in a book or sound recording that is or is to be available to the public; or
- (e) make known to the public in any other manner or by any other means.

(7) An order made under subsection (1) to the effect that no report of an inquiry, proceedings or appeal referred to in that subsection be published does not operate so as to prevent the publication of a report of the inquiry, proceedings or appeal in a bona fide volume of law reports, legal journal or other publication intended to be read mainly by legal practitioners, so long as the person to whom the inquiry, proceedings or appeal relates is not identified in the report.

**Procedural matters**

50OL. (1) An inquiry under section 50OB, 50OC or 50OE, or proceedings in respect of any appeal from a decision made at such an inquiry or proceedings for an offence against section 50OF, is required to be open to the public unless:

- (a) any party to the proceedings, or any representative of that party, objects; and
- (b) the court concerned upholds the objection.

(2) If such an objection is upheld, the proceedings must be held in closed court.

(3) At an inquiry under section 50OB, 50OC or 50OE and at any appeal from a decision made at such an inquiry, the person to whom the inquiry or appeal relates is entitled to be heard and to be represented by a legal practitioner or, with the leave of the court concerned, by another person of his or her choice.

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SCHEDULE 1 - AMENDMENTS - *continued*

**Inspection of medical records**

500M. (1) A person to whom a public health order applies is, unless the appropriate court otherwise directs, entitled to inspect and make copies of any medical records relating to that person that are in the possession of any other person.

(2) The representative of the person to whom a public health order applies is, unless the appropriate court otherwise directs, entitled, at any time before or during proceedings under this Division relating to the order, to inspect and take copies of any medical records relating to that person that are in the possession of any other person.

(3) If a medical practitioner warns the representative of a person to whom a public health order applies that it may be harmful to communicate to that person, or to any other person, specified information contained in those records, then, subject to any direction given under this section, the representative:

- (a) must have proper regard to that warning; and
- (b) is not obliged to disclose any information obtained by virtue of this section.

(4) If the medical records referred to in subsection (1) or (2) are not kept in a readable form, the person in charge of the records must provide a copy of those records in that form.

**Regulations relating to the detention of persons under public health orders**

500N. The regulations may prescribe the places at which, and the conditions subject to which, a person may be detained under a public health order.

SCHEDULE 1 - AMENDMENTS - *continued*

(4) Section 50R:

Omit the section, insert instead:

**Application of section 30 to proclaimed diseases etc.**

50R. Section 30 applies to and in respect of a proclaimed disease and to a person who is infected with that disease in the same way as it applies to and in respect of an infectious disease and a person who suffers from that disease, and that section so applies as if a reference in that section to an infectious disease was a reference to a proclaimed disease.

(5) Section 50S (**Proceedings for offences**):

After "this Part", insert "(Division 3A excepted)".

(6) Sections 50D, 50H, 50I, 50J, 50K, 50M, 50N, 50P, 50Q, 75C, 75D, 75E, 75I:

Omit "Penalty" wherever occurring, insert instead "Maximum penalty".

(7) The whole Act (section 3 excepted):

(a) Omit "Secretary" wherever occurring, insert instead "Director-General".

(b) Omit "Secretary's" wherever occurring, insert instead "Director-General's".

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[*Minister's second reading speech made in -  
Legislative Assembly on 14 November 1989  
Legislative Council on 23 November 1989*]