



New South Wales

COVID-19 Legislation Amendment (Emergency Measures—Attorney General) Act 2020 No 4

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New South Wales

COVID-19 Legislation Amendment (Emergency Measures—Attorney General) Act 2020 No 4

Act No 4, 2020

An Act to amend a number of Acts administered by the Attorney General to implement further emergency measures as a result of the COVID-19 pandemic. [Assented to 14 May 2020]

See also the *COVID-19 Legislation Amendment (Emergency Measures—Treasurer) Act 2020* and the *COVID-19 Legislation Amendment (Emergency Measures—Miscellaneous) Act 2020*.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *COVID-19 Legislation Amendment (Emergency Measures—Attorney General) Act 2020*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Explanatory notes

The matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.

Schedule 1 Amendment of legislation administered by the Attorney General

1.1 Court Security Act 2005 No 1

Part 3, Division 1A

Insert after Division 1 of Part 3—

Division 1A COVID-19 pandemic—special provisions

Subdivision 1 Preliminary

12A Definition

In this Division—

selected juror means a juror who has been selected to a jury panel.

sign of illness means the following—

- (a) a fever, including a fever indicated by a temperature reading, of 38 degrees Celsius or more, of a person who has submitted to a thermal imaging scan or a temperature check under section 12D,
- (b) a cough or runny nose,
- (c) a sore throat,
- (d) shortness of breath,
- (e) loss of taste or smell.

12B Meaning of “required to be in court premises”

For the purposes of this Division, a person is *required to be in court premises* if the person is attending the court premises in relation to specific proceedings, including as—

- (a) a party to proceedings, or
- (b) a legal practitioner, or
- (c) a witness, or
- (d) a juror, or
- (e) a support person.

12C Effect of Division

This Division prevails to the extent of any inconsistency with any other provision of this Act.

Subdivision 2 Special requirements in relation to COVID-19

12D Power to conduct health checks

- (1) A security officer may, for the purpose of determining the likelihood that a person is suffering from a sign of illness, require a person who is entering or in court premises to do the following—
 - (a) submit to a thermal imaging scan,
 - (b) submit to a temperature check using a contactless approved temperature monitoring device,
 - (c) answer questions about—

- (i) the person's health in relation to signs of illness, or
 - (ii) any other thing that may determine whether the person is likely to be at risk of exposure to COVID-19.
- (2) A security officer making a requirement under subsection (1)(a) or (b) must ask for the person's co-operation.
- (3) The person complies with a requirement under subsection (1)(a) or (b) if the person submits to any of the following alternative health checks—
 - (a) if the person is required to submit to a thermal imaging scan—a temperature check,
 - (b) if the person is required to submit to a temperature check—a thermal imaging scan.
- (4) The security officer must conduct the alternative health check, if requested by the person, unless the alternative health check is not available.
- (5) A person who undertakes a test may request that the result be confirmed by a second test using a different device, and the security officer must do the second test unless a different device is not available.
- (6) If the security officer makes a requirement of a person under subsection (1) and the person fails to immediately comply with the requirement or to leave the court premises, the security officer may again make the requirement and must—
 - (a) ask whether the person is required to be in court premises on that day, and
 - (b) if the person is not a selected juror—
 - (i) warn the person that a failure or refusal to immediately comply with the requirement of the security officer, in the exercise of the power, or to leave the court premises for the remainder of the day may be an offence, and
 - (ii) provide the person with the information referred to in section 20(2)(a)–(c), and
 - (iii) warn the person that the security officer may arrest the person in accordance with section 16 for committing an offence, and
 - (iv) comply with a condition, if any, prescribed by the regulations.

Note. See section 12F in relation to selected jurors or section 12G in relation to other persons who are required to be in court premises on the day.
- (7) If a security officer makes a requirement of a person, other than a selected juror, in accordance with subsection (6), the person must immediately—
 - (a) comply with the requirement, or
 - (b) leave the court premises for the remainder of the day.Maximum penalty (subsection (7))—5 penalty units.
- (8) Section 17 does not apply to a requirement made under subsection (1), including the requirement, if made again, under subsection (6).
- (9) In this section—

approved temperature monitoring device means a device for monitoring temperatures, approved by the Therapeutic Goods Administration and specified on the Australian Register of Therapeutic Goods.

12E Requirement for persons with sign of illness

- (1) A security officer may, if a person who is entering or in court premises, has exhibited, or reported, a sign of illness—
 - (a) require the person in court premises to leave the premises for the remainder of the day, or
 - (b) refuse the person entry to court premises for the remainder of the day.
- (2) A security officer making a requirement under this section must ask whether the person is required to be in court premises on that day.
- (3) If a security officer requires the person to leave the court premises for the remainder of the day and the person fails to immediately comply with the requirement, the security officer may again make the requirement and must—
 - (a) warn the person that a failure or refusal to immediately comply with the requirement of the security officer, in the exercise of the power, or to leave the court premises for the remainder of the day may be an offence, and
 - (b) provide the person with the information referred to in section 20(2)(a)–(c), and
 - (c) warn the person that the security officer may arrest the person, in accordance with section 16, for committing an offence, and
 - (d) comply with a condition, if any, prescribed by the regulations.
- (4) If a security officer makes a requirement of a person in accordance with subsection (3), the person must comply with the requirement.
Maximum penalty (subsection (4))—5 penalty units.
- (5) Subsection (3) and a requirement to leave the court premises or refusal of entry to the court premises made under this section do not apply to a selected juror.
Note. See section 12F in relation to selected jurors or section 12G in relation to other persons who are required to be in the court premises on the day.

12F Additional conditions for selected jurors in relation to COVID-19

- (1) This section applies to a selected juror—
 - (a) exhibiting or reporting a sign of illness, or
 - (b) who fails to comply with a requirement made of the person under section 12D(1).
- (2) A security officer must—
 - (a) refer the selected juror to the judicial officer or coroner having the conduct of the trial or coronial inquest concerned, and
 - (b) comply with a condition, if any, prescribed by the regulations.

12G Additional conditions in relation to certain persons required to leave court premises

- (1) This section applies—
 - (a) to a person, other than a selected juror, required to leave the court premises or refused entry to the court premises, in accordance with this Subdivision, and
 - (b) if the person is required to be in the court premises on the day.
- (2) The security officer must—

- (a) give the person written notice, in a form approved by the Sheriff, stating that the person was required to leave the court premises, or refused entry to the court premises, under this Division, and
 - (b) immediately advise the court that the person was required to leave the court premises, or refused entry to the court premises, under this Division.
- (3) Despite any other Act or law, the notice given to the person may be used as evidence in any action, order, judgment or application taken in relation to the non-attendance of the person in court.

Subdivision 3 Repeal

12H Repeal of Division

This Division is repealed on—

- (a) 26 September 2020, or
- (b) the later day, not later than 26 March 2021, prescribed by the regulations.

Explanatory note

The proposed amendment enables a security officer to make requirements of persons entering or in court premises, to determine whether a person is suffering from a symptom related to COVID-19 or is likely to have been exposed to COVID-19. Requirements may also be made to refuse the person entry to the court premises or to leave the court premises. The provisions require that if the person is a juror selected to a jury panel, the matter should be referred to the relevant judicial officer or coroner. The provisions also provide for a process of notification if the person is required to leave the court premises under this Division or refused entry to court premises and the person was required to attend court on that day.

The proposed amendment is repealed on 26 September 2020 unless the regulations prescribe a later date for the repeal, not being later than 26 March 2021.

1.2 Criminal Procedure Act 1986 No 209

Section 182 Written pleas

Insert after section 182(4)—

- (5) Subsection (4) does not have effect during the period—
 - (a) starting on the commencement of this subsection, and
 - (b) ending on the day that Chapter 7, Part 5 is repealed.
- (6) Subsection (5) and this subsection are repealed on the day that Chapter 7, Part 5 is repealed.

Explanatory note

The proposed amendment provides that an accused person who has been served with a court attendance notice and who has been granted or refused bail, or in relation to whom bail has been dispensed with, is not prevented from lodging a written plea of guilty or not guilty under section 182 of the *Criminal Procedure Act 1986*. The provision ceases to have effect (and is automatically repealed) on the day that Chapter 7, Part 5 (Response to COVID-19 pandemic) of that Act is repealed, being 26 September 2020 or a later day prescribed by the regulations but not later than 26 March 2021 (see section 367 of that Act).

1.3 Electronic Transactions Act 2000 No 8

[1] Section 17 Regulation-making power

Omit “The regulations under any relevant Act” from section 17(1).

Insert instead “A regulation under this section or another Act (a *relevant Act*)”.

[2] Section 17(1)(d)–(n)

Insert after section 17(1)(c)—

- (d) altered arrangements for the giving of information in writing,
- (e) altered arrangements for the making of a document in a particular form or way,
- (f) altered arrangements for the processes for making or executing a document,
- (g) altered arrangements for the inclusion of particular content in a document,
- (h) altered arrangements for the recording of information,
- (i) altered arrangements for the certification of a copy of an original document,
- (j) altered arrangements for the production of a document,
- (k) altered arrangements for the filing, lodgement, submission, giving, inspection or service of information, a notice or other document,
- (l) altered arrangements for the process by which information or a document must be given or issued,
- (m) altered arrangements for the retention of information or documents, including in relation to the form in which information or a document must be retained,
- (n) altered arrangements for a matter related or incidental to a matter in paragraph (a)–(m).

[3] Section 17(1A)

Insert after section 17(1)—

(1A) To remove any doubt—

- (a) for the purposes of subsection (1), a relevant Act is taken to include a power to make a regulation as provided in this section, and
- (b) a regulation made under a relevant Act may be made only on the recommendation of the Minister administering that Act.

[4] Section 17(2)

Omit “The Minister may recommend to the Governor that regulations be made under this section”.

Insert instead “A Minister may recommend to the Governor that a regulation be made under this section or a relevant Act”.

[5] Section 17(2)(b)(ii)

Omit “and” from the end of the subparagraph.

[6] Section 17(2)(c)

Omit the paragraph.

[7] Section 17(3)(b) and (c)

Omit section 17(3)(b). Insert instead—

- (b) if the regulation is made under this section—may override the provisions of any Act, regulation or other law, and

- (c) if the regulation is made under a relevant Act—may override the provisions of that Act or a regulation made under that Act.

[8] Section 17(5)

Omit the subsection. Insert instead—

- (5) In this section—
 - altered arrangements* includes—
 - (a) modified arrangements, permissions or requirements, and
 - (b) suspended arrangements, permissions or requirements.

Explanatory note

The proposed amendments extend the regulation-making power in section 17 of the Act to provide for altered arrangements in relation to requirements in any Act about documents or information. These special arrangements apply for the purposes of responding to the public health emergency caused by the COVID-19 pandemic and apply only for a limited period.

1.4 Evidence (Audio and Audio Visual Links) Act 1998 No 105

[1] Section 22C COVID-19 pandemic—special provisions

Insert after section 22C(1)—

Note. The Act continues to apply to appearances not referred to in this section and in proceedings prescribed by the regulations. Part 1A continues to apply to the appearance of witnesses to which subsection (4) does not apply and Part 1B continues to apply to the appearance of accused detainees to which subsection (3) does not apply.

[2] Section 22C(2A)

Insert after section 22C(2)—

- (2A) The appearance of an accused person (other than an accused detainee) in any proceedings other than physical appearance proceedings may take place by way of audio visual link if the court directs or the parties to the proceedings consent.

[3] Section 22C(3A)

Insert after section 22C(3)—

- (3A) The appearance of an accused person (other than an accused detainee) in any physical appearance proceedings prescribed by the regulations under subsection (3) is not to take place by way of audio visual link unless the court directs or the parties to the proceedings consent.

[4] Section 22C(4)

Omit “(including a government agency witness)”.

[5] Section 22C(5)

Omit “subsection (3)”. Insert instead “subsection (2A), (3), (3A)”.

[6] Section 22C(6)

Omit the subsection. Insert instead—

- (6) The court is to make a direction under this section only if it is in the interests of justice, having regard to the following—
 - (a) the public health risk posed by the COVID-19 pandemic,
 - (b) the efficient use of available judicial and administrative resources,

- (c) any relevant matter raised by a party to the proceedings,
- (d) any other matter that the court considers relevant.

[7] Section 22C(9)

Insert in alphabetical order—

witness excludes—

- (a) a government agency witness, and
- (b) an accused person giving evidence in proceedings concerning an offence alleged to have been committed by the accused person.

Explanatory note

The proposed amendments further provide for the use of audio visual link in court proceedings during the COVID-19 pandemic.

Items [2] and [3] provide for an accused person who is not in custody to appear by audio visual link in certain proceedings.

Item [6] requires the court to consider certain factors before directing an appearance by way of audio visual link.

Item [1] makes it clear that the *Evidence (Audio and Audio Visual Links) Act 1998* continues to apply to proceedings that are not covered by the COVID-19 special provisions.

Items [4] and [7] restore the existing arrangements for government agency witnesses, under which a government agency witness is to give evidence by way of audio visual link unless the court otherwise directs. Items [4] and [7] also make it clear that the provision about the appearance of witnesses in proceedings by way of audio visual link does not apply to an accused person giving evidence in the proceedings concerned an offence allegedly committed by the accused person.

Item [5] is a consequential amendment.

1.5 Sheriff Act 2005 No 6

Section 7C

Insert after section 7B—

7C COVID-19 pandemic—powers when assisting in COVID-19 response

(1) Application of section

This section has effect for the prescribed period and prevails to the extent of any inconsistency with any other provision of this Act.

(2) Agreement for assistance of sheriff's officers

The Sheriff may, with the approval of the Secretary of the Department of Justice and Communities, enter into an agreement with the head of a Public Service agency to enable sheriff's officers to—

- (a) assist that agency in connection with the COVID-19 response, and
- (b) exercise powers under this section for that purpose.

(3) An agreement under this section must—

- (a) be in writing, and
- (b) specify the powers referred to in this section that may be used by sheriff's officers under the agreement, and
- (c) specify the period for which the agreement is in force (being a period ending on or before the end of the prescribed period).

(4) **Sheriff's officer may issue directions**

A sheriff's officer, when assisting a Public Service agency under an agreement referred to in subsection (2), may issue a direction to a person entering, attempting to enter or on restricted access premises—

- (a) to leave the premises or part of the premises, or
- (b) to remain on the premises or to go to a specified part of the premises, or
- (c) to refrain from specified conduct.

(5) A sheriff's officer may issue a direction under subsection (4) only if the officer believes on reasonable grounds that the direction is necessary—

- (a) to prevent a person from unlawfully entering or exiting restricted access premises or remaining on restricted access premises, or
- (b) to prevent a person from assaulting another person or from damaging property at restricted access premises.

(6) If a sheriff's officer gives a direction to a person under subsection (4) and the person fails to comply with the direction, the sheriff's officer may again give the direction (a *second direction*) and, at the time of giving the second direction, is required to—

- (a) tell the person that the officer is a sheriff's officer and the reason for the direction, and
- (b) warn the person that failure to comply with the direction may be an offence.

(7) A person must not, without reasonable excuse, fail to comply with a second direction.

Maximum penalty—10 penalty units.

(8) A person is not guilty of an offence under subsection (7) unless it is established that—

- (a) the sheriff's officer was in uniform when the direction was given, and
- (b) the sheriff's officer complied with the requirements of subsection (6) when giving the second direction, and
- (c) the person persisted, after the second direction concerned was given, to fail to comply with the second direction.

(9) **Power of entry and arrest**

A sheriff's officer, when assisting a Public Service agency under an agreement referred to in subsection (2), may do one or more of the following—

- (a) enter restricted access premises, or part of restricted access premises,
- (b) arrest or detain a person, without a warrant.

(10) A sheriff's officer may exercise a power referred to in subsection (9) only if—

- (a) a person has failed to comply with a second direction, or
- (b) the officer believes on reasonable grounds that the power must be exercised urgently or a direction will be insufficient—
 - (i) to prevent or stop a person from assaulting another person at restricted access premises, or
 - (ii) to prevent or stop a person from damaging property at restricted access premises, or
 - (iii) to prevent or stop a person from unlawfully entering or exiting restricted access premises.

- (11) A sheriff's officer may, when exercising a power under subsection (9), use reasonably necessary force to exercise the power, including to prevent the escape of a person after the arrest.
- (12) As soon as practicable after arresting or detaining a person under this section, the sheriff's officer is to hand custody of the person to a police officer to be dealt with according to law.
- (13) A sheriff's officer may discontinue an arrest at any time and may do so despite the requirement of subsection (12).
- (14) **Definitions**
In this section—
head, of a Public Service agency, has the same meaning as in the *Government Sector Employment Act 2013*.
prescribed period means the period—
(a) starting on the commencement of this section, and
(b) ending on—
(i) 26 September 2020, or
(ii) the later day, not later than 26 March 2021, prescribed by the regulations.
Public Service agency has the same meaning as in the *Government Sector Employment Act 2013*.
restricted access premises means any of the following—
(a) a residence or other place at which a person is required to reside pursuant to an order under section 7 of the *Public Health Act 2010* relating to COVID-19,
(b) premises prescribed by the regulations for the purposes of this section.

Explanatory note

The proposed amendment allows the Sheriff, with the approval of the Secretary of the Department of Communities and Justice, to enter into an agreement with the head of another Public Service agency to enable a sheriff's officer to assist that other agency in its COVID-19 pandemic response. The proposed amendment grants a sheriff's officer the power to issue directions to persons when providing that assistance. Failure to comply with a direction is an offence. A sheriff's officer may also, in certain limited circumstances, enter premises or arrest or detain a person if the person has failed to comply with a direction or the officer believes on reasonable grounds that it is necessary because the power must be exercised urgently or a direction will be insufficient.

1.6 Subordinate Legislation Act 1989 No 146

Schedule 5 Further postponement of repeal of certain statutory rules

Omit “2021” wherever occurring in clauses 11 and 12(1) and (3). Insert instead “2022”.

Explanatory note

The proposed amendment keeps the *Environmental Planning and Assessment Regulation 2000* and the *Poisons and Therapeutic Goods Regulation 2008* in force for a further 12 months after the Regulations would otherwise be repealed by the *Subordinate Legislation Act 1989*. The Regulations may be repealed sooner by other legislation.

The Department of Planning, Industry and Environment is currently reviewing and preparing to remake the *Environmental Planning and Assessment Regulation 2000*.

The Ministry of Health is currently reviewing and preparing a new Bill and Regulation to replace the *Poisons and Therapeutic Goods Act 1966* and the *Poisons and Therapeutic Goods Regulation 2008*. However, due to the COVID-19 pandemic, the preparation and public consultation of the draft Bill and Regulations are delayed and it is considered necessary to postpone the repeal of the existing Regulations in these circumstances.

The proposed amendment also extends for 12 months an exemption that enables a principal regulation under the *Environmental Planning and Assessment Act 1979* that deals primarily with matters relating to building and subdivision certification and fire and building safety to be made without a regulatory impact statement.

[Second reading speech made in—
Legislative Assembly on 12 May 2020
Legislative Council on 12 May 2020]