

**PUBLIC HEALTH (PROCLAIMED DISEASES) AMENDMENT
BILL 1989**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Public Health Act 1902 so as:

- (a) to make further provision for preventing the spread of proclaimed diseases, such as the human immuno-deficiency virus (HIV); and
- (b) to provide for related matters.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 gives effect to the Schedule of amendments.

SCHEDULE 1 - AMENDMENTS

Schedule 1 (1) inserts in section 3 a definition of "Director-General" and omits the now outdated definition of "Secretary".

Schedule 1 (2) amends section 50F of the Principal Act (definitions for the purposes of Part 3B) by inserting definitions of "appropriate court" and "authorised medical practitioner". The definition of "authorised medical practitioner" will include the Chief Health Officer of the Department of Health and any medical practitioner authorised by the Director-General of the Department of Health.

Schedule 1 (3) inserts into Part 3B of the Principal Act (Proclaimed diseases) a proposed new Division, Division 3A, which provides for the making of public health orders in relation to persons who are infected with a proclaimed disease, such as HIV. The proposed Division contains sections 500A - 500N.

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Proposed section 500A will enable an authorised medical practitioner to make a public health order in respect of any person if satisfied that the person is infected with a proclaimed disease and that the person is behaving in a way that endangers or is likely to endanger public health. A public health order will be able to include:

- a requirement that the person refrain from specified conduct or undergo specified treatment; or
- a requirement that the person to whom the order applies undergo counselling; or
- a direction that the person submit to supervision; or
- a direction that the person be detained at a place specified in the order.

The maximum period for which it will be possible for a public health order to remain in force will be 28 days, but it will be possible for the order to be renewed by the Supreme Court under proposed section 500C.

Proposed section 500B provides that, if an application for the confirmation of a public health order is not made to the appropriate Local Court within 3 business days after the order is made, the order will cease to have effect.

Proposed section 500C will enable the Supreme Court, on the application of an authorised medical practitioner, to renew a public health order for a further period of up to 6 months.

Proposed section 500D will require an authorised medical practitioner to cancel a public health order if of the opinion that the person to whom the order applies is no longer a danger to public health.

Proposed section 500E deals with contraventions of public health orders. If a person to whom a public health order applies is alleged to have contravened the order, the person may be apprehended and brought before the appropriate court. That court will be empowered to vary the order and, where appropriate, will be able to impose more stringent requirements or give more stringent directions, such as a direction for the person to be detained for a specified period.

Proposed section 500F will make it an offence for a person to whom a public health order applies to contravene the order. The section provides for the imposition of a penalty for such a contravention of up to \$5,000 or 6 months' imprisonment, or both.

Proposed section 500G will confer on a person to whom a public health order applies a right of appeal to the Supreme Court against a decision of a Local Court under proposed section 500B which confirms the order or under proposed section 500E in respect of a contravention of the order.

Proposed section 500H provides that, where a person has been subject to a public health order that has been quashed or has otherwise ceased to have effect, no further public health order may be made in respect of that person unless the authorised medical practitioner concerned is satisfied that there has since been a change in that person's health or behaviour from a public health point of view.

Proposed section 500I specifies the persons who will be authorised to retake a person detained under a public health order where that person has escaped from detention.

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Proposed section 500J will make it an offence, punishable by a penalty not exceeding \$5,000 or imprisonment for 6 months, or both, for a person to assist a person to whom a public health order applies to contravene the order.

Proposed section 500K provides that, where an inquiry or other proceedings under the proposed Division 3A of Part 3B are being held before a court or an appeal arising from those proceedings is pending or being heard, the court will be able to make an order prohibiting publication of reports of the proceedings or of particulars that may identify a person to whom a public health order applies. The maximum penalty for a breach of such an order will be \$10,000 in the case of a body corporate and \$5,000 or 6 months' imprisonment, or both, in the case of any other person. In a case involving a contravention of an order of the Supreme Court, it will be possible for the Court to deal with the contravention as a contempt of the Court.

Proposed section 500L deals with procedural matters. Proceedings under proposed Division 3A of Part 3B involving a person to whom a public health order applies will normally be open to the public unless a party to the proceedings, or that party's representative, objects and the objection is upheld. The person to whom such an order applies will be entitled to be heard in the proceedings and to be represented by a legal practitioner or, with the leave of the court concerned, by another person of his or her choice.

Proposed section 500M will permit a person to whom a public health order applies, or that person's representative, to have access to medical records relating to that person unless the appropriate court otherwise directs.

Proposed section 500N will enable the Governor-in-Council to make regulations prescribing the places at which and the conditions under which a person may be detained under a public health order.

Schedule 1 (4) substitutes a proposed new section for section 50R of the Principal Act. The substitution is consequential on the amendments effected by Schedule 1 (3). The new section 50R will apply only section 30 of the Principal Act to a proclaimed disease. At present section 50R applies both sections 30 and 32A of the Principal Act to a proclaimed disease. (Section 30 requires the Registrar-General and registrars of births, deaths and marriages to notify deaths from infectious diseases to the Director-General of the Department of Health and section 32A confers power to direct the removal of a person to a hospital.)

Schedule 1 (5) - (7) make minor consequential amendments to a number of other sections of the Principal Act, including amendments which will bring references to penalties for offences against that Act into line with the current drafting practice and which will substitute references to "Director-General" for references to "Secretary".