

Public Health Amendment (Review) Act 2017 No 43

[2017-43]



New South Wales

Status Information

Currency of version

Historical version for 20 September 2017 to 20 September 2017 (accessed 17 July 2024 at 19:27)

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

Authorisation

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File last modified 20 September 2017

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Public Health Amendment (Review) Act 2017 No 43



New South Wales

An Act to amend the *Public Health Act 2010* as a result of the statutory review of that Act; to amend the *Public Health Regulation 2012* in relation to childcare vaccination; and for other purposes.

1 Name of Act

This Act is the *Public Health Amendment (Review) Act 2017*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Schedule 1 [4]-[19], [23]-[31], [33]-[48], [56] and [59] commence on a day or days to be appointed by proclamation.
- (3) Schedule 1 [32] commences on the day that is 28 days after the date of assent to this Act.

Schedule 1 Amendment of *Public Health Act 2010* No 127

[1] Section 3 Objects

Insert after section 3 (1) (e):

- (f) to monitor diseases and conditions affecting public health.

[2] Section 4 Responsibilities of local government relating to environmental health

Insert “private water suppliers, water carters,” before “public” in section 4 (1).

[3] Section 4 (3)

Insert after section 4 (2):

(3) In this section:

private water supplier means a person who supplies drinking water in the course of a commercial undertaking (other than that of supplying bottled or packaged drinking water), being a person who has not received the water:

- (a) from any supplier of drinking water referred to in paragraphs (a)–(g) of the definition of **supplier of drinking water** in section 5 (1), or
- (b) in the form of bottled or packaged water.

water carter means a person who receives water from a supplier of drinking water and who supplies drinking water from a water carting vehicle in the course of a commercial undertaking.

[4] Section 5 Definitions

Omit “except as provided by paragraph (b),” from paragraph (a) of the definition of **occupier** in section 5 (1).

[5] Section 5 (1), definition of “occupier”

Insert at the end of paragraph (b):

, or

- (c) for the purposes of Divisions 2 and 5 of Part 3—if an air-handling system or a water-cooling system is installed on premises that are subdivided into a strata scheme (within the meaning of the [Strata Schemes Management Act 2015](#)), the owners corporation constituted under that Act for the scheme.

[6] Section 5 (1), definition of “skin penetration procedure”

Insert “or the penetration of a mucous membrane” after “hair removal”).

[7] Section 25 Quality assurance programs

Omit section 25 (1). Insert instead:

- (1) A supplier of drinking water must have a quality assurance program.

Maximum penalty:

- (a) in the case of an individual—50 penalty units, or
- (b) in the case of a corporation—250 penalty units.

[8] Section 25 (1A) and (1B)

Insert after section 25 (1):

(1A) A supplier of drinking water must comply with the supplier's quality assurance program.

Maximum penalty:

(a) in the case of an individual—50 penalty units, or

(b) in the case of a corporation—250 penalty units.

(1B) A supplier of drinking water must provide a copy of the supplier's quality assurance program to the Secretary.

Maximum penalty:

(a) in the case of an individual—25 penalty units, or

(b) in the case of a corporation—125 penalty units.

[9] Section 25 (2) (c)

Insert after section 25 (2) (b):

(c) matters to be included in a quality assurance program, including in relation to particular types of suppliers.

[10] Section 34 Definitions

Insert at the end of paragraph (d) of the definition of ***public swimming pool or spa pool***:

or

(e) a pool situated at private residential premises, but only if that pool is used for commercial purposes, or

(f) any other pool or spa pool declared by the regulations to be a public swimming pool or spa pool,

[11] Section 34, definition of "public swimming pool or spa pool"

Omit "but not including a pool situated at private residential premises".

Insert instead "but not including any pool or spa pool declared by the regulations not to be a public swimming pool or spa pool".

[12] Section 34, definition of “swimming pool”

Omit “or other recreational aquatic structure”.

Insert instead “, water play park or other recreational aquatic structure (including any interactive water feature or fountain that is intended to be bathed in for recreational purposes)”.

[13] Section 39A

Insert after section 39:

39A Eyeball tattooing to be carried out by medical practitioner or other qualified person

Eyeball tattooing must not be carried out by any person other than:

- (a) a medical practitioner, or
- (b) a person, or person belonging to a class of persons, prescribed by the regulations for the purposes of this section.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

[14] Section 51 Definitions

Insert in alphabetical order in section 51 (1):

contact order condition means a medical condition listed in Schedule 1A.

[15] Section 51 (2)

Insert “or 1A” after “Schedule 1”.

[16] Section 54 Medical practitioner to notify Secretary of Category 1 and 2 conditions

Insert after section 54 (3):

- (3A) Subject to section 56, any medical practitioner involved in the treatment of the person concerned must, at the request of the Secretary, provide the Secretary with:
 - (a) such information as is necessary to complete or correct a certificate that appears to be incomplete or incorrect, and
 - (b) such other information concerning the person’s medical condition and transmission and risk factors as is available to the medical practitioner.

[17] Section 54 (4)

Omit “this section”. Insert instead “subsection (2)”.

[18] Section 55 Laboratories to notify Secretary of Category 3 conditions

Insert “or other person of a class prescribed by the regulations” after “practitioner” where firstly occurring in section 55 (1) (a).

[19] Section 55 (4) and (5)

Omit the subsections. Insert instead:

- (4) Subject to section 56, any medical practitioner involved in the treatment of the person concerned must, at the request of the Secretary, provide the Secretary with:
 - (a) such information as is necessary to complete or correct a report that appears to be incomplete or incorrect, and
 - (b) such other information concerning the person’s medical condition and transmission and risk factors as is available to the medical practitioner.
- (5) A registered medical practitioner must not, without reasonable excuse, fail to comply with such a request.

Maximum penalty: 50 penalty units.

[20] Section 56 Protection of patient’s identity

Omit section 56 (1) and (2). Insert instead:

- (1) A registered medical practitioner must not include a patient’s name or address in a certificate under section 54 or in information provided under section 54 or 55 if the condition to which the certificate or information relates is a Category 5 condition.

[21] Section 56 (4) (b)

Omit “so long as the information is relevant to the provision of such care, treatment or counselling”.

[22] Section 56 (4), note

Insert after section 56 (4):

Note—

The [Health Records and Information Privacy Act 2002](#) limits the use and disclosure of health information.

[23] Section 61 Secretary may direct persons to undergo medical examination

Insert after section 61 (5):

- (6) The medical practitioner who carries out the examination must, as soon as practicable, provide the Secretary with a report of the examination, including the results of any associated tests.

Maximum penalty: 50 penalty units.

[24] Section 62 Making of public health orders relating to person with Category 4 or 5 condition or contact order condition

Omit section 62 (1). Insert instead:

- (1) An authorised medical practitioner may make a public health order in respect of a person if satisfied, on reasonable grounds, that:
 - (a) the person has a Category 4 or 5 condition and because of the way the person behaves may, as a consequence of that condition, be a risk to public health, or
 - (b) the person:
 - (i) has been exposed to a contact order condition, and
 - (ii) is at risk of developing the contact order condition, and
 - (iii) because of the way the person behaves, may be a risk to public health.

[25] Section 62 (2) (d)

Omit the paragraph. Insert instead:

- (d) must state that, unless sooner revoked, it expires:
 - (i) if the public health order is made in respect of a person referred to in subsection (1) (b)—at the end of the period specified opposite the relevant condition in Schedule 1A, or
 - (ii) in any other case—at the end of a specified period (not exceeding 28 days), after it is served on the person subject to the order.

[26] Section 62 (3) (b)

Omit the paragraph. Insert instead:

(b) to undergo specified treatment (whether at a specified place or otherwise),

[27] Section 62 (3) (e)-(g)

Omit section 62 (3) (e). Insert instead:

(e) to notify the Secretary of other persons with whom the person has been in contact within a specified period,

(f) to notify the Secretary if the person displays any specified signs or symptoms,

(g) in relation to a person referred to in subsection (1) (b)—to undergo specified testing for the relevant condition.

[28] Section 62 (4)

Omit section 62 (4) and (5). Insert instead:

(4) A public health order may authorise the person subject to the order:

(a) to be detained at a specified place for the duration of the order, or

(b) in relation to an order that requires the person to undergo specified treatment at a specified place—to be detained at that place while undergoing the treatment.

[29] Section 63 Duration of public health order

Insert “or made in relation to a person referred to in section 62 (1) (b)” after “Category 5 condition” in section 63 (2).

[30] Section 64 NCAT may confirm certain public health orders

Insert “or made in relation to a person referred to in section 62 (1) (b)” after “Category 5 condition” in section 64 (1).

[31] Section 68 Restriction on making of further public health order

Insert at the end of the section:

(2) This section does not apply to the revocation of a public health order made in relation to a person referred to in section 62 (1) (b).

[32] Section 79

Omit the section. Insert instead:

79 Duties of persons in relation to sexually transmissible diseases or conditions

- (1) A person who knows that he or she has a notifiable disease, or a scheduled medical condition, that is sexually transmissible is required to take reasonable precautions against spreading the disease or condition.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

- (2) An owner or occupier of a building or place who knowingly permits another person to have sexual intercourse in contravention of subsection (1) at the building or place for the purpose of prostitution is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

- (3) A person (other than a member of the NSW Health Service) must notify the Secretary if the person commences proceedings against a person for an offence under this section.

[33] Section 83 Hospital CEO to notify Secretary of notifiable diseases

Insert after section 83 (3):

- (4) Any medical practitioner involved in the treatment of the patient or former patient concerned must, at the request of the Secretary, provide the Secretary with:
- (a) such information as is necessary to complete or correct information that appears to be incomplete or incorrect, and
 - (b) such other information concerning the patient's medical condition and transmission and risk factors as is available to the medical practitioner.
- (5) A registered medical practitioner must not, without reasonable excuse, fail to comply with the requirements of this section.

Maximum penalty: 50 penalty units.

[34] Section 85 Definitions

Omit "primary school" wherever occurring in the definitions of ***child at risk*** and ***principal*** in section 85 (1).

Insert instead "school".

[35] Section 85 (1), definition of "primary school"

Omit the definition.

[36] Section 85 (1)

Insert in alphabetical order:

school means:

- (a) a government school established under the *Education Act 1990*, or
- (b) a non-government school registered under that Act.

[37] Section 86 Responsibilities of principals of schools with respect to immunisation

Omit “primary school” wherever occurring in section 86. Insert instead “school”.

[38] Section 87 Responsibilities of principals of child care facilities with respect to immunisation

Omit section 87 (1) (a)–(c). Insert instead:

- (a) a vaccination certificate and, if the vaccination certificate does not cover some of the vaccine preventable diseases for which immunisation at the child’s age is recommended by the NSW Immunisation Schedule, a medical certificate in respect of any vaccine preventable disease not covered by the vaccination certificate, or
- (b) if a vaccination certificate is not provided—a medical certificate in respect of the vaccine preventable diseases for which immunisation at the child’s age is recommended by the NSW Immunisation Schedule.

[39] Section 87 (1) and (6)

Insert at the end of each subsection:

Maximum penalty: 50 penalty units.

[40] Section 87 (2)

Omit the subsection. Insert instead:

- (2) A person must not forge or falsify a certificate that is required to be provided under this section.

Maximum penalty: 50 penalty units.

[41] Section 87 (9)

Insert after section 87 (8):

(9) In this section:

medical certificate means a certificate in the approved form by an authorised practitioner certifying that a specified child should have an exemption for one or more vaccines for specified vaccine preventable diseases due to a medical contraindication to vaccination.

vaccination certificate means:

- (a) an immunisation certificate indicating that the child is age appropriately immunised, or
- (b) a certificate in the approved form by an authorised practitioner certifying that the child is following an approved vaccination catch-up schedule.

[42] Section 88 Responsibilities of principals during outbreaks of vaccine preventable disease

Omit section 88 (1). Insert instead:

- (1) The principal of a school or child care facility must, as soon as practicable, ensure that the public health officer is given notice in writing, in the approved form, if:
 - (a) the principal becomes aware that a child enrolled at the school or facility has a vaccine preventable disease, or
 - (b) the principal reasonably suspects that a child enrolled at the school or facility who is a child at risk has come into contact with a person who has a vaccine preventable disease.

[43] Section 88 (2)

Omit “On being informed that a child has a vaccine preventable disease”.

Insert instead “On receiving a notice referred to in subsection (1) or if the public health officer reasonably believes that a child at risk has come into contact with a person who has a vaccine preventable disease”.

[44] Section 88 (2), (4)-(6) and (8)

Omit “primary school” wherever occurring. Insert instead “school”.

[45] Section 88 (2)

Omit “both in respect of the child that has the disease”.

Insert instead “in respect of the child that has the disease, the child who has come into contact with a person who has the disease”.

[46] Part 6, heading

Insert “**and diseases**” after “**health**”.

[47] Part 6

Omit Divisions 1–3.

[48] Part 6, Division 4

Omit the heading.

[49] Section 97 Registers that may be established

Insert after section 97 (1) (e):

(f) any other purpose prescribed by the regulations for the purpose of this section.

[50] Sections 97 (2) and 98 (1)

Omit “Division” wherever occurring. Insert instead “Part”.

[51] Section 98 Public health and disease registers

Omit “register” wherever occurring in section 98 (5) and (6).

Insert instead “register established under this section”.

[52] Section 98 (7)

Insert in alphabetical order:

identifying particulars of a person means the person’s:

- (a) name (including any previous name), or
- (b) residential, postal or email address.

[53] Section 106 Inquiries by Secretary

Insert after section 106 (3):

(3A) If the person is authorised to exercise the function of an authorised officer under a provision of this Part that relates to a contravention of this Act or the regulations, the function may be exercised in relation to a matter the subject of the inquiry.

[54] Section 106 (4A)

Insert after section 106 (4):

(4A) If, as a result of an inquiry, the Secretary considers that there is, or is likely to be, a risk to public health, the Secretary may, by notice in writing, direct a person whom the Secretary reasonably believes is responsible for, or contributed to, the public health risk to notify specified persons or a specified class of persons of the nature of the risk and of any measures to be taken to mitigate that risk.

[55] Section 130A

Insert after section 130:

130A Secretary cannot be compelled to produce certain information in proceedings

- (1) The Secretary and any person who, on behalf of the Secretary, holds information that has been provided to the Secretary under Part 4 or 5 cannot be compelled in any proceedings (other than proceedings under this Act) to produce or to give evidence in relation to that information.
- (2) However, the Secretary may consent to the disclosure of any such information for the purpose of any legal proceedings.

[56] Section 131A

Insert after section 131:

131A Annual reports

Without limiting the requirements of the *Annual Reports (Departments) Act 1985*, the Secretary must include the number of public health orders made under section 62 (including specifying the conditions to which those orders related and the number of orders made in relation to each of those conditions) during the reporting year in the annual report of the Ministry of Health under that Act.

[57] Section 134 Regulations

Omit section 134 (2) (w). Insert instead:

- (w) the payment of specified fees in relation to applications made, approvals given, improvement notices and prohibitions orders given, and other matters arising, under this Act (including in relation to the exercise of functions by local government authorities and authorised officers).

[58] Section 136

Omit the section. Insert instead:

136 Review of amendments made by [Public Health Amendment \(Review\) Act 2017](#)

- (1) The Minister will review the amendments made to section 62 and Division 1 of Part 5 by the [Public Health Amendment \(Review\) Act 2017](#) to determine whether the policy objectives of those amendments remain valid and whether the terms of those provisions as amended remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 2 years from the commencement of the amendments to section 62.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years from the commencement of the amendments to section 62.

[59] Schedule 1A

Insert after Schedule 1:

Schedule 1A Contact order conditions

(Section 51)

Contact order conditions	Expiry periods
Avian influenza in humans	10 days
Middle East respiratory syndrome coronavirus	10 days
Severe Acute Respiratory Syndrome	10 days
Typhoid	14 days
Viral haemorrhagic fevers	21 days

Schedule 2 Amendment of [Public Health Regulation 2012](#)

[1] Clause 44A Exemptions from pre-enrolment requirements relating to child care facilities

Omit clause 44A (1) (b). Insert instead:

- (b) the child is subject to a guardianship order under section 79A of the *Children and Young Persons (Care and Protection) Act 1998* or is in out-of-home care (within the meaning of that Act), or

[2] Clause 44A (1)

Insert at the end of clause 44A (1):

, or

- (e) the child is an Aboriginal or Torres Strait Islander (within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*).