

# Public Health (Further Extension of Declared Public Health Emergency–COVID-19) Regulation (No. 3) 2020

Explanatory notes for SL 2020 No. 75

made under the

*Public Health Act 2005*

## General Outline

### Short title

*Public Health (Further Extension of Declared Public Health Emergency–COVID-19) Regulation (No. 3) 2020*

### Authorising law

Sections 323 and 461 of the *Public Health Act 2005*

### Policy objectives and the reasons for them

Chapter 8 of the *Public Health Act 2005* deals with public health emergencies. Under section 319 of the Act, the Minister may declare a public health emergency by a signed written order. The public health emergency takes effect from its declaration by the Minister.

A declared public health emergency activates a range of powers and functions under chapter 8 of the Act. For example, emergency officers have wide ranging powers under chapter 8 to assist in responding to a public health emergency, including powers of entry and a range of powers to compel persons to do or refrain from certain activities. Emergency officers (medical) have additional powers relating to the detention of persons.

In December 2019 and January 2020, a new coronavirus emerged in Wuhan City, in the Hubei Province of China. The new coronavirus was given the temporary name of 2019-nCoV.

On 29 January 2020, a public health emergency was declared under section 319 of the Public Health Act due to the outbreak of 2019-nCoV within China, its pandemic potential due to cases spreading to other countries, and the public health implications within Queensland resulting from recently arrived travellers from the epicentre of the outbreak. The public health emergency was declared for all of Queensland. A copy of the public health emergency order was published in the Government Gazette on 31 January 2020.

Under sections 322 and 323 of the Public Health Act, a declared public health emergency ends seven days after the day it is declared, unless extended by a regulation. On 5 and 6 February 2020, the declared public health emergency was extended by the *Public Health (Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation 2020* and the *Public Health (Further Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation 2020*, which collectively extended the declared public health emergency until 19 February 2020.

On 7 February 2020, the *Public Health (Declared Public Health Emergencies) Amendment Act 2020* (Amendment Act) received Royal Assent. The Amendment Act amended the Public Health Act to allow a declared public health emergency to be extended by regulation for periods of up to 90 days. The *Public Health (Further Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation (No. 2) 2020* extended the period of the declared public health emergency for 2019-CoV by 90 days, until 19 May 2020.

On 11 February 2020, the World Health Organization gave the coronavirus 2019-nCoV the official name ‘COVID-19’, meaning the coronavirus disease originating in 2019.

On 11 March 2020, the World Health Organization declared the spread of COVID-19 a pandemic. A coordinated national response is being implemented across Australia to address the exponential number of increasing confirmed cases overseas and in Australia and information regarding the epidemiology of COVID-19 is frequently being updated. For these reasons, it is considered necessary to extend the declared public health emergency for a further 90 days. This will give emergency officers and the Queensland community greater certainty about the anticipated need for the public health emergency declaration to continue. It will also enable the Queensland Government to communicate with certainty about emergency arrangements that may need to be implemented over the next 90 days to manage the public health risks arising from the potential spread of COVID-19.

In accordance with section 324 of the Public Health Act, if the need for the declaration of the public health emergency is no longer required, the Minister will declare the end of the public health emergency and the emergency powers provided under chapter 8 will cease on the day the declaration ends.

## **Achievement of policy objectives**

The title of the *Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 3) 2020* (Regulation) has been updated from previous extension regulations to refer to the official name ‘COVID-19’ and not ‘2019-nCoV’.

The Regulation extends the period of the declared public health emergency to allow for emergency powers to be used to reduce the risk of COVID-19 spreading. In accordance with section 323 of the Public Health Act, the Regulation extends the declared public health emergency for a further period of 90 days.

The effect of making the Regulation is that the declared public health emergency will be extended until midnight on 17 August 2020. If the need arises, section 323(4) of the Public Health Act states that the Governor-in-Council may make another regulation to extend the declared public health emergency for a further period of not more than 90 days.

## **Consistency with policy objectives of authorising law**

The Regulation is consistent with the policy objectives of the authorising Act.

## **Inconsistency with policy objectives of other legislation**

No inconsistencies with the policy objectives of other legislation have been identified.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives.

## **Benefits and costs of implementation**

Extending the duration of the declared public health emergency until 17 August 2020 is considered essential to manage any potential spread of COVID-19 in Queensland. There are no direct costs associated with making the Regulation.

## **Consistency with fundamental legislative principles**

The Regulation is generally consistent with fundamental legislative principles in the *Legislative Standards Act 1992*.

Section 4(2)(a) of the Legislative Standards Act provides that fundamental legislative principles include requiring that legislation has sufficient regard to rights and liberties of individuals. This includes, for example, whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; allows delegation of administrative power only in appropriate cases and to appropriate persons; and confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

The Regulation may potentially breach fundamental legislative principles, as it will continue the declared public health emergency which empowers the chief health officer and emergency officers to compel persons to do or refrain from certain activities. This includes requiring persons not to enter or remain within a place, or to stay in a stated place; requiring persons to answer questions; and requiring persons to stop using a place for a stated purpose. Failure to comply with these requirements is an offence with a maximum penalty of 100 penalty units.

The powers of emergency officers are discretionary and are only expected to be exercised if there are significant risks to public health. Additionally, the Act includes protections to limit the exercise of emergency officers' powers. For example:

- emergency officers can only enter places to save human life, prevent or minimise serious adverse effects on human health, or do anything else to relieve suffering or distress. Emergency officers are also required to make a reasonable attempt to seek an occupier's consent to the entry (section 344 of the Public Health Act);
- certain powers can only be exercised with the written approval of the chief executive (section 345(2) of the Public Health Act);
- a person must be given the opportunity to voluntarily comply with a detention order before it is enforced against them (section 353 of the Public Health Act); and

- a person who is detained must be given the opportunity of receiving medical treatment including by a doctor chosen by the person (section 354(4) of the Public Health Act).

Emergency officers (medical) will also continue to have the power to order detention of a person if that person has or may have a serious disease or illness. As soon as practicable after a person is detained, an emergency officer (medical) must request that the person be medically examined. Failure to comply with a detention order is an offence with a maximum penalty of 200 penalty units.

The exercise of these emergency powers is likely to impact upon the rights and liberties of individuals. However, it is considered that any potential impact that the Regulation has upon the rights and liberties of individuals in this context is justified, given the need to protect the health of the public by managing the potential spread of COVID-19.

## **Consultation**

Due to its urgent nature, consultation on the Regulation was not possible. However, Queensland Health is in regular contact with clinicians and the general public about the developing COVID-19 situation. Queensland Health will continue to ensure that Queenslanders are informed about COVID-19, including any confirmed cases and actions that can be taken to reduce the risk of COVID-19 spreading.

The Office of Best Practice Regulation advised that under *The Queensland Government Guide to Better Regulation*, the Regulation is excluded from further regulatory impact analysis as it falls into category (m), regulatory proposals for matters that require an immediate legislative response to prevent damage to property or injury to persons.

## Notes on provisions

### Short Title

*Clause 1* states that the short title of the Regulation is the *Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 3) 2020*.

### Further extension of period declared public health emergency—Act, s 323

*Clause 2* states that the section applies in relation to the declared public health emergency:

- declared by the Minister on 29 January 2020 under section 319(2) of the Public Health Act;
- extended by the *Public Health (Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation 2020* under section 323(1) of the Public Health Act on 5 February 2020;
- further extended by the *Public Health (Further Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation 2020* under section 323(1) of the Public Health Act on 6 February 2020; and
- further extended by the *Public Health (Further Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation (No. 2) 2020* under section 323(1) of the Public Health Act on 18 February 2020.

Under section 323(1) of the Act, the Regulation provides for the declared public health emergency to be extended for a further 90 days. Therefore, the Regulation will expire on 17 August 2020, unless it is further extended, is repealed or the declared public health emergency ends under section 324 of the Act.