

Economic Development (COVID-19 Emergency Response) Regulation 2020

Explanatory notes for SL 2020 No.102

made under the

COVID-19 Emergency Response Act 2020
Economic Development Act 2012

General Outline

Short title

Economic Development (COVID-19 Emergency Response) Regulation 2020

Authorising law

Sections 5 and 9 of the *COVID-19 Emergency Response Act 2020*
Section 176 of the *Economic Development Act 2012*

Policy objectives and the reasons for them

On 29 January 2020, the Minister for Health and Minister for Ambulance Services declared a public health emergency under section 319 of the *Public Health Act 2005* (the Public Health Act) due to the outbreak of COVID-19 (the COVID-19 emergency).

COVID-19 represents a significant risk to the health and wellbeing of many Queenslanders. It also has the potential to cause adverse economic and social consequences.

In the response to the COVID-19 emergency the *COVID-19 Emergency Response Act 2020* (the COVID-19 Act) was passed on 22 April 2020. The COVID-19 Act establishes a legislative modification framework of general application across the statute book. The purposes of the COVID-19 Act include protecting the health, safety and welfare of persons affected by the COVID-19 emergency and facilitating the continuance of public administration disrupted by the COVID-19 emergency, including by easing regulatory requirements.

The modification framework provides for extraordinary regulations to be made that will modify the requirements of existing laws until 31 December 2020, including those related to making and associated use of documents and physical presence requirements, to protect the health, safety and welfare of the public and to facilitate the continuance of good public administration.

Queensland's planning framework is being impacted by the COVID-19 emergency.

Queensland's planning framework includes the *Economic Development Act 2012* (ED Act) and the *Economic Development Regulation 2013* (the ED Regulation) which regulate the system for managing planning and development in declared Priority Development Areas (PDAs) in Queensland. This system is administered by the Minister for Economic Development Queensland (the MEDQ) and generally parallels the system under the *Planning Act 2016*. For example, PDA development applications are made for PDA development approvals, and applications may require public notification.

If public notification is required, it is the applicant's responsibility to publicly notify their application which includes publishing a notice in a hard copy newspaper circulating in the area of the relevant local government. These notices are a core aspect of the public notification process and key to making the public aware of, and able to provide comment on, development applications within their localities. With the closure or change to online-only publication of many local and regional newspapers as a consequence of the COVID-19 emergency, there is the need to provide for alternative options for public notification of PDA development applications during and while recovering from the COVID-19 emergency.

Additionally, as a result of social distancing requirements and the need for many to work from home and impacts on staff resourcing and capacity, departments, local governments and other entities (key to the successful operation of Queensland's planning framework) have difficulty meeting statutory obligations for making hard copies of documents available to the public.

The policy objectives of the *Economic Development (COVID-19 Emergency Response) Regulation 2020* (the regulation) under the COVID-19 Act are to protect the health, safety and welfare of persons affected by the COVID-19 emergency, and facilitate the ongoing effective operation of the ED Act component of the planning framework, by easing regulatory requirements and allowing for flexible responses in managing disruptions caused by the COVID-19 emergency and social distancing measures.

Achievement of policy objectives

The policy objectives of the regulation are achieved by modifying provisions of the ED Act:

- to provide alternative arrangements for the inspection and purchase of hard copies of documents, in recognition of health and safety restrictions – by providing for inspection at an agreed time and place, and
- to provide alternative options to placing a notice in a hard copy newspaper for notifying PDA development applications and amendment applications, in recognition of disruption of local hardcopy newspapers –
 - if a local hard copy newspaper is not circulating in the locality of the land that is the subject of the application, by publishing a notice in an online local newspaper for the locality, and
 - if there is no online local newspaper, by using one of the following options: publishing a notice in a hard copy or online state or national newspaper, giving a notice to the occupier of each lot in the identified area for the application, or publishing a notice on the relevant state or local government website.

The provisions of the regulation apply during the 'response period', defined as starting on commencement of the regulation and ending on 31 December 2020.

Modified arrangements for inspection of hard copy documents

Section 173(1)(a) of the ED Act provides that the Minister for Economic Development Queensland (MEDQ) must keep the required registers published on the department's website available for inspection by the public during office hours on business days at the places the MEDQ considers appropriate. A person may search and take extracts from a register and obtain a hard copy. The regulation modifies those requirements during the response period to provide that the MEDQ is taken to comply with section 173(1)(a) if the register is open for inspection at an agreed time and place, and if the MEDQ is satisfied that these modified provisions are appropriate:

- to protect the health, safety and welfare of persons affected by the COVID-19 emergency, or
- to facilitate the continuance of public administration disrupted by the COVID-19 emergency.

These considerations by the MEDQ ensure that the modified arrangements apply only if the impacts of the COVID-19 emergency continue.

Alternative notification options if there is no local hard copy newspaper

The regulation modifies section 84(2)(a) of the ED Act and provides that where a local hard copy newspaper continues to circulate generally in the locality of the land that is the subject of the application, that method of notification is to be used.

Further, should there be no local hard copy newspaper in circulation, but an online local newspaper for the locality is available, then that local online method of notification is to be used.

A local newspaper for a locality is defined in the regulation as a newspaper that primarily publishes news in relation to the locality, or a region that includes the locality, is intended for a local or regional, rather than state-wide or nationwide, readership, and contains a section for the publication of notices for members of the public.

This approach provides for the continuity of local and regional scale hard copy newspapers wherever possible. It recognises the notification method most commonly used by applicants and known to the public, noting the important role that many local hard copy newspapers have for their townships and communities, particularly in rural areas where access to the internet may be limited. The use of online publications is only intended to be used where no hard copy local newspaper exists. In that situation, the first online option is a local online newspaper for the locality.

In the circumstances where there is neither a hard copy nor online local newspaper available, a notice may be published in a state or national hard copy or online newspaper. A state or national newspaper means a newspaper that is published in Australia, primarily publishes news in relation to the State or Australia and is intended for a state-wide or nation-wide readership.

Alternatively, a notice may be given to the occupier of each lot in the identified area for the application or published on the relevant state or local government website for the decision-maker for the application. The availability to an applicant of these options will depend on the entity responsible for deciding applications in the PDA having, or establishing, necessary processes or procedures:

- for giving notices to occupiers of lots in the identified area – identifying the area of interest for the application, and
- for placing a notice on the relevant state or local government website – providing access to the decision-maker’s website

An identified area is intended to be a geographic area around the land that is the subject of the application that the decision-maker for the application identifies as having occupiers that are likely to be interested in the application. To reduce regulatory burden, the regulation requires notices to be given to occupiers and not owners of land within the identified area.

Publishing on a website requires that:

- the notice be published until at least the end of the submission period, and
- the submission period ends on or before 18 December 2020. This date represents the final business day in 2020 before the exclusion period of 20 December to 5 January stated in section 84(5)(c) of the ED Act.

All other requirements for the notification of applications under section 84 of the ED Act to place a notice on the land, and give a notice to the MEDQ, adjoining land owners and others identified by the MEDQ, remain unchanged and will continue to apply.

The provisions will apply to notification of both PDA development applications and amendment applications during the ‘response period’. The provisions do not apply if, before the commencement of the regulation, the applicant had published a notice as required under section 82(a) of the ED Act.

The meeting of any stated requirements for public notification in the regulation will be considered by the decision-maker in deciding whether notification requirements have been complied with under section 84C of the ED Act. The regulation also identifies other sections of the ED Act where a reference to compliance with section 84 or 84(2) includes a reference to compliance with section 4(1) of the regulation that states additional notification options.

Consistency with policy objectives of authorising law

The regulation is consistent with the policy objectives of the authorising laws.

The regulation meets the purpose of the COVID-19 Act which includes to protect the health, safety and welfare of persons affected by the COVID-19 emergency and to facilitate the continuance of public administration.

Inconsistency with policy objectives of other legislation

The regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Benefits and costs of implementation

The regulation allows for the timely response to issues the planning framework is experiencing as a result of COVID-19. By introducing alternative arrangements for viewing documents and public notifying development applications, the regulation allows the continued good public administration of the planning framework.

There are no significant costs in establishing alternative viewing arrangements for documents.

The additional options for notifying PDA development applications are not expected to significantly increase current notification costs.

Consistency with fundamental legislative principles

The regulation is consistent with fundamental legislative principles.

Consultation

Given the urgent nature of the regulation, consultation has not been undertaken. However, the impacts of COVID-19 on the planning framework have been raised by several local governments and businesses.

The Office of Best Practice Regulation (OBPR) in the Queensland Productivity Commission (the Commission) was also consulted under the *Queensland Government Guide to Better Regulation* (the guidelines) to determine if further assessment was required under the Regulatory Impact Analysis (RIA) system. The Commission considers that the proposal to provide alternative arrangements for viewing documents and notifying application is designed to reduce the burden of regulation, and it is reasonably clear it does not add to the burden or impose significant adverse impacts. Therefore further RIA is therefore not required under the guidelines.

The Commission notes that the proposed amendments are earmarked for removal at the end of the COVID-19 emergency response.