

# State Penalties Enforcement Amendment Regulation (No. 1) 2020

Explanatory notes for SL 2020 No. 125

made under the

*State Penalties Enforcement Act 1999*

## General Outline

### Short title

*State Penalties Enforcement Amendment Regulation (No. 1) 2020*

### Authorising law

Section 165(2) of the *State Penalties Enforcement Act 1999*.

### Policy objectives and the reasons for them

#### ***COVID-19 public health emergency***

On 29 January 2020, under the *Public Health Act 2005*, the Minister for Health and Minister for Ambulance Services made an order declaring a public health emergency in relation to coronavirus disease (COVID-19). The COVID-19 public health emergency has been extended by regulation to 17 August 2020 and may be further extended.

As at 30 June 2020, the World Health Organization recorded more than 10 million COVID-19 cases worldwide. Australia has recorded 7,834 cases of COVID-19. Queensland has recorded 1,067 cases of COVID-19, including 6 fatalities. As at 30 June 2020, Queensland only had two active cases of COVID-19. The last confirmed case in Queensland that has no epidemiology link to interstate or overseas transmission or another confirmed case (known as community transmission) was notified on 26 May 2020, with symptom onset on 2 May 2020. In Queensland, 79 per cent of cases are related to overseas or interstate travel compared to 63 per cent nationally.

In Queensland, the spread of COVID-19 has been managed through a number of important public health controls including public health directions made by the Chief Health Officer. Under section 362B of the *Public Health Act*, the Chief Health Officer may give a public health direction to assist in containing, or to respond to, the spread of COVID-19 within the community.

#### ***Queensland border restrictions***

Border controls help prevent COVID-19 cases entering the Queensland community from places where there is more COVID-19 in the community and/or people are at greater risk of getting COVID-19. Queensland has border restrictions in place for people arriving from overseas and from within Australia. The State Penalties Amendment Regulation (No. 1) 2020 relates to the restrictions on Queensland's domestic borders. In Queensland, 79 per cent of cases are related to overseas or interstate travel compared to 63 per cent nationally. This indicates a significantly lower proportion of community transmission, likely as a result of Queensland's domestic border measures and effective monitoring of individuals in self-quarantine.

Queensland's domestic borders were closed on 28 March 2020. On that date, the Chief Health Officer made the Public Health Direction – Border Restrictions. This public health direction required any person arriving in Queensland to quarantine for 14 days unless the person was an exempt person. The public health direction has been revised a number of times. As at 30 June 2020, under the Public Health Direction – Border Restrictions (No. 5), which came into effect on 1 May 2020, a person who arrives in Queensland from another state or territory of Australia is not be allowed to enter Queensland, unless they are an exempt resident or exempt person. Some exempt residents and exempt persons must self-quarantine for 14 days if they have been in a COVID-19 hotspot within Australia. COVID-19 hotspots are declared by the Chief Health Officer as high-risk areas for the transmission of COVID-19. Since 21 June 2020, all COVID-19 hotspots have been located in Victoria.

An acute public health risk has been identified in Victoria. An unacceptably high number of new cases have been identified in Victoria in June. There have been fourteen consecutive days of double-digit case growth in Victoria with 321 active cases. There is a continuing and concerning number of cases associated with transmission in households and families. There have been 281 confirmed cases of coronavirus in Victoria that have been acquired through community transmission. The increase in locally acquired cases in Victoria is driven by multiple epidemiologically linked outbreaks, across a range of settings including between and within households, hotels providing quarantine services, retail businesses, schools, childcare centres, health care practices and an aged care facility. This is a significant public health concern to Queensland because of the risk of transmission of a case from Victoria to Queensland if appropriate public health controls are not put in place. Other states and territories have not reported any significant community transmission in recent weeks.

Queensland's very low active case numbers and low rate of community transmission means that the highest risk of COVID-19 entering Queensland is from people who have been in a COVID-19 hotspot or overseas in 14 days before entering Queensland, who have COVID-19 or who have had contact with a confirmed case of COVID-19 in the 14 days before entering Queensland.

On 30 June 2020, the Premier announced that from 3 July 2020, anyone who has been in Victoria in the past 14 days and enters Queensland will be required to quarantine for 14 days at their own expense. It is proposed that if a person who enters Queensland has been in Victoria (or any other COVID-19 hotspot, should others emerge) in the past 14 days, the person will be required to quarantine at their own cost. In addition, a person will be required to quarantine for 14 days if they have been outside Australia in the previous 14 days, had known contact with a person who has a confirmed case of COVID-19 in the last 14 days or had symptoms consistent with COVID-19 in the last 14 days. Requiring these people to quarantine will ensure that those individuals who have the highest risk of bringing COVID-19 into Queensland do not spread the disease to the wider community.

In order to ensure that the Queensland Police Service and other emergency officers under the Public Health Act can identify those persons that are required to quarantine, all persons entering Queensland from 3 July 2020 will be required to provide information about whether, in the previous 14 days, the person has been outside Australia, has been in a COVID-19 hotspot or has had known contact with a person who has a confirmed case of COVID-19; the persons' name, address and phone number; details of where the person intends to stay while in Queensland; whether the person has had any COVID-19 symptoms in the past 14 days; and any other information required by an emergency officer (public health).

As it is crucial that border officials receive complete and accurate information to enable them to make reliable risk assessments and effectively enforce quarantine requirements, persons entering Queensland will also be required to provide a declaration stating that the information they have provided is true and correct to the best of their knowledge. A person who knowingly provides false or incorrect information will be in breach of the public health direction and liable for a fine. A person will also breach the direction if they fail to quarantine for 14 days or enter Queensland in contravention of the direction.

### ***Fines for breaching the Public Health Direction – Border Restrictions (No. 5) and its successors***

Under section 362D of the Public Health Act, a person who fails to comply with a public health direction without a reasonable excuse commits an offence with a maximum penalty of 100 penalty units. An offence under section 362D is an infringement notice offence under the *State Penalties Enforcement Regulation 2014*. Under the *State Penalties Enforcement Act 1999*, infringement notice offences can be enforced by an on-the-spot fine known as an infringement notice. The infringement notice fine for breaching section 362D of the Public Health Act, is 10 penalty units for an individual (\$1,335) and 50 penalty units for a corporation (\$6,673).

The State Penalties Enforcement Regulation will be updated to increase the infringement notice fine for breaching the Public Health Direction – Border Restrictions (No. 5) and its successors (collectively, Border Restrictions Public Health Directions). The policy objective of this amendment is to provide a strong deterrent to persons who may breach the Border Restrictions Public Health Directions and, as a consequence, increase the risk of COVID-19 being re-introduced into the community and an outbreak occurring. Given Queensland's low case numbers and low rates of community transmission, people bringing COVID-19 into Queensland from elsewhere is a significant public health risk. It is appropriate that breaches of the Border Restrictions Public Health Directions be subject to a higher penalty than other public health directions to reflect the high level of risk to the public health of Queensland.

## **Achievement of policy objectives**

To achieve the policy objectives, the regulation amends the State Penalties Enforcement Regulation to increase the infringement notice fine for breaching the Border Restrictions Public Health Directions to 30 penalty units for an individual (\$4,004). The penalty for a corporation will remain at 50 penalty units.

The increase in the fine for breaching the Border Restrictions Public Health Directions from \$1,335 to \$4,004 will be a significant deterrent to persons who may provide false information to allow them to enter Queensland without quarantine or to break quarantine once they have gained entry to Queensland.

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

The regulation is consistent with the policy objectives of the State Penalties Enforcement 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 objective with same efficiency.

## **Benefits and costs of implementation**

The regulation does not impose any significant implementation costs.

## **Consistency with fundamental legislative principles**

The inclusion of new offences in a legislative scheme have generally been identified as relevant to the consideration of whether legislation has sufficient regard to individuals' rights and liberties. New offences are required to be appropriate and reasonable in light of the conduct that constitutes the offence. Penalties are required to be consistent and proportionate to the offences.

The regulation does not create any new offences, as breaching a public health direction is already an offence under section 362D of the Public Health Act and is an infringement notice offence for which an infringement notice fine can be issued. However, the regulation increases the amount of the infringement notice fine for breaches of the Border Restrictions Public Health Directions.

The increased fines for breaches of the Border Restrictions Public Health Directions are considered appropriate and reasonable in light of the unique public health risks and practical enforcement challenges posed by persons who provide false information to border officials or who do not comply with quarantine requirements at the border. To effectively prevent people from bringing COVID-19 into Queensland, emergency officers must be able to obtain accurate information about where individuals have travelled outside of Queensland, who they have been in contact with and whether they have symptoms or are otherwise at greater risk of having COVID-19. The only practical and timely way to obtain this information is to require that persons entering Queensland provide it and to create a strong deterrent to providing information that is false, inaccurate or incomplete, which would increase the risk of COVID-19 being re-introduced into Queensland and new outbreaks occurring.

## **Consultation**

Due to its urgent nature, consultation on the regulation was not possible. However, Queensland Health is in regular contact with clinicians, local governments and other stakeholders who will be affected by the regulation. Queensland Health will ensure an appropriate communications strategy is adopted to inform stakeholders and the public about changes to Queensland's border restrictions, including the increased infringement notice fines prescribed by this regulation.

Although preliminary consultation has occurred with the Queensland Productivity Commission, due to the urgent circumstances a regulatory impact assessment has not been conducted.