

# State Penalties Enforcement (Public Health) Amendment Regulation 2021

Explanatory notes for SL 2021 No. 4

Made under the

*State Penalties Enforcement Act 1999*

## General Outline

### Short Title

*State Penalties Enforcement (Public Health) Amendment Regulation 2021*

### Authorising law

Section 165(3) of the *State Penalties Enforcement Act 1999*.

### Policy objectives and the reasons for them

On 29 January 2020, a public health emergency was declared under section 319 of the *Public Health Act 2005* (PH Act) due to the outbreak of COVID-19 in 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. Under section 323 of the PH Act, the declared public health emergency has been extended until 31 March 2021 through the making of several regulations and may need to be further extended.

Further to this declaration, on 8 January 2021, Dr Jeannette Young, Chief Health Officer, made the *Restrictions on Impacted Areas Direction* pursuant to the powers under section 362B of the PH Act to assist in containing, and responding to, the potential spread of COVID-19 in Queensland. Several public health measures were introduced through this Direction, including requirements for an individual to carry and wear a face mask in particular circumstances, primarily when the person was outside their principal place of residence in the impacted area.

On 11 January 2021, these restrictions were amended by the making of the *Restrictions on Impacted Areas Direction (No. 2)*, which required people to wear face masks in particular settings, such as shopping centres, on public transport and when entering and exiting major sports facilities. On 12 January 2021, the Chief Health Officer also made the *Mandatory Face Masks Direction*, which requires a person at a Queensland airport to wear a face mask in all areas of the airport, unless an exception applies.

Under section 362D of the PH 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 or six months imprisonment. The offence under section 362D is an infringement notice offence under Schedule 1 of the *State Penalties Enforcement Regulation 2014* (SPE Regulation). Under the *State Penalties Enforcement Act 1999*, an on-the-spot fine, known as an infringement notice, can be served where an infringement notice offence is detected. The infringement notice fine for breaching section 362D of the PH Act, is currently 10 penalty units for an individual (\$1,334) and 50 penalty units for a corporation (\$6,672) unless the breach relates to a failure to comply with a public health direction restricting entry into Queensland from another State.

The *State Penalties Enforcement (Public Health) Amendment Regulation 2021* (Amendment Regulation) will amend the SPE Regulation to provide a specific infringement notice fine for the failure to wear or carry a face mask as required under any public health direction. The amount of the specific fine will be 1.5 penalty units (which will be \$200 when rounded down in accordance with section 5(2A) of the *Penalties and Sentences Act 1992*). A specific penalty amount of 1.5 penalty units (\$200) for a failure to carry or wear a mask, compared to the general requirements to comply with a public health direction, is considered appropriate to meet the required compliance outcome and align with the approach in other jurisdictions. The penalty aligns with the penalty for failing to wear a face mask in certain settings in Victoria and New South Wales, which also attracts a fine of \$200.

Inserting a specific infringement notice fine for failing to carry or wear a face mask will ensure the penalty aligns more closely with community standards and that there is a proportionate and effective enforcement response to the failure to comply with a requirement in a public health direction to wear or carry a face mask.

## **Achievement of policy objectives**

To achieve the policy objectives, the Amendment Regulation amends the SPE Regulation to introduce a specific infringement notice fine for failing to comply with a requirement contained in a public health direction to carry or wear a face mask.

The specific infringement notice fine of 1.5 penalty units will ensure that there continues to be a proportionate and effective enforcement response to the failure to comply with a requirement in a public health direction relating to the wearing or carrying of a face mask.

The Amendment Regulation ensures that the specific infringement notice fine of 1.5 penalty units applies:

- (a) to all public health directions which include a requirement to wear or carry a face mask; and
- (b) only to the failure to wear or carry a face mask and not any other aspect of a public health direction.

Accordingly, a person who fails to comply with a face mask requirement under a public health direction may be liable to a 1.5 penalty unit infringement notice fine, however, if they fail to comply with any other aspect of a public health direction, they will be liable to the higher 10 penalty unit infringement notice, as currently prescribed under Schedule 1 of the SPE Regulation.

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

The Amendment Regulation is consistent with the policy objectives of the *State Penalties Enforcement Act 1999*.

## **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 with same efficiency.

## **Benefits and costs of implementation**

The Amendment Regulation provides benefits by ensuring that:

- (a) the main policy objective of the PH Act, to protect and promote the health of the Queensland public, is supported;
- (b) the specific penalty for the failure to comply with a requirement in a public health direction to wear or carry a face mask is a proportionate and effective enforcement response; and
- (c) court efficiencies are improved by the issuing of an infringement notice instead of a person being required to appear in court, therefore expediting the administration of justice.

There are no expected costs of implementation of the Amendment Regulation as the failure to comply with a requirement of a public health direction is already listed in Schedule 1 of the SPE Regulation as an offence for which an infringement notice may be issued.

Any costs associated will be met from existing resources.

## **Consistency with fundamental legislative principles**

The Amendment Regulation is consistent 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 offence committed.

The Amendment Regulation does not prescribe any new offences as infringement notice offences. Breaching a public health direction is already an offence under section 362D of the PH Act and is already an offence for which an infringement notice can be issued. However, the Amendment Regulation provides a specific infringement notice fine for the failure to comply with a requirement in a public health direction to wear or carry a face mask.

The specific infringement notice fine for breaching a requirement in a public health direction which requires a person to wear or carry a face mask is considered appropriate and reasonable in light of the unique public health risks and practical enforcement challenges posed by the threat of widespread community transmission of COVID-19.

The benefits of wearing face masks in reducing the spread of COVID-19, especially in closed or confined environments, is well documented. With new strains of the virus being identified and a growing recognition the virus can be transmitted even without symptoms, numerous health advisory bodies, including the World Health Organization, recommends the wearing of face masks for the general public.

## **Consultation**

Due to its urgent nature, consultation on the Amendment Regulation was not possible. As the wearing or carrying of a face mask is already subject to an offence, Queensland Health has undertaken an appropriate communications strategy to inform the public of the requirement to comply with a public health direction that requires a person to wear or carry a face mask.

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