

Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation 2021

Explanatory notes for SL 2021 No. 26

made under the

Public Health Act 2005

General Outline

Short title

Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation 2021

Authorising law

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

Policy objectives and the reasons for them

The objective of the *Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation 2021* (Regulation) is to extend the period of the declared public health emergency to ensure the Queensland Government can continue to respond to any outbreak of COVID-19 in Queensland and to allow for emergency powers to be used to reduce the risk of COVID-19 spreading in Queensland.

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 Public Health 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 and was given the temporary name of 2019-nCoV. The disease was renamed on 11 February 2020 by the World Health Organization to COVID-19.

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.

Prior to 7 February 2020, under sections 322 and 323 of the Public Health Act, a declared public health emergency ended seven days after the day it is declared, unless extended by a regulation. On 7 February 2020, the *Public Health (Declared Public Health Emergencies) Amendment Act 2020* amended the Public Health Act to allow a declared public health emergency to be extended by regulation for periods of up to 90 days. However, this amendment was subject to a sunset clause that took effect one year from Royal Assent of that Amendment Act. On 7 February 2021, the extension period reverted to a period of up to seven days.

On 8 March 2021, the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* reinstated the amendments that provide the Governor in Council with powers to extend the declared public health emergency for up to 90 days. This Amendment Act also extends the expiry dates of all other amendments made to Health portfolio legislation to support the Queensland Government's health response to COVID-19, to the end of the day on 30 September 2021.

The declared public health emergency has been extended by regulation as follows:

- 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.
- 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.
- The *Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 3) 2020* extended the period of the declared public health emergency for COVID-19 by 90 days, until 17 August 2020.
- The *Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 4) 2020* extended the period of the declared public health emergency for COVID-19 by 46 days, until 2 October 2020.
- The *Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 5) 2020* extended the period of the declared public health emergency for COVID-19 by 90 days, until 31 December 2020.
- The *Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 6) 2020* extended the period of the declared public health emergency for COVID-19 by 90 days, until 31 March 2021.

As at 12 February 2021, the World Health Organization reported a total of 106,991,090 confirmed positive COVID-19 cases globally.

Australia has experienced a lesser burden from COVID-19 than other countries. As at 12 February 2021, the Australian Government Department of Health reported 28,879 confirmed COVID-19 cases, including 909 deaths in Australia. Of those, 1,317 confirmed cases of COVID-19 have been recorded in Queensland, with six deaths relating to COVID-19 being Queensland residents.

Despite overall low numbers of COVID-19 in Queensland, recent events in other Australian jurisdictions and continued large-scale outbreaks around the world serve as a clear reminder of how rapidly COVID-19 can spread and overwhelm hospital systems. Certain risks for community transmission in Queensland, such as interstate cross-border travel, will remain for as long as the virus continues to circulate in Australia. Having the ability to respond at short notice to an evolving epidemiological situation will continue to ensure public health objectives are met while also balancing the social and economic needs of the community.

Queensland's management of outbreaks in the community has proven to be rapid and effective. However, with few restrictions now in place on the movement and gathering of people in Queensland, there is still potential for larger scale outbreaks. Queensland Health anticipates that a form of restrictions will need to continue in 2021.

If the declared public health emergency is not extended, the emergency powers will cease to have effect, including the powers provided to the Chief Health Officer to make public health directions and the powers of emergency officers to issue self-quarantine notices for people who are suspected of having COVID-19 or are close contacts of a confirmed case of COVID-19. It is therefore considered necessary to extend the declared public health emergency.

The Regulation will extend the declared public health emergency for a further 90 days, from 31 March 2021 until the end of the day on 29 June 2021, to allow the Queensland Government's health response to COVID-19 to continue.

Under section 324 of the Public Health Act, if the Minister becomes satisfied it is no longer necessary to exercise powers to respond to COVID-19 to prevent or minimise serious adverse effects on human health, the Minister must end the declared public health emergency and make a written record of the time and date the declared public health emergency ends.

Achievement of policy objectives

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 and prevent community transmission. The effect of making the Regulation is that the declared public health emergency will be extended until midnight on 29 June 2021. If the need arises, section 323 of the Public Health Act states the Governor in Council may make another regulation to extend the declared public health emergency for a further period of time.

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 29 June 2021 is considered essential to limiting, and responding to, the 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 requires 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 Public Health 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);
- certain powers can only be exercised with the written approval of the chief executive (section 345(2));
- a person must be given the opportunity to voluntarily comply with a detention order before it is enforced against them (section 353); 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)).

The Regulation will extend the powers of the Chief Health Officer to give a public health direction to assist in containing, or responding to, the spread of COVID-19 within the community.

A public health direction may:

- restrict the movement of persons;
- require persons to stay at or in a stated place, or not to enter or stay in a stated place;
- restrict contact between persons; and
- make any other direction the Chief Health Officer considers necessary to protect public health.

The exercise of emergency powers by the Chief Health Officer and emergency officers is likely to impact on the rights and liberties of individuals. However, it is considered that any potential impact the Regulation has on 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.

Section 4 (2)(b) of the Legislative Standards Act requires legislation to have sufficient regard to the institution of Parliament. According to section 4(4) of the Act this will depend on:

- whether the delegation of legislative power only in appropriate cases and to appropriate persons (section 4(4)(a)); and
- the exercise of a delegated power is sufficiently subjected to the scrutiny of the legislative assembly.

Given the extensive powers enlivened when a public health emergency is declared or extended there is a potential breach of the fundamental principle set out sections 4(2)(b) and section 4(4) of the Legislative Standards Act. The potential breach is considered justified given the need to protect the health of the Queensland community by being able to respond swiftly to manage the ongoing evolving public health risk from COVID-19. The power to extend by regulation rather than an Act of Parliament allows the Government to discharge its key responsibility of protecting the health and safety of the public.

The *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* – which reinstates amendments that provide the Governor in Council with powers to extend the declared public health emergency for up to 90 days and extends the expiry dates of all other amendments made to Health portfolio legislation to support the Queensland Government’s health response to COVID-19, to the end of the day on 30 September 2021 – provides safeguards for each of the amendments it includes.

It is clear a regulation extending the declared public health emergency may be made only if the Minister is satisfied it is necessary for a purpose of the Public Health Act. Having the ability to respond at short notice to an evolving epidemiological situation will continue to help ensure the public health objectives of the Public Health Act can be met.

The amendments made to the Public Health Act by the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* are also strictly time limited by the inclusion of a six month expiry provision. This means the power to make a regulation to extend the public health emergency by up to 90 days will expire on 30 September 2021.

Consultation

Due to its urgent nature, external consultation on the Regulation was not possible. However, Queensland Health will continue to consult with businesses and industries and continue its public messaging about the emergency powers, social distancing requirements and the Queensland Government's response to ensure Queenslanders are informed about COVID-19, including any confirmed cases and actions that can be taken to reduce the risk of COVID-19 spreading.

Given the need to urgently implement the extension to allow emergency powers to continue to be used to reduce the risk of COVID-19 spreading in Queensland, the Premier and Minister for Trade has exempted the extension of the declared public health emergency for a further 90 days from regulatory assessment under *The Queensland Government Guide to Better Regulation*.

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 2021*.

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

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

- declared by the Minister on 29 January 2020 under section 319(2) of the Public Health Act;
- extended under section 323(1) of the Public Health Act, by the *Public Health (Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation 2020* made on 5 February 2020;
- further extended under section 323(1) of the Public Health Act, by each regulation stated in schedule 1 made on the date stated opposite the regulation.

Under section 323(1) of the Act, the regulation provides for the declared public health emergency to be extended for a further 90 days, until the end of the day on 29 June 2021, unless it is further extended, is repealed or the declared public health emergency ends under section 324 of the Act.

Schedule 1 — Regulations that further extended declared public health emergency

Schedule 1 lists regulations that further extended the declared public health emergency:

- *Public Health (Further Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation 2020* made on 6 February 2020;
- *Public Health (Further Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation (No. 2) 2020* made on 18 February 2020;
- *Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 3) 2020* made on 18 May 2020;
- *Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 4) 2020* made on 13 August 2020;
- *Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 5) 2020* made on 2 October 2020;
- *Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 6) 2020* made on 17 December 2020.