

Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 3) 2021

Explanatory notes for SL 2021 No. 148

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) 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 (No. 3) 2021* (Regulation) is to extend the period of the declared public health emergency to ensure the Queensland Government can continue to respond to outbreaks 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 (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 COVID-19 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 assent of the 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. These amendments were due expire to on 30 September 2021.

On 2 September 2021, the *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021*, which further extended the power to make a regulation to extend the declared public health emergency for up to 90 days was passed by the Legislative Assembly and received Royal Assent on 9 September 2021. These amendments will expire on 30 April 2022.

The declared public health emergency has been extended by regulation multiple times as detailed in schedule 1 of the Regulation.

As at 1 September 2021, the World Health Organization reported a total of 217,558,771 confirmed positive COVID-19 cases globally. Australia has experienced a lesser burden from COVID-19 than other countries. As at 1 September 2021, the Australian Government Department of Health reported 55,093 confirmed COVID-19 cases, including 1,041 deaths in Australia. Of those, 1,980 confirmed cases of COVID-19 have been recorded in Queensland, with seven 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.

The Delta variant of COVID-19 is causing significant concern globally. There have been several outbreaks nationally over the past three months. Lockdowns have recently been enforced in response to community spread of the Delta variant in nearly every part of the country, with an extended lockdown in place in New South Wales. The primary purpose of lockdowns is to slow the potential for spread and support an effective public health response (testing, contact tracing and isolation) to contain an emerging outbreak as quickly as possible.

Queensland imposed a three-day lockdown for the South East, Townsville and Palm Island (with a 24-hour extension for parts of greater Brisbane) at the end of June, in response to several community transmission events and multiple clusters involving both the Alpha and Delta variants. Due to multiple instances of persons being infectious with the more infectious Delta variant in the Queensland community, Queensland imposed an eight-day lockdown for South East Queensland at the end of July, and a three-day lockdown in Cairns at the beginning of August.

Certain risks for community transmission in Queensland, such as overseas and interstate cross-border travel, will remain for as long as the virus continues to circulate in Australia. Risks for community transmission in Queensland from interstate cross-border travel also remain whenever there is an outbreak of COVID-19 in Australia.

The current global epidemiological situation, with sustained growth in new cases and the spread of highly transmissible COVID-19 variants, continues to present a very significant risk to Australia and Queensland. The ongoing circulation of the virus in countries with limited public health responses, overwhelmed public health systems and limited or inequitable access to vaccination continues to invite further and potentially vaccine-resistant variants. The Delta variant, first detected in India has been designated by the World Health Organization as a variant of concern, joining the Alpha (UK), Beta (South African) and Gamma (Brazilian) variants. Growing evidence around the variants of concern indicates that they spread more readily and can cause more severe disease. Queensland continues to receive significant numbers of overseas arrivals and cases of COVID-19 continue to be detected in hotel quarantine, including highly contagious variants. Large numbers of COVID-19 cases in Papua New Guinea are also a concern, particularly for transmission in North Queensland and the Torres Strait.

The impact of Australia's COVID-19 vaccination program on the declared public health emergency will require further assessment once the program has been completed. The Queensland Government's response to the declared public health emergency continues to be monitored and reviewed in consideration of the requirement to limit and respond to COVID-19.

On 31 July 2021, National Cabinet agreed that once 70 per cent of the adult population is fully vaccinated, Australia can enter a "transition stage", with less focus on the number of cases, and fewer restrictions and lockdowns. Instead, there would be monitoring of the number of those with serious illness, hospitalisations and fatalities as a result of COVID-19 with a low level of restrictions and targeted lockdowns. When 80 per cent of the adult population is fully vaccinated, National Cabinet has agreed Australia will abolish caps on returning vaccinated Australians and lift all restrictions on out-bound travel for vaccinated Australians. When those vaccinations rates are reached, Queensland will review the type of restrictions that remain appropriate for the public health risk.

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 27 September 2021 until the end of the day on 26 December 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 the end of the day on 26 December 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 26 December 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 in 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.

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 time limited by the inclusion of a six month expiry provision. The power to make a regulation to extend the public health emergency by up to 90 days was due to expire on 30 September 2021. On 2 September 2021, the *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021* was passed by the Legislative Assembly. This Act includes a new sunset date of 30 April 2022.

Consultation

The Parliamentary Committee process for the Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021 involved public consultation which has been considered in the making of the Regulation.

Consistent with previous practice, Queensland Health has and 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. This communication will ensure Queenslanders continue to be kept 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 implement the extension to allow emergency powers to continue to be used to reduce the risk of COVID-19 spreading in Queensland, the extension of the declared public health emergency for a further 90 days has been exempted from regulatory assessment under *The Queensland Government Guide to Better Regulation*.

Notes on provisions

Short title

Clause 1 states the short title of the regulation is the *Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 3) 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 2005*;
- 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 26 December 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;
- *Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation 2021* made on 25 March 2021;
- *Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation 2021 (No. 2)* made on 29 June 2021.