

# Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 3) 2022

Explanatory notes for SL 2022 No. 127

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) 2022*

### 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) 2022* (Regulation) is to extend the period of the declared public health emergency to ensure the Queensland Government can continue to use emergency powers to limit, or respond to, the spread of COVID-19 in Queensland. This remains necessary in view of the significant impact of the most recent COVID-19 wave, to ensure there are sufficient powers in place to respond proportionately and rapidly to the unpredictable nature of COVID-19. It is expected COVID-19 will continue to present a significant public health challenge for Queensland over the next 12 months as the virus continues to mutate at a rapid rate.

Chapter 8 of the *Public Health Act 2005* deals with public health emergencies. Under section 319 of the Public Health 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. Under chapter 8 of the Public Health Act, the Chief Health Officer has the power to make public health directions to assist in containing, or responding to, the spread of COVID-19 within the community.

The Chief Health Officer may give any direction which is considered necessary to protect public health, including directions to 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; or restrict contact between persons.

### ***Timeline***

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 was 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 temporary amendments that provide the Governor in Council with powers to extend the declared public health emergency for up to 90 days. On 8 April 2022, the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2022* extended the effect of these amendments until 31 October 2022.

The declared public health emergency has been extended by regulation as set out in schedule 1 of the Regulation.

### ***Public health risks***

The Regulation extends the public health emergency from 22 September 2022 to 31 October 2022, ensuring the COVID-19 public health emergency powers remain in place until 31 October 2022 and can continue to be exercised to prevent and minimise the adverse effects of COVID-19.

In recent months, there has been widespread and sustained COVID-19 transmission in Queensland, including three waves dominated by the Omicron variant in December 2021 to early March 2022, in mid-March to mid-April 2022, and in mid-June to August 2022. While a level of ongoing community transmission was expected beyond the peak of the first two waves, the trajectory of the most recent wave was significant. The ability of the BA.4 and BA.5 Omicron subvariants to partially evade vaccine and infection-derived immunity led to a large wave of infections and subsequent impacts on the health system.

The most recent wave of COVID-19 illustrates how the virus continues to evolve and pose a significant risk to the Queensland community and health system. While Queensland Health is managing the ongoing and fluctuating transmission of COVID-19, including repeated waves of infection and emergence of new variants, the impacts on the public health system remain a concern.

During its third wave, Queensland experienced a significant increase in cases of the BA.4 and BA.5 subvariants of the COVID-19 Omicron strain. As at 4 September 2022, there have been 1,613,627 confirmed cases of COVID-19 in Queensland, and 1,988 deaths relating to COVID-19 have been recorded. Following the peak of the third wave, Queensland's reported case numbers have slowly trended down. On 4 September 2022, Queensland reported 1,008 cases. However, not all COVID-19 cases are tested and reported, and the true number of cases of COVID-19 in the community are likely to be significantly higher. This is evident in the number of COVID-19 hospitalisations in Queensland. The third Omicron wave resulted in record levels of Queenslanders being admitted to hospitals from COVID-19 infections. This placed increased pressure on Queensland's hospital system, already experiencing high levels of patients and absenteeism due to illness in staff. As at 4 September 2022, Queensland had 279 COVID-19 hospital inpatients, with 8 of these in intensive care, and 378 staff were furloughed due to isolation/quarantine from COVID-19.

A number of uncertainties around the development of the pandemic remain. This includes the potential emergence of new highly transmissible and virulent variants, the effects of waning vaccine and infection-derived immunity over time, and what impacts new variants may have on reinfection.

It is likely there will be ongoing waves of COVID-19 in Australia as the virus continues to mutate at a rapid rate. Variants will continue to emerge, despite high rates of prior infection and vaccinations. For example, the most recent COVID-19 wave was driven by the BA.4 and BA.5 Omicron subvariants, which are more transmissible than previous subvariants. Recent research also indicates these subvariants are better at evading immune responses among those who have previously been infected with an earlier COVID-19 variant and those who are up to date with their vaccinations. Although three or four doses of vaccine remain very effective at providing protection against severe disease from COVID-19, vaccination alone is not effective at stopping infection or transmission of the virus from person to person.

In response to these immunity evading characteristics, the Australian Health Protection Principal Committee issued advice on 8 July 2022 that the reinfection period should be reduced from 12 weeks to 28 days and reiterated its advice on testing and isolation, mask wearing, vaccine boosters and treatments, and called on employers to allow work from home if feasible.

COVID-19 will disproportionately affect the unvaccinated, under-vaccinated and cohorts with waning immunity. While the most acute societal impacts were associated with the first two years of the pandemic, COVID-19 remains unpredictable and has the potential to cause significant disruption. Queensland's public health system continues to be under sustained pressure from COVID-19.

For these reasons, extending the public health emergency is necessary and appropriate to prevent or minimise serious adverse effects on human health. Continuing the public health emergency will ensure the emergency powers in the Public Health Act can be exercised when necessary to manage the impacts of COVID-19 in Queensland. The powers under the declared

public health emergency are necessary to reduce the spread of the virus and protect those at highest risk of severe disease through sustained community action.

### ***Managing the public health risk***

Although Queensland is well-positioned to manage COVID-19 transmission among a highly vaccinated population, the evolving global epidemiological situation, sustained growth in new cases and the spread of highly transmissible COVID-19 variants, continues to present a significant risk to Australia and Queensland.

Queensland's experience through waves of infection has enabled the Chief Health Officer to significantly ease COVID-19 restrictions. Since late 2021, Queensland has been moving away from an elimination approach to a suppression approach, and more recently into living with the risks of COVID-19, monitoring transmission levels, and protecting vulnerable cohorts.

Restrictions have been eased in a gradual and considered manner. Since January 2022, there has been ongoing process of easing restrictions, including changes to:

- test, trace, isolation and quarantine requirements for international and interstate arrivals;
- removal of quarantine requirements for close contacts;
- removal of mask wearing requirements in most settings;
- revocation of public health and social measures differentiating between vaccinated and unvaccinated persons in a wide range of discretionary venues (pubs, clubs and restaurants);
- easing of vaccine requirements for visitors to certain settings and for workers in high-risk settings; and
- removing check-in requirements for all venues.

Remaining measures are targeted at protecting the hospital system capacity and vulnerable cohorts from COVID-19. As Queensland continues the transition towards living with the risks of COVID-19, consideration is being given to a step-down approach that will support more targeted use of limited directions for a temporary period, outside a declared public health emergency. The step-down approach would enable Queensland to respond rapidly to serious COVID-19 risks to our community and health system and adopt a nationally consistent approach to managing COVID-19, acting on national decisions or advice.

To this end, the Public Health and Other Legislation (COVID-19 Management) Bill 2022 has been introduced into Parliament. The Bill proposes to amend the Public Health Act to replace the use of emergency powers to respond to COVID-19. While ultimately for the Queensland Parliament to determine, the proposed model would give the Chief Health Officer a limited number of temporary powers, substantially lesser in nature than the current emergency powers, until 31 October 2023. If passed by Parliament, the Bill will commence on 1 November 2022.

However, Queensland's three Omicron waves highlight the potential for more transmissible and immune-evading subvariants of Omicron or other COVID-19 variants and serve as a clear reminder of how rapidly COVID-19 can spread and significantly impact the community. A rapid and flexible public health response is still required now and in the immediate future to protect the health, safety and welfare of Queenslanders from the impact of COVID-19.

As the development of the pandemic remains uncertain and the virus continues to evolve, it is critical that Queensland does not prematurely dismantle its pandemic response system. Given the significant impacts of the most recent COVID-19 wave, current public health measures are still needed in the interim between the expiry of the declared public health emergency on 22 September 2022 and the proposed commencement of the step-down temporary COVID-19 powers under the Public Health Act on 1 November 2022. Without these measures, it will be difficult to effectively manage the unpredictable challenges across the health system, as well as hospital and health system capacity. It is critical that appropriate public health measures remain and can be put in place during this period, if needed.

Without the extension of the public health emergency, the Chief Health Officer's powers under the Public Health Act to combat COVID-19 would revert to their pre-pandemic state. This means the Chief Health Officer would no longer have the power to issue directions to limit, respond to, or contain the spread of COVID-19 in the community, including the ability to require diagnosed cases of COVID-19 to isolate or to mandate mask wearing. Extending legislative measures to support the public health response to the COVID-19 public health emergency will ensure Queensland remains well placed to respond to the changing nature of the pandemic, until a step-down approach may be progressed. It will also support the government's long-term objective of safeguarding our health contained in *Unite and Recover – Queensland's Economic Recovery Plan*.

## **Achievement of policy objectives**

The Regulation extends the period of the declared public health emergency to allow for emergency powers to continue to respond to the risks of COVID-19 in Queensland. The effect of making the Regulation is that the declared public health emergency will be extended until the end of the day on 31 October 2022.

Under section 324, the Minister must end the declared public health emergency as soon as the Minister is satisfied it is no longer necessary to exercise the emergency powers in chapter 8 of the Public Health Act to prevent or minimise serious adverse effects on human health. If the Minister ends the public health declaration, the regulation extending the public health emergency will expire.

## **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 31 October 2022 is considered essential to assist in containing, and responding to, the 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 impact 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 is allowed 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.

In addition, 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 in accordance with section 324 of the Public Health Act.

The amendments made to the Public Health Act by the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* and the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2022* are also time limited. The power to make a regulation to extend the public health emergency by up to 90 days has an expiry date of 31 October 2022, or an earlier day if the Minister ends the declared public health emergency under section 324 of the Public Health Act.

## Consultation

The Parliamentary Committee process for the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2022* involved public consultation which has been considered in the making of the Regulation.

Consistent with previous practice, Queensland Health has and continues to consult with businesses and industries about the COVID-19 response. Queensland Health will also continue its public messaging about the emergency powers, social distancing requirements and the Queensland Government's response to COVID-19. This communication will ensure Queenslanders continue to be kept informed about COVID-19, including confirmed cases and actions that can be taken to reduce the risk of it spreading.

The Regulation 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) 2022*.

### Further extension of period of 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 Public Health Act, the regulation provides for the declared public health emergency to be extended for a further 39 days, until the end of the day on 31 October 2022, 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;
- *Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation 2021 (No. 3)* made on 23 September 2021;



- *Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation 2021 (No. 4)* made on 2 December 2021;
- *Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation 2022* made on 17 March 2022;
- *Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 2) 2022* made on 16 June 2022.

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