

Health Legislation (COVID-19 Emergency Response) Regulation 2020

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, the Honourable Steven Miles MP, Deputy Premier and Minister for Health and Minister for Ambulance Services, provide this human rights certificate with respect to the *Health Legislation (COVID-19 Emergency Response) Regulation 2020* made under the *COVID-19 Emergency Response Act 2020*, *Food Act 2006* and *Pest Management Act 2001*.

In my opinion, the *Health Legislation (COVID-19 Emergency Response) Regulation 2020*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The objective of the *Health Legislation (COVID-19 Emergency Response) Regulation 2020* is to extend statutory time limits relating to applications and reviews under the *Food Act 2006* and *Pest Management Act 2001* to facilitate effective administration and manage potential disruption for the pest control and food industries as a result of the COVID-19 emergency.

Currently, the Food Act and the Pest Management Act impose statutory time limits for certain activities, including:

- sending notices requesting further information (Food Act only);
- deeming decisions refused if not decided within a particular timeframe;
- deeming an original decision confirmed, if a notice of a decision on a review has not been given within particular timeframes; and
- requiring a pest management technician to apply for renewal of their licence 60 days prior to licence expiry (Pest Management Act only).

The combination of the restrictions imposed by the public health directions, the need for Queensland Health and local governments who administer provisions of relating to licensed food venues to reallocate staff to respond to the COVID-19 emergency, and business closures, has put pressure on the administrative processes involved in applications under the Food Act and Pest Management Act.

While applications are continuing to be processed as efficiently as possible, strict compliance with the statutory time limits during COVID-19 emergency and recovery period is considered impracticable and may lead to unfair outcomes for applicants under both the Acts.

For example, where an applicant, who would otherwise be suitable, does not provide sufficient information with an application and a notice requesting further information is unable to be sent within current statutory time limits, the application will likely be refused. Where the relevant authority is unable to decide an application within time limits, the application will be deemed refused. In both instances, the applicant may be unable to start or continue their business unless they submit a new application and fee, and the application is subsequently granted. Alternatively, the person may apply for a review of the deemed decision. If an applicant applies for a review it would further stretch the decision maker's resources and require additional costs and effort from the applicant – all of which could be avoidable if additional time had been available to consider the original application.

In relation to licence renewals under the Pest Management Act, as late applications for renewals cannot be accepted, licensees who are unable to apply for renewal before expiry due to COVID related circumstances, will need to make a new application, including fees in addition to the annual renewal fee and, in some instances, may need to redo their prescribed qualifications.

Under the *COVID-19 Emergency Response Act 2020* (COVID Act) some statutory time limits may be extended by statutory instrument. Otherwise, the COVID Act allows statutory time limits to be extended by extraordinary regulation.

To address matters that cannot be managed by statutory instruments, the following modifications to the statutory time limits in the Food Act are made by this regulation:

- where a statutory instrument made under the COVID Act modifies a time limit for an application – ensuring timeframes for requesting further information or document are consistent with the modification;
- extending the period within which a local government must decide an application for renewal, restoration or amendment of a licence before it is deemed refused from 30 days to 90 days;
- extending the period within which the chief executive must decide an application for amendment of conditions on an auditor approval from 30 days to 90 days;
- extending the period within which an application for compensation must be decided before it is deemed refused from 28 days to 90 days; and
- extending the period for a review of a decision before the original decision is deemed confirmed from 30 days to 90 days.

In addition, the regulation makes the following modifications to statutory time limits in the Pest Management Act:

- allowing a pest management technician to apply for, and the chief executive to accept, an application for renewal of a pest management licence up to 30 days after the licence has expired. This will apply retrospectively from 19 March 2020 to help manage applications already received; and
- extending the period for a review of a decision before the original decision is deemed confirmed from 60 days to 90 days.

The extensions will apply until 31 December 2020.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The regulation does not affect or engage human rights.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

As the regulation does not affect or engage any human rights as outlined in the *Human Rights Act 2019*, I am of the view a section 13 analysis is not required.

Conclusion

I consider that the *Health Legislation (COVID-19 Emergency Response) Regulation 2020* is compatible with the *Human Rights Act 2019*.

STEVEN MILES
DEPUTY PREMIER and
MINISTER FOR HEALTH and
MINISTER FOR AMBULANCE SERVICES

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