

Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020

Explanatory Notes

Short title

The short title of the Bill is the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020 (Bill).

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* 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. The public health emergency was declared for all of Queensland. Under section 323 of the Public Health Act, the declared public health emergency has been extended until 31 December 2020 through the making of several regulations and may need to be further extended.

In early 2020, the Legislative Assembly also passed several pieces of legislation to support the Queensland Government's health response to COVID-19. The amendments made to Chapter 8 of the Public Health Act allowed for:

- the Governor-in-Council to extend the declared public health emergency for up to 90 days (*Public Health (Declared Public Health Emergencies) Amendment Act 2020*, which received assent on 7 February 2020);
- increased powers for emergency officers and the Chief Health Officer to limit, or respond to, the spread of COVID-19 in Queensland (*Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020*, which received assent on 19 March 2020);
- the chief executive to delegate their powers to the Chief Health Officer or a person with expertise or experience in public health issues and improving the operation of the provisions of emergency officers (medical) to support the Queensland Government's response to COVID-19 (*Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020*, which received assent on 25 May 2020); and
- a person to be required to enter hotel quarantine at their own cost (*Community Services Industry (Portable Long Service Leave) Act 2020*, which received assent on 22 June 2020).

Amendments were also made to the *Mental Health Act 2016* through the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* to allow:

- declarations to be made about a mental health service through an expedited process; and
- mental health patients to be granted leave to comply with public health directions.

As the above amendments were made through an urgent Bill or as amendments during consideration in detail, sunset clauses and expiry provisions were inserted into the amending Acts so the amendments expired either on 31 December 2020 or in early 2021. The Bill extends the expiry dates of these provisions until the end of the day on 30 September 2021 and also aligns the expiry dates for all the amendments made to Health portfolio legislation to support the Queensland Government's health response to COVID-19.

As at 9 November 2020, the World Health Organization reported a total of 50,266,033 confirmed positive COVID-19 cases reported globally. Australia has experienced a lesser burden from COVID-19 than other countries. However, as at 9 November 2020, the Australian Government Department of Health reported 27,668 confirmed COVID-19 cases, including 907 deaths in Australia. As at 9 November 2020, there were 1,177 confirmed cases of COVID-19 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. As the situation relating to COVID-19 continues to evolve across Australia and internationally, it is difficult to determine with absolute certainty how long the emergency response measures, particularly the emergency powers provided to the Chief Health Officer and emergency officers appointed under the *Public Health Act 2005*, will be required. Therefore, an extension of the amendments, until 30 September 2021, is considered to be the least restrictive and reasonably available way to allow for the continuation of the Queensland Government's health response to respond to any emerging threats of COVID-19 in Queensland while also considering the impact that a vaccine becoming available may have on limiting the public health risks of COVID-19 in Queensland.

Queensland Health will continue to monitor the situation in relation to COVID-19 and advise the Queensland Government, as required. If it is considered necessary to extend these amendments for a further period, another Bill will be introduced to the Legislative Assembly for consideration of the appropriateness of a further extension of these emergency response measures provided by the amendments to the Public Health Act and Mental Health Act.

Achievement of policy objectives

The Bill achieves the policy objectives by amending various Acts to ensure that any sunset clauses or expiry provisions relating to the amendments made to Chapter 8 of the Public Health Act and Chapter 18B of the Mental Health Act do not take effect until the end of the day on 30 September 2021. The extension of these expiry dates will allow the Queensland Government's health response to continue for a further six months.

Alternative ways of achieving policy objectives

There is no alternative method of achieving the policy objective.

Estimated cost for government implementation

There are no costs associated with the extension of the amendments made to the Public Health Act and Mental Health Act. Any costs associated with the exercise of the emergency powers by the Chief Health Officer or emergency officers appointed under the Public Health Act will continue to be met through existing budget allocations.

Consistency with fundamental legislative principles

Section 4(2)(a) of the *Legislative Standards Act 1992* provides that fundamental legislative principles include requiring that legislation has sufficient regard to rights and liberties of individuals. Whether legislation has sufficient regard to the rights and liberties of individuals depends on 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.

Extending the expiry of the amendments to the Public Health Act may potentially breach this principle as the provisions authorise the Chief Health Officer and emergency officers to issue directions that may restrict the ability of persons to leave their homes or other premises, to enter particular facilities, or to freely move about and engage in activities.

It is considered that any potential impact that these emergency powers have upon the rights and liberties of individuals is justified, given the need to protect the health of the public by managing the outbreak of COVID-19, and in particular to ensure the latest health and medical advice about isolation and quarantine of suspected or confirmed cases of COVID-19 can be achieved.

While they are broad, the emergency powers are clearly defined and subject to limits, including that the person giving the direction or order must reasonably believe that it is necessary to assist in containing or responding to the spread of COVID-19. Similarly, directions issued by both the Chief Health Officer and emergency officers must be revoked if the Chief Health Officer or emergency officer is satisfied the direction is no longer necessary.

Consultation

Due to its urgent nature, external consultation on the provisions in the Bill was not possible. 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.

Consistency with legislation of other jurisdictions

Each state and territory across Australia has taken a different approach to managing and extending their respective emergency legislation in response to COVID-19. For example, there is a large variance in the timeframes and decision-maker for extending a declared public health emergency.

The extension of the amendments to support the Queensland Government's health response is consistent with the approach taken by other jurisdictions across Australia to continue to exercise their emergency powers in some form into 2021 or until a vaccine or effective treatment becomes widely available.

Notes on provisions

Part 1 Preliminary

Short Title

Clause 1 provides that, when enacted, the Act may be cited as the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2020*.

Commencement

Clause 2 states that part 4, division 3 of the Bill will commence on 1 October 2021.

Part 2 Amendment of Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020

Act amended

Clause 3 states that this part amends the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020*. The legislation ultimately amended is the *Public Health Act 2005*.

Amendment of s 2 (Commencement)

Clause 4 amends section 2 of the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* to change the commencement date for part 16, division 3 of that Act to 1 October 2021.

Amendment of pt 16, div 3, hdg (Amendments commencing on 19 March 2021)

Clause 5 amends the heading of part 16, division 3 of the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* to change the date referred to in the heading to 1 October 2021.

Part 3 Amendment of Mental Health Act 2016

Act amended

Clause 6 states that this part amends the *Mental Health Act 2016*.

Amendment of s 800I (Power of chief psychiatrist to approve absences during COVID-19 emergency period)

Clause 7 amends section 800I(3)(b) of the *Mental Health Act 2016* to allow the chief psychiatrist to approve a leave of absence until 30 September 2021.

This will enable the chief psychiatrist to issue a leave of absence during the COVID-19 emergency period but will limit the ability to grant leave for a further period, longer than the current expiry date of the amendments made to the *Mental Health Act 2016*.

Amendment of s 800P (Expiry of chapter)

Clause 8 amends section 800P of the *Mental Health Act 2016* to extend the date that chapter 18B of that Act expires until 30 September 2021.

Part 4 Amendment of Public Health Act 2005

Division 1 Preliminary

Act amended

Clause 9 states that this part amends the *Public Health Act 2005*.

Division 2 Amendments commencing on assent

Amendment of s323 (Extending declared public health emergency)

Clause 10 amends section 323(3) and 323(4) of the *Public Health Act 2005* to provide the Governor-in-Council with the power to make a regulation to extend, or further extend, the period of a declared public health emergency for a period of up to 90 days, unless it expires at the end of the stated period, or is sooner repealed, or it expires under section 324(3) of the Act. This amendment re-instates the amendments made to section 323 of the *Public Health Act 2005* by section 4 of the *Public Health (Declared Public Health Emergencies) Amendment Act 2020*.

Section 324(3) of the *Public Health Act 2005* states that a regulation extending, or further extending, a declared public health emergency expires when the declared public health emergency ends under section 324.

Amendment of s 362MG (Expiry of Part)

Clause 11 amends the expiry date in section 362M of the *Public Health Act 2005*, which provides for the expiry of the amendments made by the *Community Services Industry (Portable Long Service Leave) Act 2020* to insert part 7AA into chapter 8 of the *Public Health Act 2005*. The expiry date will be extended until 30 September 2021.

Part 7AA of the *Public Health Act 2005* provides for a person who is required to enter hotel quarantine to pay any costs associated with the person's quarantine, such as accommodation and food costs.

Amendment of s 362Q (Expiry of Part)

Clause 12 amends the expiry date in section 362Q of the *Public Health Act 2005*, which provides for the expiry of the amendments made by the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* to insert part 7B into chapter 8 of the *Public Health Act 2005*. The expiry date will be extended until 30 September 2021.

Chapter 8, part 7B of the *Public Health Act 2005* amends sections 81 and 109 of the *Public Health Act 2005* that provide the chief executive, during the COVID-19 emergency, with the power to delegate their powers to the Chief Health Officer or another person who is a public service officer or employee or a health service employee, where the chief executive is satisfied that the person has the expertise or experience in public health issues necessary to exercise the powers.

The amendments also support the efficient disclosure of information relating to confirmed or suspected cases of COVID-19 in the public interest during the COVID-19 emergency.

Division 3 Amendment commencing on 1 October 2021

Amendment of s 323 (Extending declared public health emergency)

Clause 13 acts as a sunset clause for the amendments made to sections 323(3) and 323(4) by providing that the amendments made by clause 10 of this Bill will expire on 1 October 2021. On that date the *Public Health Act 2005* will revert to the previous section 323(3) and 323(4), which provides for Governor-in-Council to:

- make a regulation to extend a declared public health emergency for an initial period of 14 days from the date the emergency is declared; or
- make a regulation to further extend a declared public health emergency for a period of no more than 7 days.

Part 5 Amendment of Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020

Act amended

Clause 14 states that this part amends the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020*. The legislation ultimately amended is the *Public Health Act 2005*.

Amendment of s 2 (Commencement)

Clause 15 amends section 2 of the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* to change the commencement date for part 11, division 3 of that Act until 1 October 2021.

Amendment of pt 11, div 3, hdg (Amendments commencing 1 year after assent)

Clause 16 amends the heading of part 11, division 3 of the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* to change the date referred to in the heading to 1 October 2021.