

Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation 2022

Explanatory notes for SL 2022 No. 19

made under the

Public Health Act 2005

General Outline

Short title

Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation 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 2022* (Regulation) is to extend the period of the declared public health emergency to ensure the Queensland Government can continue to respond to the transmission of COVID-19 in Queensland and to allow for emergency powers to limit, or respond to, the spread of COVID-19 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. 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.

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. On 9 September 2021, the *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021* extended this provision until 30 April 2022.

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

The COVID-19 pandemic has been complex and unpredictable, presenting significant challenges over the past two years to Queensland's health system, economy, and community. For the majority of the pandemic, Queensland's rapid and flexible public health response has been highly successful in containing community transmission, providing the opportunity to reach high vaccination coverage across the Queensland population. Although this high coverage provides protections, the risk of adverse impacts to the health system, economy and the community remains, as demonstrated by the high rate of transmission occurring in the current wave of the Omicron variant of COVID-19 (Omicron).

Public health risks

Based on modelling by the Doherty Institute, QIMR Berghofer and internally by Queensland Health, Queensland had anticipated a substantial increase in cases as the domestic and international borders gradually reopened and restrictions were relaxed. The QIMR Berghofer modelling, undertaken for Queensland's unique context and largely based on the Delta strain, indicated there would be significant case growth in the first half of 2022, with associated hospitalisations and intensive care requirements.

The emergence of Omicron in late November 2021 has fuelled a rapid increase in cases both locally in Queensland and nationally, with transmission occurring at a much higher rate and earlier than anticipated by the models. This increased rate of transmission has impacted health

system capacity and resulted in widespread community and economic impacts from isolation and quarantine requirements.

As at 2 March 2022, the World Health Organization reported a total of 435,626,514 confirmed positive COVID-19 cases reported globally. The Australian Government Department of Health reported 2,867,023 confirmed COVID-19 cases, including 5,212 deaths in Australia. In Queensland, there have been 572,399 confirmed cases of COVID-19, with 564 deaths relating to COVID-19 being Queensland residents.

Although it appears that the risk of severe disease from Omicron at the population level is lower than posed by the Delta variant, due to its high transmissibility rate, the sheer number of positive cases experienced in the current outbreak has placed significant pressure on Queensland's hospital system.

Due to Queensland's dispersed geography, cases in the current wave peaked first in South-East Queensland and then progressively across the rest of the State. Areas where there is a high rate of infection per capita, such as in South East Queensland, experienced significant health system pressures.

While Queensland's health system continues to cope with the surge in cases, a number of uncertainties around the development of the pandemic remain. This includes what protections the Omicron infection may present against reinfection with either the Omicron or Delta variant (both currently circulating in Australia), the potential emergence of new variants of concern, particularly with eased international border restrictions, the effectiveness of vaccines over time, and increased transmission in the winter months, particularly if it coincides with a challenging influenza season.

Queensland Health considers it is likely there will be more waves of COVID-19 in the next eight to twelve months, with the potential for waves consisting of multiple variants. This would continue to pose significant risks to communities and the health system and will remain of particular concern in areas with comparatively low vaccination rates and more limited health care resources, such as rural and remote areas and First Nations and culturally and linguistically diverse communities. The opening of international borders and relaxation of quarantine requirements for vaccinated travellers will put Queensland in a position where additional outbreaks may originate with transmission from an international arrival.

A flexible and risk-mitigating approach that balances public health objectives with the essential and ongoing needs of the community remain a critical element of Queensland's response to COVID-19 to manage the current scenario and the uncertain outlook. Therefore, it is critical that Queensland's policy levers continue to be available to enable the rapid introduction of protective measures as the need arises.

Queensland Health considers extension of the public health emergency is necessary and appropriate to manage the ongoing public health risk.

Managing the public health risk

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.

Since late 2021, Queensland has been easing restrictions and moving away from a containment approach, to a suppression approach, and ultimately toward living with the risks of COVID-19. On 18 October 2021, *Queensland's COVID-19 Vaccine Plan to Unite Families* was released, which provided a roadmap for the relaxation of border restrictions and quarantine requirements, dependent on vaccination rates. For example, from 13 December 2021, having reached 80 per cent two-dose vaccination, fully vaccinated individuals travelling from domestic hotspots, who met the relevant conditions, were able to enter Queensland without any quarantine requirements. From 15 January 2022, all domestic border restrictions were lifted, allowing vaccinated and unvaccinated people to enter Queensland without quarantine requirements. From 22 January 2022, fully vaccinated international arrivals were able to enter Queensland without quarantining. Unvaccinated international arrivals are still required to quarantine in dedicated quarantine accommodation or other government-nominated accommodation.

On 9 November 2021, Queensland released the *Public Health Measures linked to vaccination status – a plan for 80% and beyond*. This plan sets out different restrictions that apply for vaccinated and unvaccinated individuals in Queensland with a focus on reducing restrictions where possible. For example, many venues, including hospitality venues, have returned to full capacity, provided that only fully vaccinated people attend. On 30 January 2022, Queensland released the *Back to School Plan 2022* which sets out COVID-safe measures for Term 1 of 2022. The public health measures in the plan include mandatory COVID-19 vaccination and mandatory mask wearing for staff in all schools, and mandatory mask wearing for high school students.

As Queensland transitions to living with the risks of COVID-19, some restrictions may still need to be activated, such as mask wearing in areas of increased community transmission and vaccination requirements for high-risk settings. Recent events like the emergence of Omicron, and the Delta variant before that, serve as a clear reminder of how rapidly COVID-19 can spread, with the potential to significantly impact hospital systems. A rapid and flexible public health response is still required to protect the health, safety and welfare of Queenslanders and mitigate the spread of COVID-19 in the community. Ongoing COVID-19 responses are likely to be driven by local epidemiological conditions, vaccination rates and health system capacity, as well as any measures needed to respond to the emergence of vaccine resistant variants or other unforeseen circumstances.

It is critical that flexibility is retained to ensure that, as restrictions are eased and normal social and economic activity resume, appropriate public health measures can continue to be put in place where necessary to address ongoing public health risks and protect the health system. Extending legislative measures to support the public health response to the COVID-19 emergency will ensure Queensland remains well placed to respond to the changing nature of the pandemic and to support the government's long-term objective of safeguarding our health in the Statement of the Queensland Government's objectives for the community built around *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 be used to reduce the risk of COVID-19 in Queensland. The effect of making the Regulation is that the declared public health emergency will be extended for a further 90 days until the end of the day on 24 June 2022. 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 for a further 90 days 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 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 (Further Extension of Expiring Provisions) Amendment Act 2021* 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 30 April 2022. The Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022, introduced to the Legislative Assembly on

22 February 2022, proposes to extend the expiry of this power to 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 (Further Extension of Expiring Provisions) Amendment Act 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.

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 2022*.

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 Public Health 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 24 June 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.

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