

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

Briefing from Queensland Health

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On 3 December 2020, the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020 (Bill) was introduced to the Legislative Assembly and referred to the Health and Environment Committee (Committee). The Committee has requested that Queensland Health provide a written briefing about the Bill.

Background

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 2005*, the declared public health emergency has been extended until 31 March 2021 through the making of several regulations and may need to be further extended.

Earlier this year, the Legislative Assembly also passed several amendments to the Public Health Act and *Mental Health Act 2016* to support the Queensland Government's health response to COVID-19. The amendments to the Public Health Act include the following:

Amendments	Amendment Act	Expiry date
Increased powers for the Governor in Council to extend a declared public health emergency for up to 90 days (instead of 7 days)	<i>(Public Health (Declared Public Health Emergencies) Amendment Act 2020</i>	Start of the day on 7 February 2021
Increased powers for emergency officers and the Chief Health Officer to limit, or respond to, the spread of COVID-19 in Queensland	<i>(Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020</i>	Start of the day on 19 March 2021
Allowing the chief executive to delegate their powers to the Chief Health Officer or a person with expertise or experience in public health issues and improvements to the operation of the provisions about emergency officers (medical) appointed under Chapter 8 of the <i>Public Health Act 2005</i>	<i>(Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020</i>	Start of the day on 19 March 2021
Powers to allow for the recovery of costs for the provision of accommodation and food to a person required to enter hotel quarantine	<i>(Community Services Industry (Portable Long Service Leave) Act 2020</i>	End of the day on 18 March 2021

Additional amendments were also made to the Public Health Act and Mental Health Act through the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020*. The amendments to the Mental Health Act provided for an authorised mental health service to be declared through an expedited process, that is, without gazettal, and to allow mental health patients to be granted leave to comply with public health directions. These amendments have been extended until 30 April 2021 by the *COVID-19 Emergency Response and Other Legislation Amendment Act 2020* which received Royal Assent on 4 December 2020.

As the above amendments were made through urgent Bills or as amendments during consideration in detail, sunset clauses and expiry provisions were included in the amending Acts. These amendments will expire between February and April 2021. The Bill proposes to extend all the expiry dates for the amendments made to Public Health Act and Mental Health Act to support the Queensland Government's health response until the end of the day on 30 September 2021.

Challenges to the health of Queenslanders

As at 14 December 2020, the World Health Organization reported a total of 70,462,926 confirmed positive COVID-19 cases globally. Australia has experienced a lesser burden from COVID-19 than other countries with the Australian Government Department of Health reported 28,039 confirmed COVID-19 cases, including 908 deaths in Australia. As at 14 December 2020, there have been 1,227 confirmed cases of COVID-19 in Queensland, with six deaths relating to COVID-19 of 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 demonstrate how rapidly COVID-19 can spread and overwhelm hospital systems. Certain risks for community transmission in Queensland, such as international arrivals entering Queensland, will remain for as long as the virus continues to circulate worldwide. Queensland Health anticipates that some form of restrictions will need to continue into 2021 and until a vaccine or treatment becomes widely available and distributed.

Policy objectives of the Bill

The policy objectives of the Bill are to extend the various sunset clauses in the amending legislation to continue the amendments made to the Public Health Act and the Mental Health Act for a further six months, until 30 September 2021. In some instances, these sunset clauses are contained in the amending Acts while others were directly included in the Public Health Act and Mental Health Act.

Continuation of the powers provided to the Governor-in-Council to extend a declared public health emergency for up to 90 days

The amendments made to section 323 of the Public Health Act to allow the Governor-in-Council to make a regulation to extend a declared public health emergency for up to 90 days has been critical to providing certainty to the public about how long the emergency measures will continue.

Enabling the Governor-in-Council to extend the public health emergency for up to 90 days, rather than 7 days, has avoided the need for weekly regulations to be made. If the amendments had not been made, between 29 January 2020 and 18 December 2020, approximately 45 regulations would have been required to allow the emergency response to continue. To date, the Governor-in-Council has made a total of six extension regulations.

To ensure this approach can continue, it is proposed to extend the amendments made to section 323 of the Public Health Act until 30 September 2021.

Continuation of the emergency powers to allow the Chief Health Officer and emergency officers to make directions to limit, or respond to, the spread of COVID-19 in Queensland

The Chief Health Officer's rapid and agile approach to respond to COVID-19 has proven to be highly successful in limiting and responding to the spread of COVID-19 in Queensland. For example, restrictions on the movement of people were effective in limiting the potential human-to-human transmission of COVID-19. Controls implemented in hospitals and aged care facilities have protected vulnerable cohorts who are at a higher risk of contracting the virus or suffering complications if infected with COVID-19.

While the modelling of the potential spread of the virus, released by the Commonwealth Government¹, did not eventuate there is still a risk this modelling could accurately reflect the impacts on the health system if the Queensland Government's health response does not continue to successfully manage to flatten the curve of COVID-19 cases. It is important that the Queensland Government's health response does not end prematurely as there is still a risk of the virus spreading throughout Queensland, particularly as international arrivals return to Queensland from overseas where high numbers of cases continue to occur.

Queensland Health notes that governments have begun to distribute vaccines in the United Kingdom and the United States of America. Until an effective vaccine is widely available, there is still a risk that a large and unmitigated outbreak could occur in Queensland and cause our hospital system to be overwhelmed in a short period of time. These considerations are based on the international evidence, and evidence from the recent large-scale outbreak in Victoria, that indicate that a re-introduction of the virus in the community can lead to second waves of COVID-19 infections.

The combination of all the public health measures that have been undertaken has proven to be highly successful in limiting the spread of the virus in Queensland. This is evidenced by only 41 people in Queensland contracting COVID-19 through community transmission from an unknown source. The ongoing staged easing of restrictions has also been successful in continuing to limit the spread of the virus, while allowing the economy to recover. Queensland has not had a single case of community transmission since 15 September 2020.

¹ On 7 April 2020, the Commonwealth Government released modelling of the potential impacts of COVID-19 in Australia. The summary report can be found using the following URL:
<https://www.health.gov.au/sites/default/files/documents/2020/04/impact-of-covid-19-in-australia-ensuring-the-health-system-can-respond-summary-report.pdf>.

The emergency powers provided to emergency officers to issue directions to limit, and respond to, the spread of COVID-19 has also been a critical component of the Queensland Government's health response to COVID-19. As at 14 December 2020, a total of 129,428 quarantine notices have been issued to people who have:

- tested positive for COVID-19;
- been a close contact of someone who has tested positive for COVID-19;
- been in a hotspot in the previous 14 days; or
- arrived from overseas.

As at 14 December 2020, 2,968 quarantine notices were still active. These quarantine notices have been critical in ensuring that people are lawfully required to remain in quarantine to limit the risk of these people entering the community while infectious.

The mandatory 14-day quarantine for overseas arrivals has been a critical factor in Queensland's and Australia's successful response to COVID-19 to date, as a large proportion of positive cases have been from overseas arrivals. On 18 November 2020, Acting Chief Medical Officer Professor Paul Kelly stated that hotel quarantine was now the "major risk" for the reintroduction of COVID-19 into Australia. Nationally, there is significant focus on enabling more Australians to return home from overseas, with all jurisdictions agreeing to increased numbers of international arrivals. Queensland is currently accepting 1,300 international arrivals per week.

Since 5 October 2020, a majority of the positive COVID-19 cases recorded in Queensland have been returning travellers from overseas who have been detected in hotel quarantine. The effective management of infection control in hotel quarantine is an integral part of the government's first line of defence against the risk of COVID-19 outbreaks in the community. The Chief Health Officer's public health direction titled *Quarantine for International Arrivals Direction* and its predecessors have been the instruments used to impose the requirements for hotel quarantine. If the Chief Health Officer's powers under the Public Health Act to make public health directions are not extended, there will be no ability to enforce hotel quarantine for overseas arrivals.

Failures in the appropriate management of hotel quarantine, such as those that occurred in the hotel quarantine system in Victoria, have been shown to have led to a second wave of COVID-19 positive cases. Based on data provided by the Australian Department of Health, the second wave in Victoria has resulted in 18,595 positive COVID-19 cases being reported as locally acquired cases in the period between 1 June to 14 December 2020. The second wave in Victoria has shown that wide-spread community transmission not only has serious impacts on public health but can also lead to significant economic and social consequences in the event that restrictions, such as lockdowns, are required to be re-introduced for a long period of time to flatten the curve and reduce the number of infections as part of the second wave. Therefore, it is critical that the existing hotel quarantine system in Queensland continue in order to act as the primary defence to ensure people can enter Queensland from overseas without creating a risk to public health and prevent a second wave of infections occurring. To ensure that all available measures are being taken to make the hotel quarantine as effective as possible, the Chief Health Officer has also made the *COVID-19 Testing for Quarantine Facility Workers Direction* to require people working in these hotel quarantine facilities to be tested every seven days to limit the risk of these workers acquiring the virus in the facility and then entering the community.

The public health measures outlined above have all been made possible by the amendments made to the Public Health Act through the Public Health and Other Legislation (Public Health Emergency) Amendment Act, which provide the Chief Health Officer and emergency officers with emergency powers to make directions to limit, and respond to, the spread of COVID-19 in Queensland. It is proposed these measures will continue in 2021 to ensure that the chief health officer and emergency officers can effectively respond to the threat of COVID-19 and limit the potential spread throughout Queensland. The Bill achieves this policy objective by extending the expiry of these amendments for a further 6 months, until 30 September 2021.

Continuation of requirements for people to pay their own costs associated with hotel quarantine

Given the growing number of positive COVID-19 cases internationally, it is anticipated the requirements for international arrivals to enter hotel quarantine will need to remain in place for a further period. To ensure the ongoing sustainability of the hotel quarantine system, it is proposed to continue to charge a fee to persons required to enter hotel quarantine. This enables the State to recover costs incurred, such as, accommodation or food costs for the duration of the quarantine period.

The hardship scheme will also continue to apply to allow people, particularly vulnerable cohorts, to seek a waiver from the requirement to pay a fee for hotel quarantine. It is also proposed to continue to offer payment plans or alternative measures to support people to pay the relevant fees over a period.

Other amendments made to the Public Health Act

Other operational amendments to the Public Health Act were made by the Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act to:

- extend the period in which an exemption from medically examining a person exposed to a serious disease or illness applies to 14 days;
- require an emergency officer (medical) to inform a detained person that the officer must apply to a magistrate to extend the duration of a detention order beyond 14 days;
- provide that a public health direction takes effect when the direction is given or, if the direction fixes a later day or time, on the later day or at the later time;
- allow an emergency officer to give a parent of a child a direction to keep the child at or in a stated place for an isolation period and ensure the child complies with stated conditions during the isolation period; and
- authorise the chief executive to delegate the powers to authorise the disclosure of confidential information about notifiable conditions or contact tracing to the Chief Health Officer and one additional person who is a public service officer or employee or a health service employee, and has the expertise or experience in public health issues necessary to exercise the powers.

While technical in nature, these amendments to the Public Health Act have assisted the operations of the Queensland Government's health response to COVID-19 by clarifying the powers of emergency officers and allowing the chief executive to delegate powers to ensure that decisions about sharing of information to assist contact tracing do not solely rely on the chief executive. As the other amendments made to the Public Health Act are required to be extended, it is also considered necessary to further extend these complementary and supporting amendments to the Act.

Amendments made to the Mental Health Act

The amendments made to the Mental Health Act allow the Chief Psychiatrist to:

- approve a leave of absence for certain patients from an authorised mental health service if satisfied the absence is necessary to allow a patient to comply with a detention order or public health direction given under the Public Health Act and does not result in unacceptable risks to the person's safety and welfare, and the safety of the community; and
- declare a health service, or part of a health service, to be an authorised mental health service and appoint a person as the administrator of an authorised mental health service by notice published on the department's website instead of making the declaration or appointment by gazette notice.

These amendments to the Mental Health Act are intended to operate only as a last resort, where the application of the standard provisions may result in a conflict with a direction or order given under the Public Health Act. While these measures have not been required to be used to date, it is proposed to continue these amendments to allow for a rapid response to any potential outbreaks of COVID-19 involving patients from an authorised mental health service.

Temporary measures

While Queensland has had considerable success in managing the spread of COVID-19, it is important these public health measures continue to operate into 2021 and until the risks to public health from COVID-19 ease and remain stable. If another extension of these measures is required, a Bill will be introduced to the Legislative Assembly to seek a further extension of the measures. The extension for a further six months is considered to achieve an appropriate balance in ensuring the measures are not ended too early but are also not extended for an unreasonable period of time.

In addition, section 324 of the Public Health Act provides that if the Minister is satisfied that there is no longer a risk to public health, the Minister must declare that the public health emergency has ended. For example, if the Minister declared the end of the public health emergency prior to 30 September 2021, the temporary emergency powers could no longer be exercised despite the amendments remaining in the Public Health Act until 30 September 2021.

Other considerations

Commencement of amendments made by the Public Health (Declared Public Health Emergencies) Amendment Act 2020

On 7 February 2020, the Public Health (Declared Public Health Emergencies) Amendment Act received Royal Assent. Part 3 of the Public Health (Declared Public Health Emergencies) Amendment Act is a sunset clause which, one year after commencement, reinstates section 323 of the Public Health Act to its original form. This would only allow the Governor-in-Council to extend the declared public health emergency for COVID-19 for up to 7 days at a time.

As the Legislative Assembly is not scheduled to sit prior to the commencement of Part 3 of the Public Health (Declared Public Health Emergencies) Amendment Act, the Bill will be unable to be debated prior to the commencement of the sunset clause. Therefore, rather than amending Part 3 of the Act, the substantive amendments to section 323 of the Public Health Act will need to be remade to allow the Governor-in-Council to extend a declared public health emergency for up to 90 days. These amendments will include a sunset clause which will again re-instate section 323 of the *Public Health Act 2005* to its previous form at the end of the day on 30 September 2021.