

Health Legislation (COVID-19 Emergency Response) Regulation 2020

Explanatory notes for SL 2020 No. 80

made under the

COVID-19 Emergency Response Act 2020

Food Act 2006

Pest Management Act 2001

General Outline

Short title

Health Legislation (COVID-19 Emergency Response) Regulation 2020

Authorising law

Food Act 2006 in reliance on section 13 of the *COVID-19 Emergency Response Act 2020*

Pest Management Act 2001 in reliance on section 13 of the *COVID-19 Emergency Response Act 2020*

Policy objectives and the reasons for them

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

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 ('COVID-19 emergency'). The COVID-19 emergency has been extended by regulation and may be further extended.

As a first response, the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* was passed by Parliament on 18 March 2020, to ensure there is clear legal authority to make the interventions necessary to mitigate the spread of COVID-19 in the community and to provide increased flexibility to manage disruptions caused by the disease and social distancing measures.

The second stage of reforms to address the COVID-19 emergency, the *COVID-19 Emergency Response Act 2020* (COVID Act), was passed by Parliament on 22 April 2020. The COVID Act establishes a legislative modification framework of general application across the statute book allowing legislative requirements to be modified in the following areas, should that be required: attendance at places or meetings; making and associated use of documents; physical presence requirements; statutory timeframes; and proceedings of courts and tribunals.

The Queensland response to the COVID-19 emergency has also included the Chief Health Officer making public health directions under the Public Health Act. Public health directions impose restrictions on individuals and business activities to reduce the transmission of COVID-19 or otherwise respond to the COVID-19 emergency.

The combination of the restrictions imposed by the public health directions, the reallocation of Queensland Health and local government staff and resources 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 the Pest Management Act.

While local governments and Queensland Health will continue to process applications as efficiently as they can, existing statutory time limits in the Food Act and the Pest Management Act may be impractical and may lead to unfair outcomes if they apply during the COVID-19 emergency and for a period of recovery after the end of the COVID-19 emergency.

Statutory time limits under the Food Act

The Food Act ensures food for sale in Queensland is safe and suitable for human consumption, prevents misleading conduct relating to the sale of food and applies the food standards code. The Act includes schemes for licensing food venues, accreditation for food safety programs and approval of auditors. Local and state governments share responsibility for administering the Food Act. Relevantly, local governments administer provisions relating to applications for, and the issue of, licences and enforcement of licensed food venues, including food safety programs. Queensland Health administers provisions relating to auditors.

Under the Food Act, if a person applies for a licence or auditor approval, the local government or the chief executive may request further information or documents to ensure the person is suitable. Current statutory time limits require the notice requesting further information or documents to be given to applicants within 30 days of an application (ss 59(3) and 132(3)). The disruption caused by the COVID-19 emergency may make it difficult for relevant authorities to issue notices for further information within the 30 day timeframe. As a result, authorities may be required to refuse applications on the basis that insufficient information was provided even though additional information may have established the applicant's suitability.

The Food Act also includes provisions that deem applications refused if they are not decided within particular timeframes. Applications for food venue licences (including applications for renewal, restoration or amendment), food safety program accreditation or auditor approval are deemed refused if not decided in 30 days (ss 61, 77, 107, 132, 134 and 143). The relevant authority may extend the timeframe by an additional 30 days to decide complex applications (ss 62, 108 and 134A). Claims for compensation are deemed refused if not decided in 28 days (s 220). Similarly, on an application for review of a decision, if the reviewer has not given the applicant notice of the review decision within 30 days, the original decision is taken to be confirmed (s 239).

If, due to the COVID-19 emergency, statutory time limits are not met and applications are deemed refused, applicants will then need to either make a fresh application (and pay the requisite costs), or alternatively, seek review. Seeking a review could unnecessarily escalate the issue, burdening the applicant and further straining the relevant authority's resources and potentially leading to increased case load for the Queensland Civil and Administrative Tribunal (QCAT). These outcomes are avoidable, as the issues may be easily resolved if more time is available to consider the original application.

Statutory time limits under the Pest Management Act

The Pest Management Act includes a licensing scheme to ensure people who conduct pest management activities are suitable and meet appropriate standards. This scheme is administered by Queensland Health.

If an application for a pest management licence is not decided within 60 days, the application is deemed refused (s 22) unless it is a complex application, in which case an additional 60 days may apply before the application is deemed refused (s 23). Also, if a person seeks review of a decision, and the chief executive does not give the applicant notice of the decision about the review within 60 days, the original decision is taken to be confirmed (s 106).

Deeming applications refused under the Pest Management Act will have similar outcomes for applicants and relevant authorities as deemed decisions under the Food Act; applicants must either incur the costs and burden of reapplying or escalate the matter for review, further impacting the resources of relevant authorities.

In addition, the Pest Management Act only allows a pest management technician to apply for renewal of an existing licence within 60 days before their licence has expired (s 29). The COVID-19 emergency may make it difficult for licence holders to meet this timeframe, for example, because business closures may make it difficult to obtain the required documentation and office closures may make it difficult to lodge applications. Under the current provisions, a licence holder who is unable to meet the timeframe because of COVID-19 restrictions will need to make a new application incurring fees in addition to the annual fee, and in some instances will need to redo their prescribed qualifications.

Application of COVID-19 Emergency Response Act 2020

The COVID Act facilitates the continuance of public administration, judicial process, small business and other activities disrupted by the COVID-19 emergency. The COVID Act grants entities powers to make extraordinary regulations or statutory instruments to modify the operation of existing provisions, including Act provisions, during the COVID-19 emergency.

Section 12 of the COVID Act provides a power for an entity (as defined by the *Acts Interpretation Act 1954*) to modify a statutory time limit. An entity can extend a statutory timeframe for any reason by statutory instrument on the basis that the extension is necessary for the purposes of the COVID Act. The chief executive of Queensland Health may, therefore, make a statutory instrument to modify time limits in section 134 of the Food Act (for deciding an application for approval as an auditor) and section 22 of the Pest Management Act (for deciding an application for a licence). Similarly, under section 12 of the COVID Act, local governments may make statutory instruments to modify the time limits in sections 61, 62, 107 and 108 of the Food Act, for deciding an application for a licence and an application for accreditation of food safety programs, respectively.

Under section 13 of the COVID Act, an extraordinary regulation can be made to modify time limits if the relevant authority has no existing power to modify the time limits under the Act. Extraordinary regulations are required to extend certain time limits under the Food Act and the Pest Management Act where no power to extend the time limits currently exists. In addition, extraordinary regulations are also required to align the time limits for requests for information about applications under the Food Act and the Pest Management Act with timeframes to decide applications if amended by statutory instrument under section 12 of the COVID Act.

Achievement of policy objectives

To facilitate effective administration and minimise potential adverse impacts of the COVID-19 emergency for the food and pest control industries, the regulation relies on section 13 of the COVID Act to make modifications to the Food Act and the Pest Management Act.

Modifications to the Food Act:

- if a statutory instrument made under the COVID Act modifies the statutory time limits for deciding applications, ensure timeframes for requesting further information or documents are consistent with the modification;
- extend the period within which a local government must decide an application for renewal, restoration or amendment of a licence before it is taken to be refused from 30 days to 90 days;
- extend 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;
- extend the period within which an application for compensation must be decided before it is deemed refused from 28 days to 90 days; and
- extend the period by which a QCAT information notice of the outcome of a review must be given to an applicant before the original decision is taken to be confirmed from 30 days to 90 days.

Modifications to the Pest Management Act:

- allow a pest management technician to make, and the chief executive to accept, an application for renewal of a pest management licence up to 30 days after the licence has expired where it is considered necessary to achieve the main purpose of the COVID Act. Consistent with section 8(4) of the COVID Act, this modification will apply retrospectively for any licence that expired on or after 19 March 2020; and
- extend the period by which a QCAT information notice of the outcome of a review must be given to an applicant before the original decision is taken to be confirmed from 60 days to 90 days.

The modifications of statutory time limits will only apply until 31 December 2020.

Consistency with policy objectives of authorising law

The regulation is consistent with the policy objectives of the authorising Acts.

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

Time limits modified by the regulation are imposed under the Food Act and Pest Management Act. The only way to modify these time limits without an Act of Parliament is to make an extraordinary regulation under section 13 of the COVID Act. Although section 12 of the COVID Act authorises an entity to modify statutory time limits via a statutory instrument rather than a regulation, section 12 only applies where an Act already provides one or more express grounds to modify the time limit. The Food Act and Pest Management Act do not provide any such grounds. Therefore, this extraordinary regulation is required to achieve the policy objectives.

Benefits and costs of implementation

By extending the existing time limits during the COVID-19 emergency and recovery period, the proposal will improve flexibility for relevant authorities and industry, reducing the need to resubmit applications and avoid additional costs and resourcing for all parties.

Consistency with fundamental legislative principles

Sections 4(5)(c) and 4(5)(d) of the *Legislative Standards Act 1992* require subordinate legislation to have sufficient regard to the institution of Parliament by containing only matters appropriate to subordinate legislation and only amending statutory instruments. The regulation modifies the Food Act and the Pest Management Act, which breaches these fundamental legislative principles.

The regulation is consistent with the intent of the measures introduced by Parliament in the COVID Act. The unusual approach of using subordinate legislation and statutory instruments to modify legislation was acknowledged when the COVID Act was passed. Parliament deemed these measures necessary to address the challenges and urgency posed by the COVID-19 emergency and recovery period. As this regulation is consistent with Parliament's intention, is time limited, and is necessary to achieve a main purpose of the COVID-19 Act, the breach of fundamental legislative principles is considered to be justified.

Under section 4(3)(g) of the *Legislative Standards Act 1992*, legislation may not have sufficient regard to the rights and liberties of individuals if it adversely affects rights, or imposes obligations, retrospectively. Section 34 of the *Statutory Instruments Act 1992* allows an instrument to expressly provide for beneficial retrospectivity, that is, retrospectivity that does not decrease a person's rights or impose liabilities on a person other than the State, a State authority or a local government.

The regulation provides that the ability for a licensee under the Pest Management Act to apply for renewal within 30 days after the licence expiry will apply retrospectively from 19 March 2020 to help manage applications already received. Although this provision applies retrospectively, it is beneficial because its only effect will be to avoid allowing a person's license to expire due to disruptions caused by COVID-19 that are beyond the person's control.

Consultation

The modifications to allow a pest management technician under the Pest Management Act to apply for renewal within 30 days of their licence expiring is consistent with provisions in the *Medicines and Poisons Act 2019*, which have not yet commenced. Consultation was undertaken during the development of that Act.

The need to extend the timeframes for local governments regarding licensed food venues responds to concerns raised by local governments.

As Queensland Health maintains regular contact with impacted parties and the modifications are beneficial, it was considered appropriate to expedite them without further consultation due to the extenuating circumstances surrounding the COVID-19 emergency. Queensland Health will ensure an appropriate communications strategy is implemented so stakeholders are informed of the amendments.

The modifications were assessed by the Office of Best Practice Regulation, in accordance with *The Queensland Government Guide to Better Regulation*, as meeting a category of exclusion from regulatory impact assessment on the basis that the proposals reduce the regulatory burden on all parties, and it is reasonably clear there are no adverse impacts (category (k)).

Notes on provisions

Part 1 Preliminary

Short Title

Clause 1 provides the short title of the regulation.

Commencement

Clause 2 provides for the commencement of the regulation. Clause 13 will commence on 19 March 2020, consistent with section 8(4) of the *COVID-19 Emergency Response Act 2020* (COVID Act). The remaining provisions will commence on notification.

Declaration that regulation is made under COVID-19 Emergency Response Act 2020, s 13

Clause 3 states that the regulation is made under section 13 of the COVID Act.

Period not extended beyond 31 December 2020

Clause 4 ensures that the modified time limits enabled through the regulation only operate until 31 December 2020.

Part 2 Modification of Food Act 2006

Application of part

Clause 5 provides that part 2 modifies particular periods under the *Food Act 2006* and explains how references to ‘the Act’ and ‘an application’ apply.

Period for requesting further information or document for application for licence—Act, s59

Clause 6 modifies the operation of section 59(3). If a local government makes a statutory instrument to modify the statutory time limits in section 61, the new timeframe will also apply as the period within which the local government must request further information or documents.

Period for deciding application for renewal, restoration or amendment of licence—Act, s 77

Clause 7 modifies the operation of section 77 to extend the period within which a local government must decide an application for renewal, restoration or amendment of a food venue licence before it is taken to be refused. The period is extended from 30 days to 90 days.

Period for requesting further information or document for application for approval as auditor—Act, s132

Clause 8 modifies the operation of section 132(3). If the chief executive makes a statutory instrument to modify the statutory time limits in section 134, the new timeframe will also apply as the period within which the chief executive must request further information or documents.

Period for deciding application for amendment of conditions of auditor's approval—Act, s143

Clause 9 modifies the operation of section 143 to extend the period within which the chief executive must decide an application for amendment of conditions of an auditor's approval before it is taken to be refused. The period is extended from 30 days to 90 days.

Period for deciding application for compensation—Act, s220

Clause 10 modifies the operation of section 220(4) to extend the period within which the chief executive must decide an application for compensation before the application is taken to be refused. The period is extended from 28 days to 90 days.

Period for giving QCAT information notice of review decisions—Act, s239

Clause 11 modifies section 239(4) to extend the period within which the chief executive must give notice of the review decision before the original decision is taken to be confirmed. The period is extended from 30 days to 90 days.

Part 3 Modification of Pest Management Act 2001

Application of part

Clause 12 provides that part 3 modifies periods under the *Pest Management Act 2001* and explains how references to 'the Act' and 'an application' apply.

Application for renewal of expired licence—Act, s29

Clause 13 modifies the operation of section 29 to allow a pest management technician to apply for renewal of a licence within 30 days after their licence expires. This clause also allows the chief executive to accept an application made under the modified provision, only if satisfied it is reasonable to do so having regard to the main purpose of the COVID Act.

Subsection (3) of this clause indicates the period before the licence expires is extended until the new licence is issued, the application is withdrawn or an information notice under section 31(4) is given to the technician.

Period for giving QCAT information notice for review decision—Act, s106

Clause 14 modifies the operation of section 106(4) to extend the period within which the chief executive must give notice of the review decision before the original decision is taken to be confirmed. The period is extended from 60 days to 90 days.

Part 4 Expiry of regulation

Expiry

Clause 15 provides that the regulation expires on 31 December 2020.

© The State of Queensland 2020