

Corrective Services (COVID-19 Emergency Response) Regulation 2020

Explanatory notes for SL 2020 No. 84

Made under the

Corrective Services Act 2006;
COVID-19 Emergency Response Act 2020;
Dangerous Prisoners (Sexual Offenders) Act 2003;
Penalties and Sentences Act 1992; and,
State Penalties Enforcement Act 1999.

General Outline

Short Title

Corrective Services (COVID-19 Emergency Response) Regulation 2020

Authorising law

Corrective Services Act 2006 in reliance on sections 8 and 13 of the *COVID-19 Emergency Response Act 2020*
Dangerous Prisoners (Sexual Offenders) Act 2003 in reliance on section 8 of the *COVID-19 Emergency Response Act 2020*
Penalties and Sentences Act 1992 in reliance on section 8 of the *COVID-19 Emergency Response Act 2020*
State Penalties Enforcement Act 1999 in reliance on section 8 of the *COVID-19 Emergency Response Act 2020*

Policy objectives and the reasons for them

The policy objectives of the *Corrective Services (COVID-19 Emergency Response) Regulation 2020* (the Regulation) is to prescribe modified requirements or arrangements, which will apply in relation to existing requirements for Parole Board Queensland (PBQ) meetings under the *Corrective Services Act 2006* (CS Act), statutory time limits for a declaration of emergency under the CS Act, additional attendance requirements for corrective services facilities under the CS Act, and attendance requirements for offenders in the community being managed by corrective services officers under the CS Act, *Dangerous Prisoners (Sexual Offenders) Act 2003*, *Penalties and Sentences Act 1992* or *State Penalties Enforcement Act 1999*, in reliance on sections 8 and 13 of the *COVID-19 Response Act 2020* (COVID-19 Response Act).

Under section 3 of the CS Act, the purpose of corrective services is community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders.

Under section 2 of the COVID-19 Response Act, a main purpose of the Act is to protect the health, safety and welfare of persons affected by the COVID-19 emergency. Section 8 of the COVID-19 Response Act provides an extraordinary regulation-making power relating to attendance at places or meetings. Section 13 of the COVID-19 Response Act provides an extraordinary regulation-making power relating to modifying statutory time limits.

On 29 January 2020, the Queensland Minister for Health and Minister for Ambulance Services made an order declaring the outbreak of the coronavirus '2019-nCoV' (colloquially known as COVID-19) as a public health emergency under section 319(2) of the *Public Health Act 2005* (PHA) in all of Queensland.

A copy of the public health emergency order was published in the Queensland Government Gazette on 31 January 2020. The COVID-19 emergency declaration in Queensland has now been extended by regulation until 19 May 2020 and may need to be further extended. On 11 March 2020, the Director-General of the World Health Organisation declared COVID-19 a global pandemic. COVID-19 represents a significant risk to the health, safety and wellbeing of all Queenslanders.

Significant planning has been put in place to ensure business continuity and the safe and secure operation of all elements of the correctional system. Queensland Corrective Services (QCS) has adopted a staged response to implementing restrictions to respond to the COVID-19 emergency. The roll-out of these stages has been based on factors including advice and support of Queensland's Chief Health Officer. The Parole Board Queensland (PBQ) has also implemented business continuity plans in response to the pandemic.

The objective of the Regulation is to support the QCS and PBQ response to the COVID-19 emergency, as an extraordinary regulation.

Achievement of policy objectives

The Regulation provides a temporary response for the duration of the COVID-19 emergency as an extraordinary regulation.

The Regulation provides for an extension of the length of time a declaration of emergency can be made, under section 268 of the CS Act, from three days to 90 days or until the Queensland Minister for Health and Minister for Ambulance Services declares and publishes the end of the COVID-19 emergency pursuant to sections 324 and 325 of the PHA.

The Regulation provides for amendments to the PBQ meeting quorum requirements under section 234 of the CS Act, addressing a restriction requiring the president or a deputy president to sit on the same board as a professional member when hearing prescribed matters. This ensures the PBQ can appropriately respond to the increase in parole applications.

The Regulation introduces additional entry procedures for corrective services facilities when a declaration of emergency under section 268 of the CS Act is in force. The Regulation responds to the risks and transmissibility of COVID-19 by providing that a person entering a corrective services facility may be required to be screened for COVID-19, including by taking the person's temperature. The provision also ensures the chief executive has the power to refuse entry where a person displays a high temperature (in excess of 38 degrees Celsius) or flu-like symptoms.

The Regulation also clarifies the ability for offenders subject to relevant orders and managed in the community to be supervised by QCS corrective services officers remotely, supporting social distancing requirements in response to COVID-19.

In line with the COVID-19 Response Act, this Regulation (an extraordinary regulation) may be inconsistent with the CS Act and have retrospective operation. It will provide the clear authority for QCS and the PBQ to lawfully maintain security and good order in corrective services facilities and to ensure the health and safety of officers, visitors, prisoners and offenders in the community for the duration of the COVID-19 emergency.

The Regulation will have effect retrospectively from the date of commencement of the COVID-19 Response Act (23 April 2020) and will expire on 31 December 2020.

Consistency with policy objectives of authorising law

In temporarily amending the CS Act the extraordinary regulation supports QCS and the PBQ to appropriately respond to the COVID-19 emergency and mitigate the risk of contagion. The Regulation supports the objective of the CS Act in ensuring humane containment, supervision and rehabilitation of offenders, and the objective of the COVID-19 Response Act to protect the health, safety and welfare of persons affected by the COVID-19 emergency.

Inconsistency with policy objectives of other legislation

There is no inconsistency with the policy objectives of other legislation.

Benefits and costs of implementation

The costs associated with the implementation of this Regulation will be met within existing resources.

Consistency with fundamental legislative principles

The COVID-19 emergency is an extraordinary, unprecedented situation that, in turn, requires a commensurate response. The provisions in the Regulation are considered justified to allow QCS and the PBQ to take immediate action to ensure the health and safety of staff, prisoners, and the community and mitigate the risk of contagion during the COVID-19 pandemic.

Retrospective application of the Regulation to commencement of the COVID-19 Response Act is a potential departure from the rights and liberties of an individual in so far as it may be perceived to adversely affect rights and liberties or impose obligations retrospectively (s.4(3)(g) Legislative Standards Act).

Retrospective application is seen as necessary to ensure actions undertaken by QCS and the PBQ in urgently responding to imposed government restrictions and to reduce the potential risk of contagion from the COVID-19 pandemic in the correctional environment. Providing for retrospective application will ensure decisions taken to ensure the health and safety of staff, prisoners, offenders and the community are lawful.

The amendment to allow a declaration of emergency under section 268 of the CS Act to be in effect for up to 90 days for the duration of the COVID-19 emergency raises whether the legislation has sufficient regard to individual rights and liberties being dependent on administrative power (section 4 (2)(a) and (c) of the *Legislative Standards Act 1992*).

The exercise of this power is subject to the Minister's approval, a specific time limit of 90 days, and to instances where the chief executive reasonably believes a situation exists at a prison that threatens or is likely to threaten the security or good order of the prisoner or the safety of a prisoner or another person in the prison.

Further, it is a temporary extension of power limited to the expiry of this Regulation and to the end of the COVID-19 pandemic. In the circumstances of the current COVID-19 public health emergency, it is necessary and appropriate that the chief executive, with the approval of the Minister, can make such a declaration to ensure the safety of staff, prisoners and the community.

Given the unprecedented challenges managing the risks associated with COVID-19 in the correctional environment, these measures are aimed at protecting the health and safety of staff, prisoners, offenders and the broader community. They are therefore considered acceptable and necessary to respond to the COVID-19 public health emergency.

Consultation

The Regulation meets category (j) *Regulatory proposals relating to police powers and administration, general criminal laws, the administration of courts and tribunals and corrective services*, an agency-assessed exclusion category and accordingly do not require consultation with the Office of Best Practice Regulation, Queensland Productivity Commission.

Due to the urgent and temporary nature of the Regulation consultation with stakeholders external to Government was not undertaken.