

Application of Better Regulation Principles

Public Health Amendment (COVID-19) Regulation 2022

Principle 1 - The need for government action should be established

In June 2020, clause 99A was inserted into the *Public Health Regulation 2012* (the Regulation) to enable officers from the Department of Customer Service (DCS) and the NSW Food Authority to be appointed as authorised officers for the purposes of s.126(1)(c) of the *Public Health Act 2010* (the Act). This clause is currently due to expire on 26 March 2022. Over the course of the pandemic, this clause has enabled DCS and Food Authority officers (who have experience inspecting premises such as hospitality venues, registered clubs, and venues licenced under the *Liquor Act 2007*) to undertake compliance related activities in relation to obligations under the public health orders. The *Public Health Amendment (COVID-19) Regulation 2022* (Amending Regulation) will have the effect of extending clause 99A until 1 September 2022.

The Amending Regulation will also:

- prescribe the Department of Enterprise, Investment and Trade (DIET), which will be assuming Liquor, Gaming and Racing functions from 1 April 2022 under Machinery of Government changes. Prescribing DIET will enable Liquor, Gaming and Racing officers to continue to undertake compliance related activities in relation to the public health orders
- extend provisions (currently due to expire 26 March 2022) which create penalty notice offences for breaches of s.10 of the Act (breach of a public health order), s.11 (not shutting down premises if directed to do so), and s.62 (failure to comply with a s.62 public health order issued in respect of a person); and
- update references to reflect the new *Public Health (COVID-19 Air Transportation Quarantine) Order (No 1) 2022* (rather than the previous Air Order) which is anticipated to be remade before 24 February 2022. This will thereby enable on-the-spot fines to apply to breaches of the Order.

Principle 2 - The objective of government action should be clear

The objective of the Amending Regulation is to extend the operation of COVID-19 provisions to enable NSW to respond to the COVID-19 pandemic. The Amending Regulation also makes updates to reflect DIET, consistent with Machinery of Government changes due to take effect 1 April 2022.

Principle 3 - The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options

There is no non-regulatory means to extend the operation of clause 99A and the on-the-spot fine applying for breach of the public health orders.

Principle 4 - Government action should be effective and proportional

The Amending Regulation is considered to be effective and proportional as it extends the COVID-19 provisions to be in effect until the Regulation lapses on 1 September 2022.

Principle 5 - Consultation with businesses and the community should inform regulatory development

No consultation has occurred regarding extending the COVID-19 provisions. However there has been ongoing public consultation at both a departmental and Ministerial level regarding offences applying for breaches of the COVID-19 public health orders.

Principle 6 - The simplification, repeal, reform, consolidation of existing regulation should be considered

The Amending Regulation amends the existing Regulation.

Principle 7 - Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness

The Amending Regulation is due to expire on 1 September 2022, as part of the automatic repeal requirements in the *Subordinate Legislation Act 1989*. The appropriateness of continuation of COVID-19 specific clauses will be considered as part of the remake process prior to any further extension of COVID-19 clauses (via inclusion in the remake Regulation).