

Application of Better Regulation Principles

The Public Health Amendment (COVID-19) Regulation 2021

Principle 1 - The need for government action should be established

The Public Health Act 2010 (the Act) includes a range of measures to manage public health issues. The Public Health Regulation 2012 (the Regulation) supports the Act, and includes certain measures not specifically dealt with in the Act, including handling of bodies. In March 2020 amendments were made to the Act and Regulation to support the response to the COVID-19 pandemic.

The Public Health Amendment (COVID-19) Regulation 2021 (the Amending Regulation) has been prepared to extend these provisions, as well to enable the Secretary to make general exemptions regarding handling of bodies.

COVID-19 Measures

The changes to the Act in response to COVID-19, that are still in force, are as follows:

- Authorised officers under the Act undertake a range of enforcement functions under the Act. These officers are members of staff of the Ministry of Health or the NSW Health Service, and are appointed by the Secretary. Section 118 was amended so the police officers are authorised officers for the purposes of the section, and can issue penalty infringement notices (PINs) for breaches of offences under the Act.
- Section 112 provides authorised officers with the power to direct a person to provide their full name and address where the authorised suspects the person has contravened the Act or Regulations. Section 112 was amended so that authorised officers include police officers for the purposes of the section.
- Public health orders made under section 62 of the Act require a named person to comply with the order, which can include residing at a certain place, and undergo specific treatment. Section 71 sets out the normal process for arresting a person who breaches the order and includes bringing the person before NSW Civil and Administrative Tribunal (NCAT). Section 71A enables a police officer to arrest a person in breach of a section 62 order relating to the COVID-19 pandemic, without need to follow the process set out in section 70.
- Section 62 orders can be made for persons who have been exposed to a contact order condition, being a condition listed in Schedule 1A of the Act, where the person is at risk of developing the condition and because of the way the person behaves, may be a risk to public health. Section 63 requires that the orders expire after 3 days, unless confirmed by NCAT. Section 64 enables an application to NCAT to extend 62 orders. Sections 63 and 64 were amended to not apply in relation to section 62 orders made in relation to the COVID-19 pandemic.

The changes to the Regulation are as follows:

- Clause 99A of the Regulation prescribes that Department of Customer Service and the NSW Food Authority are bodies for the purposes of section 126(1)(c) of the Act, being bodies from which staff can be appointed as authorised officers (for the purposes of the whole Act and not just PINs).

- Schedule 4 provides for PIN offences under the Act, including for offences for breaches of public health orders, occurring during timeframes specified in the Schedule.

These provisions either expire on 26 September 2021 or 31 December 2021, or otherwise apply during a period ending on 31 December 2021. The provisions necessary for the ongoing management of the COVID-19 pandemic. The Amending Regulation extends these provisions to 26 March 2022.

Handling of bodies

The Regulation includes a range of measures to ensure the safe handling of bodies. Clause 54 of the Regulation limits the time that a person who is not a funeral director to be 5 days. Currently the Secretary can exempt a person in a specific case to hold a body for longer than 5 days.

It may be necessary for the Secretary to approve certain people, such as hospitals, to hold more than one body for periods longer than 5 days. It is considered appropriate to enable the Secretary to make a general exemption in these circumstances, to avoid the unnecessary administrative burden of approving the extension of time for each body.

Principle 2 - The objective of government action should be clear

The objective of the Amending Regulation is to ensure that the enforcement of the COVID-19 related measures continue and that the Secretary is not unnecessarily burdened with case by case exemptions of holding bodies.

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 COVID -19 provisions and for the Secretary to make general exemptions to retain bodies for more than 5 days.

Principle 4 - Government action should be effective and proportional

The Amending Regulation is considered to be effective and proportional as it extends the prescribed COVID -19 provisions period embedded in the Act and Regulation, and to reduce the administrative burden placed upon the Secretary of the Ministry of Health.

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

Whilst the Amending Regulation has not been developed in consultation with stakeholders, the Health System communicates regularly with the general public regarding the COVID -19 pandemic.

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

The Amending Regulation amends the existing Public Health Regulation 2012.

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

Once made, the Public Health Amendment (COVID-19) Regulation 2021 will then be subject to five – yearly staged repeal under the Subordinate Legislation Act 1989.