

COVID-19 Enforcement Framework for Local Government

Food businesses and beauty therapy

1. Scope

This document applies to local government compliance officers who have been appointed as authorised persons under section 377(2) or (3) of the *Public Health Act 2005* (the Act) and will be assisting in the Queensland Health response to the declared public health emergency order made in relation to COVID-19.

2. Background

In response to the COVID-19 public health emergency, the *Public Health Act 2005* has been amended (March 2020) to include certain offences for failing to comply with requirements and Directions designed to contain or respond to the spread of COVID-19 within the community.

The State Penalties Enforcement Regulation 2014 has also been amended to allow the service of prescribed infringement notices (PINs) against these offences by local government authorised persons.

Local government authorised persons will be responsible for monitoring compliance with the Chief Health Officer (CHO) Public Health Directions that relate to industries normally regulated by local government, including food businesses and personal appearance services. In particular, this will relate to the requirements in the [Non-essential Business, Activity and Undertaking Closure Direction](#) and the COVID SAFE Checklist.

3. Monitoring Compliance

Complaints based

Local government will receive complaint referrals via:

1. 13 4 COVID (13 4 26843)
2. Local government
3. Public Health Units
4. QPS and other enforcement agencies (example DJAG / DAF)
5. The public
6. Industry

Local government should use a graduated, proportionate risk-based approach when assessing and investigating complaints and use the Queensland Health COVID-19 Food Business Supplemental assessment proforma, and the COVID-19 Personal Appearance Services Supplemental assessment proforma.

Inspection based

A key principle in the regulatory approach being encouraged for all regulatory agencies, including local government, is the alignment and integration of COVID-19 restrictions

monitoring and enforcement activity within existing regulatory responsibilities and into normal compliance activities. Local governments can use the Queensland Health COVID-19 Food Business Supplemental assessment proforma (within the *COVID-19 Roadmap to easing restrictions - Stages - Restaurants, Cafes, Pubs, Clubs and Hotels* supporting document) and the COVID-19 Personal Appearance Services Supplemental assessment proforma (within the *COVID-19 Roadmap to easing restrictions - Stages - personal appearance services* supporting document) to aid inspections.

Reporting

Each local government is required to provide information on compliance activity, using the COVID-19 Compliance activity template, to their local Public Health Unit each week by 3pm Friday.

Interpretation or enforcement assistance

All requests for interpretation or assistance with enforcement or compliance are to be directed to the local Public Health Unit.

4. Enforcement interventions

The compliance and enforcement options available to authorised persons in relation to non-compliance include:

- verbal advice/education
- warning
- penalty infringement notice (PIN)
- prosecution.

The authorised person will choose one or more options based on:

- advice contained in the enforcement matrix
- advice from the local Public Health Unit
- individual circumstance(s).

Only a person authorised as an Emergency Officer (General) by Queensland Health can give a direction such as requiring a person to leave a premise. Local government officers can enhance their powers through Emergency Officer general appointments if required.

Verbal advice /education

The emphasis for supporting the Public Health Directions will be verbal advice and education.

Verbal advice and education are intended to ensure compliance with Directions, particularly where the non-compliance is of a technical nature arising from inadequate documentation, or of a minor nature such as a single non-compliance of a minor operation or condition. In addition, verbal advice and education is to be used when there has been no prior non-compliance, a low risk to human health, and it is believed that the advice/education will be enough to ensure compliance.

It is important that all verbal advice and education is documented as this evidence may be required if future non-compliances are identified and the enforcement intervention is to be escalated. When giving verbal advice and education, it is important to clearly outline the nature of the non-compliance, so that the business can take steps to remedy the alleged non-compliance and achieve on-going compliance.

Warning

Where there is evidence that non-compliances have occurred, written warnings may be issued at the discretion of the authorised person. Written warnings may be inappropriate where there are a large number of minor offences on one occasion within the business. Similarly, written warnings will not usually be issued for a series of offences within a relatively short period of time. The totality of the offences should be considered in deciding the appropriate course of action. Where significant non-compliance is evident, escalated enforcement action may be appropriate. Written warnings will, for example, detail the nature of the alleged offence, cite relevant clauses of the legislation and specify the maximum penalty for the offence, as well as the intention to enforce the legislation. The written warning may also request the business or individual to respond to the warning with evidence of actions they have taken to rectify the non-compliance.

Prescribed Infringement Notice

A PIN can be issued by a local government authorised person for the following three COVID-19 offences under the Act, until the end of the public health emergency.

Table title

Offence Code	Section	Particulars of the offence	Individual Penalty Units	Corporation Penalty Units
LG to register the offence with SPER	346(1)	Failure to comply with a Direction or requirement made under section 345(1)(a) to (h) or (4), unless the person has a reasonable excuse.	10	50
LG to register the offence with SPER	362D	Failure to comply with a Public Health Direction given under section 362B, unless the person has a reasonable excuse.	10	50
LG to register the offence with SPER	362J	Failure to comply with a Direction given under Division 3 of Part 7A, unless the person has a reasonable excuse.	10	50

PINs should be issued in accordance with each local government's local operating procedure and with regards to the level of evidence that is available to support the issuing of the PIN.

Section 346(1) and 362J of the Act relate to non-compliance with a Direction given by an emergency officer (general). Therefore, local government authorised persons can only issue a PIN for sections 346(1) and 362J of the Act if an emergency officer (general) has given a specific direction to the individual or corporation, and that individual or corporation has failed to comply.

For example, an emergency officer (general) has issued a direction under section 345(1)(a) to a person to not enter a place. The emergency officer (general) informs the local government authorised person of this direction. The local government authorised person can then issue a PIN under section 346(1) if that person fails to comply. Some local government officers have been and more will soon be appointed as Emergency Officer General (in addition to being authorised persons under 377 of the Act).

Key points:

1. If a local government officer is appointed under both 377 and 333 – they will need to be clear under which appointment the person is acting at a given time.
2. If a local government officer is appointed under both 377 and 333 – they can issue COVID-19 PINs under either authority, however it is recommended they issue the PIN under authorised person (s377) authority, as their local government will then be the administering authority able to collect the fine payment and manage any non-payments.

Section 362D of the Act relates to a non-compliance with a Public Health Direction given by the Chief Health Officer under section 362B. A list of all current Public Health Directions is available at: <https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers>.

Prosecution

Prosecution should only be used for the most serious offences which may have, or has, resulted in a significant impact on human health, where a PIN would not be sufficient due to the severity of the non-compliance, and the willful and intentional nature of the non-compliance.

5. Decision Enforcement Matrix

The following decision enforcement matrix should be used when deciding on the most appropriate enforcement intervention, and to promote consistency with enforcement practices across the State in relation to the compliance with the Chief Health Officer Public Health Directions.

The enforcement matrix acknowledges there are a range of enforcement tools and remedies available and recognises a strong education approach as well as escalating enforcement options. The more serious the consequence is and/or likelihood of the alleged non-compliance continuing, the greater the level of enforcement action will be.

Table 1: Enforcement Matrix

		Consequences				
		Level 1 (Low/no harm)	Level 2	Level 3	Level 4	Level 5 (Severe harm)
LIKELIHOOD OF APPROPRIATE BEHAVIOUR / WILLINGNESS AND CAPACITY TO BEHAVE APPROPRIATELY	Category A (High level of compliance expected)	Advice/ education	Advice/ education	Verbal Warning	Written Warning/ PIN	PIN
	Category B	Advice/ Education	Verbal Warning	Written Warning	PIN	PIN
	Category C	Education/ Verbal Warning	Warning	Written Warning/ PIN	PIN	PIN
	Category D	Warning	Warning	PIN	PIN	PIN
	Category E (Low level of compliance expected)	Warning	Warning/ PIN	PIN	PIN	PIN Prosecution

Table 1: Likelihood of compliance

Likelihood category	General descriptor
Category A - Indications of future and ongoing compliance are very high (High level of compliance expected)	<ul style="list-style-type: none"> No known previous occurrences of non-compliance good demonstrated awareness of and/or capacity to meet regulatory requirement and/or reasonable and cooperative attitude.
Category B - Indications of future and ongoing compliance are uncertain	<ul style="list-style-type: none"> Few previous occurrences of non-compliance and/or questionable awareness of and/or capacity to meet regulatory requirement.
Category C - Indications of future and ongoing compliance are unlikely	<ul style="list-style-type: none"> Numerous previous occurrences of non-compliance and/or little or no awareness of and/or capacity to meet regulatory requirement.
Category D - No indication of future and ongoing compliance	<ul style="list-style-type: none"> Wilful violation of regulatory requirement and/or little or no demonstrated willingness or capacity to meet regulatory requirement.
Category E – Hindering or obstructing an investigation (Low level of compliance expected)	<ul style="list-style-type: none"> Hindering or obstructing an authorised person refusing to furnish required information and/or intentionally providing false or misleading information.

Table 3: Escalating human health impacts

Human health or safety impacts	General Descriptor	Nature of offences / Examples for COVID-19 Food businesses and Beauty Therapy
Level 1	<p>Non-compliance that does not result in any immediate human health impact</p> <p>Minor administrative non-compliance</p> <p>No organisational and regulatory scheme risk</p>	<p>Social distancing</p> <ul style="list-style-type: none"> • Business has failed to place some floor or wall markings or signs to identify the 1.5m • Less than 3 people are not maintaining social distancing • Some seats in the waiting area are less than 1.5m apart <p>Wellbeing of workers</p> <ul style="list-style-type: none"> • Limited signs and posters displayed on the risks of COVID-19 <p>Hygiene and Cleaning</p> <ul style="list-style-type: none"> • Some clients not advised of the expectations before attending their appointment (beauty therapy)
Level 2	<p>Non-compliance resulting in a minor, temporary threat to human health</p> <p>Moderate administrative non-compliance</p> <p>Negligible organisational and regulatory scheme risk</p>	<p>Social distancing</p> <ul style="list-style-type: none"> • Business has failed to place any floor or wall markings or signs to identify the 1.5m • Less than 5 people are not maintaining social distancing • Half the seats in the waiting area are less than 1.5m apart • 11 patrons are in the premises at one time in food businesses and beauty therapy (not hairdressers/barbers) / 21 patrons are in the premises at one time in food business in the outback • There is not space for four square metres for each person <p>Wellbeing of workers</p> <ul style="list-style-type: none"> • No signs and posters displayed on the risks of COVID-19 <p>Hygiene and Cleaning</p> <ul style="list-style-type: none"> • Clients are not advised of the expectations before they attend their appointment (beauty therapy) • Limited communal refreshments and water stations (beauty therapy) <p>Deliveries, contractors and visitors attending the businesses</p> <ul style="list-style-type: none"> • Physical interaction between delivery drivers and other contractors is not always being minimised <p>Review and Monitor</p> <ul style="list-style-type: none"> • Outdated COVID SAFE Checklist displayed. • COVIDSAFE checklist not publicly viewable • Limited review of processes undertaken

Human health or safety impacts	General Descriptor	Nature of offences / Examples for COVID-19 Food businesses and Beauty Therapy
Level 3	<p>Non-compliance resulting in a moderate, temporary threat to human health</p> <p>Major administrative non-compliance</p> <p>Moderate organisational and regulatory scheme risk</p>	<p>Social distancing</p> <ul style="list-style-type: none"> • More than 5 people are not maintaining social distancing • All the seats in the waiting area are less than 1.5m apart • 15 patrons are in the premises at one time (for food business (non-outback) and beauty therapy (not hairdressers/barbers)) • 25 patrons are in the outback food premises at one time • There is not space for four square metres for each person • There are minimal signs at entry points instructing customers to not enter the shop if they are unwell or have COVID-19 symptoms • There are minimal signs at entry points stating that business have the right to refuse service and insist the person leave the premises if they have COVID-19 symptoms • Walk-in appointments are not limited • Cash payments are not discouraged <p>Record Keeping</p> <ul style="list-style-type: none"> • Minimal record keeping issues including incomplete records (for example, first and last name not being recorded) <p>Wellbeing of workers</p> <ul style="list-style-type: none"> • Occasionally workers not being directed to stay home if they are unwell • Limited non-essential face-to-face activities being postponed or cancelled • Limited consultation with workers on the COVID-19 measures in the workplace • Limited measures to restrict the close contact between workers and between clients/patrons <p>Hygiene and Cleaning</p> <ul style="list-style-type: none"> • Some sharing of equipment and tools • Books, magazines and iPads are in the waiting areas (beauty therapy) • Some workers not instructed to practice good hygiene • Frequently touched areas and surfaces cleaned every 1.5hrs with detergent or disinfectant • Clients not informed of the expectations until after their appointment (beauty therapy) • Some non-disposable crockery/cutlery/glassware is being re-used by the same client <p>Deliveries, contractors and visitors attending the businesses</p> <ul style="list-style-type: none"> • Physical interaction between delivery drivers and other contractors is not being minimised at all <p>Review and Monitor</p> <ul style="list-style-type: none"> • COVID-SAFE Checklist not displayed • No review of processes undertaken • Not producing the COVID-Safe checklist on request by an authorised person

<p>Level 4</p>	<p>Non-compliance resulting in a significant threat to human health</p> <p>Significant organisational and regulatory scheme risk</p>	<ul style="list-style-type: none"> • Massage therapy being provided by a therapist who is not qualified • Skin penetration beauty therapy being provided by a therapist who is not a health practitioner registered under the Health Practitioner Regulation National Law • Spray tanning being provided. <p>Social distancing</p> <ul style="list-style-type: none"> • Majority of people are not maintaining social distancing • Over 15 patrons are in the premises at one time (food businesses and beauty therapy) • Over 25 persons are in the outback food business at one time • There is not space for four square metres for each person • There are no signs at entry points instructing customers to not enter the shop if they are unwell or have COVID-19 symptoms • There are no signs at entry points stating that business have the right to refuse service and insist the person leave the premises if they have COVID-19 symptoms • Walk-in appointments are encouraged • Cash payments are encouraged • Limited measures to restrict number of people inside the premises <p>Record Keeping</p> <ul style="list-style-type: none"> • Records not being completed for every table/worker (for food businesses) • Records not being completed for every client/worker (for beauty therapy) • Records not being kept for 28 days <p>Wellbeing of workers</p> <ul style="list-style-type: none"> • Some workers not being directed to stay home if they are unwell • Non-essential face-to-face activities not being postponed or cancelled. • No consultation with workers on the COVID-19 measures in the workplace • Limited assigning of workstations to dedicated staff to limit the need to go into other spaces <p>Hygiene and Cleaning</p> <ul style="list-style-type: none"> • All workers not instructed to practice good hygiene • Product testers and samples sometimes used on more than one client (beauty therapy) • Masks and gloves to control non-covid-19 infection risks are only sometimes used (beauty therapy) • Handwashing facilities not adequate and some alcohol-based hand sanitiser is not more than 60% ethanol or 70% isopropanol • Some clients and staff are barefoot between treatments (beauty therapy) • Some surfaces not cleaned between clients/visitors • Frequently touched areas and surfaces only cleaned every 2hrs (not hourly) with detergent or disinfectant • Non-disposable crockery/cutlery/glassware is being re-used by different clients and not being adequately cleaned between uses
----------------	--	---

Human health or safety impacts	General Descriptor	Nature of offences / Examples for COVID-19 Food businesses and Beauty Therapy
Level 5	<p>Known or likely human health impact that is severe in effect (e.g. hospitalisation and/or chronic health problems)</p> <p>Extremely high organisational and regulatory scheme risk</p>	<ul style="list-style-type: none"> • Business is operating when the Direction does not allow the type of business to operate • Fast food outlets in food courts providing dine-in options • Food businesses providing buffet self-service <p>Social distancing</p> <ul style="list-style-type: none"> • Staff and visitors are not maintaining social distancing. • Over 20 patrons are in the premises at one time • No measures to restrict number of people inside the premises. <p>Record Keeping</p> <ul style="list-style-type: none"> • No records being kept on any tables/clients/workers <p>Wellbeing of workers</p> <ul style="list-style-type: none"> • Workers not being directed to stay or go home if they are unwell and have COVID-19 symptoms • No assigning of workstations to dedicated staff so that staff are continuously entering other spaces and unnecessarily coming into contact with other staff and visitors • No measures to restrict the close contact between workers and between clients/patrons <p>Hygiene and Cleaning</p> <ul style="list-style-type: none"> • Workers not practicing good hygiene • Product testers and samples frequently used on more than one client (beauty therapy) • Masks and gloves to control non-covid-19 infection risks are only not being used (beauty therapy) • Handwashing facilities not adequate and no alcohol-based hand sanitiser available that is not more than 60% ethanol or 70% isopropanol. • Numerous clients and staff are barefoot between treatments (beauty therapy). • All surfaces not cleaned between clients/visitors. • Frequently touched areas and surfaces are not cleaned at least every 2 hours or at all with detergent or disinfectant