

Public Health (Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation 2020

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Steven Miles MP, Minister for Health and Minister for Ambulance Services provide this human rights certificate with respect to the *Public Health (Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation 2020* made under the *Public Health Act 2005*.

In my opinion, the *Public Health (Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation 2020*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the Human Rights Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

Chapter 8 of the Public Health Act deals with public health emergencies. Under section 319 of the Act, the Minister may declare a public health emergency by a signed written order. The public health emergency takes effect from its declaration by the Minister.

A declared public health emergency activates a range of powers and functions under chapter 8 of the Public Health Act. For example, emergency officers have wide ranging powers to assist in responding to a public health emergency, including powers of entry and a range of powers to compel persons to do or refrain from certain activities. Emergency officers (medical) have additional powers relating to the detention of persons.

Coronaviruses are a large family of viruses that can cause illnesses ranging from the common cold through to Severe Acute Respiratory Syndrome (SARS) and Middle East Respiratory System (MERS). In December 2019 and January 2020, a new coronavirus emerged in Wuhan City, in the Hebei Province of China. The new coronavirus is known as 2019-nCoV (2019-nCoV).

The World Health Organization (WHO) has confirmed there is evidence that human to human transmission of 2019-nCoV has occurred. The WHO Emergency Committee (Committee) has been convened under the *International Health Regulations (2005)* regarding the outbreak of 2019-nCoV in the People's Republic of China and the exportation of cases to other countries, including Australia. The Committee's role is to give advice to the WHO Director-General, who makes the final decision on the determination of a Public Health Emergency of International Concern. The Committee also provides public health advice or make formal temporary recommendations as appropriate.

On 30 January 2020, the Committee held its second meeting about the outbreak of 2019-nCoV. The Committee agreed that the outbreak now meets the criteria to be declared as a Public Health Emergency of International Concern and issued Temporary Recommendations including that, “It is expected that further international exportation of cases may appear in any country. Thus, all countries should be prepared for containment, including active surveillance, early detection, isolation and case management, contact tracing and prevention of onward spread of 2019-nCoV infection, and to share full data with WHO”.

Representatives of the Ministry of Health of the People’s Republic of China reported that, as of 30 January 2020, there were 7711 confirmed and 12,167 suspected cases throughout China. Of the confirmed cases, 1370 were severe and 170 people have died. The WHO has also reported that, as of 30 January 2020, there have been a further 82 cases in 18 countries. Of these, only seven had no history of travel in China. There has been human-to-human transmission in three countries outside China, one of these cases is severe but no deaths have been reported.

On 29 January 2020, the Minister for Health and Minister for Ambulance Services declared a public health emergency under section 319 of the Public Health Act due to the outbreak of 2019-nCoV within China, its pandemic potential due to cases spreading to other countries and the public health implications within Queensland resulting from recently arrived travellers from the epicentre of the outbreak. The public health emergency was declared for all of Queensland. A copy of the public health emergency order was published in the Government Gazette on 31 January 2020.

Under sections 322 and 323 of the Act, a declared public health emergency ends seven days after the day it is declared, unless extended by a regulation. As the public health emergency was declared on 29 January 2020, it ends at midnight on 5 February 2020.

The situation regarding 2019-nCoV is still developing. The number of confirmed cases overseas and in Australia is growing and information regarding the epidemiology of 2019-nCoV is frequently being updated. As it is possible that further actions may need to be taken to isolate people suspected of having 2019-nCoV, it is necessary to maintain the declared public health emergency for longer than the initial seven-day period.

The *Public Health (Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation 2020* (Regulation) extends the period of the declared public health emergency to allow for emergency powers to be used to reduce the risk of 2019-nCoV spreading. In accordance with section 323(3) of the Public Health Act, the Regulation expires 14 days after the declaration of the public health emergency. The effect of making the Regulation is that the public health emergency will be extended until midnight on 12 February 2020. The public health emergency can be further extended under section 323(4) for a period of seven days. There is no limit on the number times the public health emergency can be extended by regulation for further seven-day periods.

Queensland Health is in regular contact with clinicians and the general public about the developing 2019-nCoV situation. Queensland Health will continue to ensure that Queenslanders are informed about the 2019-nCoV, including any confirmed cases and actions that can be taken to reduce the risk of the 2019-nCoV spreading.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Privacy and Reputation

Section 25 of the Human Rights Act provides that a person has the right not to have the person's privacy unlawfully or arbitrarily interfered with.

The Regulation has the potential to limit this human right, as the powers available to emergency officers acting under a declared public health emergency include requiring a person to state their name and residential address and requiring a person to answer questions.

Freedom of movement and right to liberty and security of person

Section 19 of the Human Rights Act provides that every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it and has the freedom to choose where to live. Section 29 of the Human Rights Act provides that every person has a right to liberty and security and a person must not be subject to arbitrary arrest or detention.

The Regulation has the potential to limit both of these rights, as the powers available to emergency officers include: requiring a person to not enter or not remain within a place; stay in a stated place; and stop using a place for a stated purpose. Failure to comply with these requirements is an offence with a maximum penalty of 100 penalty units.

Emergency officers (medical) also have the power to order detention of a person if that person has or may have a serious disease or illness. As soon as practicable after a person is detained, an emergency officer (medical) must request that the person be medically examined. Failure to comply with a detention order is an offence with a maximum penalty of 200 penalty units.

Property rights

Section 24 of the Human Rights Act provides that a person must not be arbitrarily deprived of the person's property. The powers available to emergency officers under a declared public health emergency have the potential to limit this right.

Emergency officers have the power to: demolish stated structures or other property; remove an animal, substance or thing from a place; dispose of an animal, substance or thing at a place; destroy animals at a place or remove animals at a place for destruction at another place; and take action in relation to property including, for example, to allow the officer to take control of a building for the purposes of the emergency.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Section 13 of the Human Rights Act provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

It is considered that any impact that the Regulation makes upon the rights and liberties of individuals in this context is justified, given the need to protect the health of the public by managing any potential spread of 2019-nCoV.

Privacy and reputation

The nature of the right to privacy and reputation is very broad but contains internal limitations. The protection against interference with privacy is limited to unlawful or arbitrary interference. The notion of arbitrary interference extends to those interferences which may be lawful, but are unreasonable, unnecessary and disproportionate.

The limitation of human rights under the Regulation is for the purpose of protecting the health of the public by managing the potential spread of 2019-nCoV. It is reasonable, necessary and proportionate to limit the rights of a person in order to protect the health of the public in the context of a public health emergency. The powers ensure that Queensland Health is able to understand the epidemiology of 2019-nCoV, which can be used to develop strategies to protect public health, and to determine other information that may be relevant to responding to a declared public health emergency. There are no other less restrictive ways to achieve this purpose.

The benefits of the Regulation associated with protecting public health are considered to outweigh the impact on the right to privacy and reputation of individual citizens.

Freedom of movement, right to liberty and security of person

The nature of the right to liberty and security is to protect personal liberty, but it is focussed on the requirement that due process is followed when state authorities exercise their powers of detention. It is not the deprivation of liberty that is prohibited but that which is arbitrary or unlawful.

The right to freedom of movement is based upon Article 12 of the *International Covenant on Civil and Political Rights* (ICCPR). The ICCPR states in part that the right shall not be subject to any restrictions except those which are provided by law and are necessary to protect public health.

Restricting the liberty and freedom of movement of a person who has or is suspected of having 2019-nCoV, or other persons for their own protection, in an emergency context is designed to lower public health risks of a virus spreading, such as through human to human contact. There are no other less restrictive or reasonably available ways to achieve this purpose.

Any potential limitation of a person's freedom of movement or right to liberty and security is undertaken under an established legislative framework and is considered to be outweighed by the need to protect public health.

Property rights

The right to property essentially protects a person from the arbitrary deprivation of property. Emergency officers exercising their powers under a declared public health emergency (for example, by requiring the removal of a thing from a place) is only able to be undertaken in relation to the public health emergency and not for an arbitrary purpose. Importantly, section 345(2) of the Public Health Act provides that an emergency officer cannot demolish stated

structures, demolish property or destroy animals without the written approval of the chief executive.

The need to protect the public and lower public health risks associated with the potential spread of 2019-nCoV through the extension of the public health emergency is considered to outweigh any potential impact on the property rights of a person.

Conclusion

I consider that the *Public Health (Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation 2020* is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

STEVEN MILES MP
MINISTER FOR HEALTH and MINISTER FOR AMBULANCE SERVICES

© The State of Queensland 2020