

Public Health (Declared Public Health Emergencies) Amendment Bill 2020

Explanatory Notes

Short title

The short title of the Bill is the Public Health (Declared Public Health Emergencies) Amendment Bill 2020 (Bill).

Policy objectives and the reasons for them

Chapter 8 of the *Public Health Act 2005* 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 Act. For example, emergency officers (general) have wide ranging powers under chapter 8 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.

In December 2019 and January 2020, a new coronavirus emerged in Wuhan City, in the Hubei Province of China. The new coronavirus is known as 2019-nCoV.

On 30 January 2020, the World Health Organization (WHO)'s Emergency Committee (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".

As of 2 February 2020, the WHO has reported that there are 14,557 confirmed cases of 2019-nCoV globally. Of these cases, 14,411 are from China with 2,110 considered severe and 304 deaths. There are 15,328 suspected cases in China. Outside of China, there are 146 confirmed cases in 23 countries. Queensland has two confirmed cases of 2019-nCoV.

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 Public Health Act, a declared public health emergency ends seven days after the day it is declared, unless extended by a regulation. The public health emergency can be further extended by a regulation for a period of up to seven days. There is no limit on the number times the public health emergency can be extended by regulation for further seven-day periods. Under the current provisions, extension regulations would need to be considered by Governor in Council weekly until the public health emergency ends.

The Bill amends the Public Health Act to allow a declared public health emergency to be extended by regulation for periods of up to 90 days. This will give emergency officers and the Queensland community greater certainty about the anticipated need for the declared public health emergency to continue. It will also allow the Queensland Government to communicate with certainty about emergency arrangements up to 90 days in advance.

In accordance with section 324 of the Public Health Act, if the need for the declaration of the public health emergency is no longer required, the Minister will declare the end of the public health emergency and the emergency powers provided under chapter 8 will cease on the day the declaration ends.

Achievement of policy objectives

The amendments contained in the Bill will achieve the policy objectives by allowing for Governor-in-Council to make a regulation extending the declared public health emergency for a period of up to 90 days.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Estimated cost for government implementation

The exercise of powers under the Public Health Act will be by Queensland Health employees and will be implemented within existing resources. There are no direct costs associated with the amendments to the Public Health Act.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles in the *Legislative Standards Act 1992*.

Section 4(2)(a) of the Legislative Standards Act provides that fundamental legislative principles include requiring that legislation has sufficient regard to rights and liberties of individuals. This includes, for example, whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; allows delegation of administrative power only in appropriate cases and to appropriate persons; and confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

The Bill may potentially breach fundamental legislative principles, as it will provide for the continuation of the declared public health emergency which empowers emergency officers to compel persons to do or refrain from certain activities. This includes requiring persons not to enter or remain within a place, or to stay in a stated place; requiring persons to answer questions; and requiring persons to 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.

The powers of emergency officers are discretionary and are only expected to be exercised if there are significant risks to public health. Additionally, the Act includes protections to limit the exercise of emergency officers' powers. For example:

- emergency officers can only enter places to save human life, prevent or minimise serious adverse effects on human health, or do anything else to relieve suffering or distress. Emergency officers are also required to make a reasonable attempt to seek an occupier's consent to the entry (section 344 of the Public Health Act);
- certain powers can only be exercised with the written approval of the chief executive (section 345(2) of the Public Health Act);
- a person must be given the opportunity to voluntarily comply with a detention order before it is enforced against them (section 353 of the Public Health Act); and
- a person who is detained must be given the opportunity of receiving medical treatment including by a doctor chosen by the person (section 354(4) of the Public Health Act).

Emergency officers (medical) will also continue to 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.

The exercise of these emergency powers is likely to impact upon the rights and liberties of individuals. However, it is considered that any potential impact that the Bill has upon the rights and liberties of individuals in this context is justified, given the need to protect the health of the public by managing the potential spread of 2019-nCoV.

The Bill also provides for the insertion of a sunset clause for the amendments, which means that the amendments will expire 12 months following commencement of the Act. As a result, any infringement of rights or liberties will only be for a period of 12 months unless further amendments are made to the Public Health Act.

Consultation

Due to its urgent nature, consultation on the Bill was not possible. However, 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 2019-nCoV, including any confirmed cases and actions that can be taken to reduce the risk of 2019-nCoV spreading.

Consistency with legislation of other jurisdictions

The amendment is consistent with the approaches taken in New South Wales through section 7 of the *Public Health Act 2010* (NSW).

Notes on provisions

Part 1 Preliminary

Short Title

Clause 1 provides that, when enacted, the short title of the Act will be the *Public Health (Declared Public Health Emergencies) Amendment Act 2020*.

Commencement

Clause 2 provides for Part 3 to commence 1 year after the date of assent of this Act. The remaining parts of the Act will commence on assent.

Act amended

Clause 3 states that this Act amends the *Public Health Act 2005*.

Part 2 Amendment commencing on assent

Amendment of s 323 (Extending declared public health emergency)

Clause 4 amends section 323(3) and 323(4) of the Public Health Act to provide for the Governor-in-Council to make a regulation to extend, or further extend, the period of a declared public health emergency for a period of up to 90 days unless it expires at the end of the stated period, or is sooner repealed or it expires under section 324(3) of the Act.

Section 324(3) of the Public Health Act states that a regulation extending, or further extending, a declared public health emergency expires when the declared public health emergency ends under section 324.

Part 3 Amendment commencing 1 year after assent

Amendment of s 323 (Extending declared public health emergency)

Clause 5 acts as a sunset clause for the amendments made to sections 323(3) and 323(4) by providing that the amendments made by clause 3 of this Bill will expire after 1 year. The Public Health Act will then revert to the existing section 323(3) and 323(4), which provides for Governor-in-Council to:

- make a regulation to extend a declared public health emergency for an initial period of 14 days from the date the emergency is declared; or
- make a regulation to further extend a declared public health emergency for a period of no more than 7 days.