

Public Health (Coronavirus (2019-nCoV)) Amendment Regulation 2020

Explanatory notes for SL 2020 No. 1 2020

made under the

Public Health Act 2005

General Outline

Short title

Public Health (Coronavirus (2019-nCoV)) Amendment Regulation 2020

Authorising law

Sections 62, 63, 64 and 461 of the *Public Health Act 2005*.

Policy objectives and the reasons for them

Chapter 3 of the *Public Health Act 2005* (Act) deals with notifiable conditions and establishes the notifiable conditions register. The notifiable conditions register is an important tool to manage and contain the spread of communicable diseases within Queensland. The Act requires doctors, persons in charge of hospitals and directors of pathology laboratories to notify the chief executive of Queensland Health when a person may have or has a notifiable condition. The notice must comply with the requirements prescribed in a regulation.

The conditions that are required to be notified in Queensland are listed in Schedule 1 of the *Public Health Regulation 2018*. Section 32 of the Public Health Regulation provides that notification must be given within 48 hours after an examination, pathological examination or receipt of a request, unless the condition is mentioned in schedule 2, in which case the notification must be made immediately.

Section 62 of the Act defines types of notifiable conditions. A ***clinical diagnosis notifiable condition*** is a condition where a diagnosis can be made on the basis of clinical evidence, including clinical history, signs and symptoms. A ***pathological diagnosis notifiable condition*** is where a diagnosis can be made on the basis of a pathological examination of a specimen of human origin. A ***provisional diagnosis notifiable condition*** is a condition where a provisional diagnosis can be made on the basis of clinical evidence, including clinical history, signs and symptoms. A ***pathology request notifiable condition*** is a notifiable condition prescribed under a regulation as a pathology request notifiable condition.

Controlled notifiable conditions are notifiable conditions that have the potential to have substantial impact on public health. Section 63 of the Act defines a controlled notifiable condition as a notifiable condition prescribed under a regulation as a controlled notifiable condition. Section 63 also outlines matters that the Minister must be satisfied about before recommending the making of a regulation that prescribes a controlled notifiable condition.

The Act includes additional powers to respond to controlled notifiable conditions. The Act provides that the chief executive may order the detention of a person who is reasonably suspected of having a controlled notifiable condition for an initial 24-hour period. The Act includes powers for a magistrate to, on application from the chief executive, make orders relating to initial examination of a person, behaviour of a person (such as restricting the person from visiting certain places) and detention of a person with a controlled notifiable condition.

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. The World Health Organisation has confirmed that there is evidence that human to human transmission of the coronavirus has occurred.

As at 27 January 2020, there have been 4474 confirmed cases in China, and several cases in other countries including Hong Kong, the United States, Taiwan, Singapore, Japan, and France. Australia has five reported cases. There have been 107 deaths from the virus reported in China, with no deaths reported in other countries.

The policy intention is to ensure that Queensland Health is able to understand the epidemiology of coronavirus 2019-nCoV and manage any potential outbreaks in Queensland. This will be achieved by:

- requiring doctors and persons in charge of hospitals to immediately notify the chief executive of Queensland Health when an examination of a person by a doctor indicates the person may have or has coronavirus 2019-nCoV;
- requiring directors of pathology laboratories to immediately notify the chief executive of Queensland Health when a laboratory receives a request for a pathological examination of a specimen of human origin for coronavirus 2019-nCoV or a pathological examination indicates that a person may have or has coronavirus 2019-nCoV; and
- prescribing coronavirus 2019-nCoV as a controlled notifiable condition, meaning that the additional powers in the Act are available as part of managing any potential outbreak.

Achievement of policy objectives

The Amendment Regulation amends schedule 1 of the Public Health Regulation to prescribe coronavirus 2019-nCoV as a controlled notifiable condition. It also amends schedule 2 to prescribe coronavirus 2019-nCoV as a condition requiring immediate notification.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the authorising Act.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified.

Alternative ways of achieving policy objectives

The Amendment Regulation is the only effective means of achieving the policy objectives.

Benefits and costs of implementation

Prescribing coronavirus 2019-nCoV as a controlled notifiable condition will be essential in understanding the epidemiology of the virus, the development of public health strategies and identifying and managing any outbreaks within Queensland. It will improve health professionals' understanding of the epidemiology and burden of disease by improving understanding of how the virus emerges, evolves and spreads. It will support the development of public health control strategies.

Doctors, persons in charge of hospitals and directors of pathology laboratories will use established methods to notify the coronavirus 2019-nCoV to the chief executive of Queensland Health. As such, any costs incurred are expected to be minimal.

Consistency with fundamental legislative principles

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

Section 66 of the Act sets out guiding principles for the provisions about notifiable conditions provisions in chapter 3 of the Act. These principles include that the spread of notifiable conditions should be prevented or minimised without unnecessarily infringing the liberty or privacy of individuals. Section 66 provides that a person at risk of contracting, who suspects he or she may have, or who has a notifiable condition has a right: to be protected from unlawful discrimination; to have his or her privacy respected; and to make informed decisions about his or her medical treatment.

Compulsory detention and examination

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. The Amendment Regulation may potentially breach this principle, as it will allow the chief executive and magistrates to make orders about persons who have or are suspected of having coronavirus 2019-nCoV under Chapter 3, parts 4 and 5 of the Act.

These provisions allow for the compulsory detention and examination of persons who have or are suspected of having coronavirus 2019-nCoV. The provisions also provide for behavioural orders to be made by a magistrate for persons who have coronavirus 2019-nCoV, which can provide for a person to: undergo counselling by a stated person or persons; refrain from stated conduct; refrain from visiting stated places; or submit to supervision and monitoring by another person.

Penalties apply for contravening orders, including a maximum of 200 penalty units for contravening a chief executive's order and a maximum of 400 penalty units for contravening a magistrate's order.

It is considered that any potential impact that the Amendment 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 outbreak of coronavirus 2019-nCoV. The powers of the chief executive and magistrates are discretionary and are only expected to be exercised if there are significant risks to public health as a result of the coronavirus 2019-nCoV.

Disclosing confidential information

The Amendment Regulation may also be seen as breaching the principle that legislation must have sufficient regard to individuals' rights and liberties, as it will require clinicians and pathologists to disclose confidential information, such as patient details, to the notifiable conditions register.

Section 77 of the Act provides a general duty of confidentiality for persons who are or were involved in the administration or enforcement of the notifiable conditions register. A maximum penalty of 50 penalty units applies for disclosing confidential information. Sections 78 to 88 of the Act allow for disclosure of confidential information in limited circumstances.

It is considered that any potential impact that the Amendment Regulation makes upon the rights and liberties of individuals in terms of access to confidential information is justified, given the existing protections in the Act and the important protections for public health that the Amendment Regulation will provide.

Consultation

Due to its urgent nature, consultation on the Amendment Regulation was not possible. However, Queensland Health is in regular contact with clinicians including the medical practitioners and pathologists who will be affected by the Amendment Regulation. Queensland Health will ensure an appropriate communications strategy is adopted to inform clinicians and pathologists of the requirements to notify coronavirus 2019-nCoV.

Notes on provisions

Short Title

Clause 1 provides the short title of the regulation is the *Public Health (Coronavirus (2019-nCoV)) Amendment Regulation 2020*.

Regulation amended

Clause 2 provides that this regulation amends the *Public Health Regulation 2018*.

Amendment of sch 1 (Notifiable conditions)

Clause 3 amends schedule 1 of the Public Health Regulation to insert “2019-nCoV” under the entry for coronaviruses. It inserts marks in columns 3, 4, 5 and 6 for the entry. This will mean that coronavirus 2019-nCoV has the same notification requirements as severe acute respiratory syndrome (SARS). It will be a pathological diagnosis notifiable condition, a pathology request notifiable condition, a provisional diagnosis notifiable condition and a controlled notifiable condition.

Amendment of sch 2 (Immediate notifications)

Clause 4 amends schedule 2 of the Public Health Regulation to include “coronavirus (2019-nCoV)” in schedule 2. This will mean that any notification of the virus must be made immediately in accordance with section 32(3)(a) of the Public Health Regulation.