

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

Explanatory notes for SL 2020 No. 7

made under the

*Public Health Act 2005*

## General Outline

### Short title

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

### Authorising law

Sections 323 and 461 of the *Public Health Act 2005*

### 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 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.

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 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 Public Health 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.

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.

## **Achievement of policy objectives**

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) of the Public Health Act 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.

## **Consistency with policy objectives of authorising law**

The 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**

There are no alternative ways of achieving the policy objectives.

## **Benefits and costs of implementation**

Extending the duration of the declared public health emergency by a further seven days is essential to manage any potential spread of 2019-nCoV in Queensland. There are no direct costs associated with making of the Regulation.

## **Consistency with fundamental legislative principles**

The Regulation 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 Regulation may potentially breach fundamental legislative principles, as it will continue 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 Regulation 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.

## Consultation

Due to its urgent nature, consultation on the Regulation 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.

OBPR advised that under *The Queensland Government Guide to Better Regulation*, the Regulation is excluded from further regulatory impact analysis as it falls into category (m), regulatory proposals for matters that require an immediate legislative response to prevent damage to property or injury to persons.

## Notes on provisions

### Short Title

*Clause 1* states that the short title of the Regulation is the *Public Health (Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation 2020*.

### Extension of period of declared public health emergency—Act, s 323

*Clause 2* provides that the declared public health emergency declared by the Minister on 29 January 2020 is extended under section 323(1) of the *Public Health Act 2005*.

Under section 323(3) of the Act, the Regulation expires 14 days after the public health emergency is declared unless it is sooner repealed, or it expires under section 324(3) of the Act. Therefore, the Regulation will expire on 12 February 2020, unless it is further extended under section 323(4), or is repealed or the declared public health emergency ends under section 324 of the Act.