

Public Health (Coronavirus (2019-nCoV)) Amendment 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, Minister for Health and Minister for Ambulance Services provide this human rights certificate with respect to the Public Health (Coronavirus (2019-nCoV)) Amendment Regulation 2020 made under the *Public Health Act 2005* (Act).

In my opinion, the Public Health (Coronavirus (2019-nCoV)) Amendment 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 3 of the 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 Public Health Act requires doctors, persons in charge of hospitals and directors of pathology laboratories to notify the chief executive of Queensland Health when a person has or had a notifiable condition.

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.

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 novel 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.

Section 66 of the Act sets out guiding principles for the provisions about notifiable conditions 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.

The policy intention is to ensure that Queensland Health is able to understand the epidemiology of coronavirus 2019-nCoV and manage any potential outbreaks within 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 has or had 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 has or had coronavirus 2019-nCoV;
- prescribing coronavirus 2019-nCoV as a controlled notifiable condition, meaning that the additional powers in the Act are available as part of managing any outbreak.

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.

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 Amendment Regulation limits this human right, as it will require clinicians and pathologists to disclose confidential information such as patient details to the notifiable conditions register for patients with coronavirus 2019-nCoV. The approved form for notifying a notifiable condition includes details such as the patient's name, address, date of birth, and phone number. It also requires the patient's workplace, school, childcare or other institution to be provided, the country where the condition was acquired and the likely source of exposure.

Right to Liberty and Security of person

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 Amendment Regulation limits this human right, 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 Public Health Act.

The Act allows for the compulsory detention and examination of persons who have or are suspected of having a controlled notifiable condition, which in this case is the coronavirus 2019-nCoV, as prescribed in the Amendment Regulation. The Act also provides for behavioural orders to be made by a magistrate for persons who have a controlled notifiable condition, namely coronavirus 2019-nCoV. These orders can require 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.

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 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.

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 this human right under the Act and Amendment Regulation is for the purpose of protecting the health of the public by managing any potential outbreak of coronavirus 2019-nCoV. It is reasonable, necessary and proportionate to limit the privacy of a person who has or is suspected of having coronavirus 2019-nCoV in order to protect the health of the public. The interference with privacy is not unlawful or arbitrary, as it must be done in compliance with the Public Health Act.

Section 77 of the Public Health 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.

Restricting the right to privacy and reputation of a person who has or is suspected of having coronavirus 2019-nCoV would assist in protecting the public's health as it would ensure that Queensland Health is able to understand the epidemiology of coronavirus 2019-nCoV, which can be used to develop strategies to protect public health. There are no other less restrictive ways to achieve this purpose.

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

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.

The limitation of these human rights under the Act and Amendment Regulation is for the purpose of protecting the health of the public by managing any potential outbreak of coronavirus 2019-nCoV. The process to detain a person who has or is suspected of having coronavirus 2019-nCoV is set out in Chapter 3, parts 4 and 5 of the Act. The detention is not inappropriate, unjust or unpredictable and follows due process of the law. The provisions allow the chief executive of Queensland Health to detain a person for a maximum period of 24 hours. A magistrate can order a maximum detention of 28 days, with another order from a magistrate required to extend the order for 28 days. A detention order from a magistrate can only be extended once. A magistrate's decision is subject to normal legal appeal processes.

The powers of the chief executive and magistrates to order detention are discretionary, would be exercised cautiously and with due care and are subject to strict legislative safeguards.

Under section 113 of the Act, the chief executive may only make an order if the chief executive reasonably suspects a person who has presented to a public sector health service has, or may have, a controlled notifiable condition and reasonably suspects the person's condition, or the person's condition and likely behaviour, constitutes an immediate risk to public health. The chief executive must also be satisfied the person has been counselled, or reasonable attempts have been made to counsel the person, about the condition and its possible effect on the person's health and on public health. Under section 115 of the Act, the chief executive's order may be for a maximum period of 24 hours.

Under section 129 of the Act, a magistrate may only make a detention order if the magistrate is satisfied the person has a controlled notifiable condition and the person's condition or the person's condition and likely behaviour may constitute an immediate risk to public health. The magistrate must also be satisfied the person needs to be detained to avoid the person's condition or condition and likely behaviour constituting a risk to public health. The magistrate must also be satisfied the person has been counselled, or reasonable attempts have been made to counsel the person, about the condition and its possible effect on the person's health and on public

health. Under section 130 of the Act, the magistrate's order may be for a maximum period of 28 days.

Restricting the liberty and freedom of movement of a person who has or is suspected of having coronavirus 2019-nCoV is designed to protect overall public health. There are no other less restrictive or reasonably available ways to achieve this purpose.

The benefits to public health associated with the Amendment Regulation outweighs any impact on the rights to liberty and security of person and freedom of movement. Any potential limitation of a person's right to liberty and security would be undertaken under an established legislative framework and is outweighed by the need to protect public health.

Conclusion

I consider that the Public Health (Coronavirus (2019-nCoV)) Amendment 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
MINISTER FOR HEALTH and MINISTER FOR AMBULANCE SERVICES

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