

Public Health (Further Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation (No. 2) 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 (Further Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation (No. 2) 2020* made under the *Public Health Act 2005*.

In my opinion, the *Public Health (Further Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation (No. 2) 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 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.

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).

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. On 5 and 6 February 2020, the Governor-in-Council made the *Public Health (Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation 2020* and the *Public Health (Further*

Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation 2020, which collectively extended the declared public health emergency until 19 February 2020.

On 7 February 2020, the *Public Health (Declared Public Health Emergencies) Amendment Act 2020* (Amendment Act) received Royal Assent. The Amendment Act amended the Public Health Act to allow a declared public health emergency to be extended by regulation for periods of up to 90 days.

As the situation regarding 2019-nCoV is still developing, with the number of confirmed cases overseas and in Australia is growing and information regarding the epidemiology of 2019-nCoV frequently being updated, it is considered necessary to extend the declared public health emergency for another 90 days.

The *Public Health (Further Extension of Declared Public Health Emergency—Coronavirus (2019-nCoV)) Regulation (No. 2) 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 of the Public Health Act, the Regulation extends the declared public health emergency for a further period of 90 days.

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.

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.

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 focused 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 further 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 (Further 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

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