

Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

Report No. 36, 56th Parliament

Subordinate legislation tabled between 5 February and 20 February 2020

1 Aim of this report

This report summarises the committee's findings following its examination of the subordinate legislation within its portfolio areas tabled between 5 February and 20 February 2020. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles and lawfulness, and human rights implications of the legislation. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA).

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
7	Public Health (Extension of Declared Public Health Emergency-Coronavirus (2019-nCoV)) Regulation 2020	18 February 2020	15 July 2020
8	Public Health (Further Extension of Declared Public Health Emergency-Coronavirus (2019-nCoV)) Regulation 2020	18 February 2020	15 July 2020
11	Proclamation made under the <i>Health Practitioner Regulation National Law and Other Legislation Amendment Act 2019</i>	18 February 2020	15 July 2020
13	Public Health (Further Extension of Declared Public Health Emergency-Coronavirus (2019-nCoV)) Regulation (No. 2) 2020	20 February 2020	4 August 2020

*Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

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

On 29 January 2020, the Minister for Health and Minister for Ambulance Services declared a public health emergency in relation to coronavirus 2019-nCoV (coronavirus), notified in the gazette on 31 January 2020. A declared public health emergency ends seven days after it is declared, unless extended by regulation.¹

The objective of the Public Health (Extension of Declared Public Health Emergency-Coronavirus (2019-nCoV)) Regulation 2020 (the regulation) is to extend (by seven days, ending midnight 12 February

¹ Public Health (Extension of Declared Public Health Emergency-Coronavirus (2019-nCoV)) Regulation 2020, explanatory notes, p 2.

2020) the period of the declared public health emergency to allow continued use of emergency powers to reduce the risk of coronavirus spreading. There is no limit on the number of times the public health emergency can be extended by regulation for further seven-day periods.²

3.1 Potential Issue – Emergency powers and rights and liberties of individual and power to enter premises

The emergency powers described in the regulation raise potential issues concerning fundamental legislative principles relating to the rights and liberties of individual and power to enter premises.³ The effect of declaring (and also of extending) a public health emergency is that a number of powers in the *Public Health Act 2005* (the Act) are vested in an ‘emergency officer’ who is responding to the declared public health emergency. These powers include the power to require a person to:

- not enter or not to remain within a place
- stop using a place for a stated purpose
- go to or stay in a stated place
- answer questions.⁴

An emergency officer also has the power to enter a place to save a human life, prevent or minimise serious adverse effects on human health, or do anything else to relieve suffering or distress. Reasonable force is permitted to be used to enter a place.⁵

The emergency officer must make a reasonable attempt to seek consent, but need not do so if the officer believes on reasonable grounds that immediate entry is required.⁶

Legislation should not, without sufficient justification, unduly restrict ordinary activities. The right to personal liberty is the most elemental and important of all common law rights.⁷

Entry without consent into any place where a person lives requires the highest justification.⁸

An individual would normally expect to be able to enjoy freedom of movement and any removal of this right must be fully justified and should be only done with the authority of the court.⁹

The explanatory notes provide the following advice regarding protections to limit the exercise of the powers of emergency officers:

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;*

² Public Health (Extension of Declared Public Health Emergency-Coronavirus (2019-nCoV)) Regulation 2020, explanatory notes, pp 1-2.

³ *Legislative Standards Act 1992*, section 4(2)(a); section 4(3)(f).

⁴ *Public Health Act 2005*, section 345.

⁵ *Public Health Act 2005*, section 343.

⁶ *Public Health Act 2005*, section 344.

⁷ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 96.

⁸ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 45.

⁹ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 99.

- *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).¹⁰*

The explanatory notes offer the following justification:

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.¹¹

It should be noted that the powers described above are already contained within the Act, and are triggered by the declaration (and the extension) of a public health emergency, in this case due to the outbreak of coronavirus.

Human rights considerations

Section 8 of the *Human Rights Act 2019* (Human Rights Act (HRA)) provides that a statutory provision is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with Section 13 of the HRA.

Section 13 of the HRA 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. Section 13 sets out a range of factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.

In the human rights certificate accompanying the regulation, the minister states his opinion that the amendment regulation is compatible:

- with the human rights protected by the HRA, and
- with the HRA 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.

The regulation raises four human rights issues.

Section 25 HRA – right to privacy and reputation

The declaration (and extension) of a public health emergency has the effect that any emergency officer acting under a declared public health emergency will have a range of powers available under the *Public Health Act 2005* (Public Health Act), including requiring a person to state their name and residential address and to answer questions.¹²

Under section 25 of the HRA, a person has the right not to have their privacy unlawfully or arbitrarily interfered with.

Being compelled to provide a name and address and to answer questions affects or limits a person's human right to privacy.

¹⁰ Explanatory notes, p 3.

¹¹ Explanatory notes, p 4.

¹² *Public Health Act 2005*, section 345.

The minister states:

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.¹³

The protection against interference with privacy conferred by section 25 of the HRA is limited to unlawful or arbitrary interference. As set forth in the certificate:

The notion of arbitrary interference extends to those interferences which may be lawful, but are unreasonable, unnecessary and disproportionate.¹⁴

Committee comment

The emergency powers noted above were examined by the committee as part of its work in relation to the Public Health (Coronavirus (2019-nCoV)) Amendment Regulation 2020 considered in Report No. 35, *Subordinate legislation tabled between 20 August 2019 and 4 February 2020*, tabled 24 March 2020.¹⁵

In Report No. 35, the committee noted that it was satisfied that limitations on human rights relating to emergency powers available under the Public Health Act to manage the spread of coronavirus, now a notifiable condition under the Public Health Act, were reasonable and demonstrably justifiable in accordance with the HRA.¹⁶

The committee notes the intention of the limitation on the right to privacy and reputation is part of a broader strategy to prevent the spread of coronavirus, and that the benefits of the regulation in protecting public health outweigh the impact on the right to privacy and reputation of individual citizens. In light of this, the committee is satisfied that the limitation is reasonable and demonstrably justifiable in accordance with Section 13 of the HRA.

Section 19 HRA – right to freedom of movement

Section 29 HRA – right to liberty and security of person

The declaration (and extension) of the public health emergency allows the chief executive and magistrates, under the Public Health Act, to make orders about persons who have, or are suspected of having, coronavirus, including:

- orders for the compulsory detention and examination of persons who have or are suspected of having a controlled notifiable condition, and
- behavioural orders which can require a person to undergo counselling by a stated person/s, refrain from stated conduct, refrain from visiting stated places, or submit to supervision and monitoring by another person.

¹³ Human rights certificate, p 4.

¹⁴ Human rights certificate, p 4.

¹⁵ Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, *Report No. 35, 56th Parliament, Subordinate legislation tabled between 20 August 2019 and 4 February 2020*.

¹⁶ Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, *Report No. 35, 56th Parliament, Subordinate legislation tabled between 20 August 2019 and 4 February 2020*, pp 3-7.

Under section 29 of the HRA, every person has the right to liberty and security, must not be subject to arbitrary detention, and must not be deprived of liberty except on grounds, and in accordance with procedures, established by law.

The minister states:

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.¹⁷

Committee Comment

The committee is satisfied that the limitation of rights to freedom of movement, and to liberty and security of a person relating to persons who have, or are suspected of having, coronavirus is reasonable and demonstrably justifiable.

Section 24 HRA – right to not be arbitrarily deprived of one's property

Section 24 of the HRA provides that a person has the right not to be arbitrarily deprived of property.

The powers available to emergency officers under the Public Health Act once a declared public health emergency has been declared, have the potential to limit this right, given that such powers include power to:

- demolish specified 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 for destruction at another place, and
- take other action in relation to property including, for example, to take control of a building for the purposes of the declared emergency.¹⁸

The minister states:

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 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 extension of the public health emergency is considered to outweigh any potential impact on the property rights of a person.¹⁹

In relation to the powers set out above, the written approval of the chief executive is required when seeking to demolish structures or property or to destroy or remove animals.

Committee Comment

The committee is satisfied that the limitation of the right to not be arbitrarily deprived of one's property is reasonable and demonstrably justifiable, as the benefit of protecting public health and

¹⁷ Human rights certificate, p 4.

¹⁸ Public Health Act 2005, section 345.

¹⁹ Human rights certificate, p 4.

managing lower health risks outweighs the potential impact on the property rights of an individual citizen in preventing the spread of coronavirus.

The explanatory notes comply with part 4 of the LSA.

A human rights certificate was tabled with the subordinate legislation (as required by section 41 of the HRA). It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

4 Public Health (Further Extension of Declared Public Health Emergency-Coronavirus (2019-nCoV)) Regulation 2020

The objective of the Public Health (Further Extension of Declared Public Health Emergency-Coronavirus (2019-nCoV)) Regulation 2020 (the Regulation) is to extend the period of the declared public health emergency to allow for continued use of emergency powers to reduce the risk of 2019-nCoV spreading. The effect of the regulation extends the declared public health emergency for another seven days until midnight on 19 February 2020.²⁰

Committee comment

The same issues of fundamental legislative principle arise here as are discussed above under SL No. 7 of 2020. For the same reasons set out in relation to SL No. 7 above, committee is satisfied that the limitation of rights to freedom of movement, and to liberty and security of a person relating to persons who have, or are suspected of having, coronavirus by the Public Health (Further Extension of Declared Public Health Emergency-Coronavirus (2019-nCoV)) Regulation 2020 is reasonable and demonstrably justifiable.

The explanatory notes comply with part 4 of the LSA.

5 Proclamation made under the Health Practitioner Regulation National Law and Other Legislation Amendment Act 2019

The objective of the proclamation made under the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2019* (Amendment Act) is to fix the date 1 March 2020 as the commencement date for the provisions of the Amendment Act that are not yet in force. Most provisions of the Amendment Act commenced on assent or by proclamation on 1 July 2019 (2019 SL No. 99).

The remaining provisions make changes to the mandatory reporting requirements for treating practitioners under the Health Practitioner Regulation National Law. The purpose of these changes ensures registered health practitioners have confidence to seek treatment for their health issues, while continuing to provide appropriate reporting obligations for practitioners to protect the public from harm.²¹

The subordinate legislation is compatible with human rights, raises no fundamental legislative principles issues, and the explanatory notes comply with part 4 of the LSA.

6 Public Health (Further Extension of Declared Public Health Emergency-Coronavirus (2019-nCoV)) Regulation (No. 2) 2020

Due to the developing situation regarding 2019-nCoV, the increasing number of confirmed cases overseas and in Australia, and the continual updating of information regarding the epidemiology of

²⁰ Public Health (Further Extension of Declared Public Health Emergency-Coronavirus (2019-nCoV)) Regulation 2020, explanatory notes, p 2.

²¹ Proclamation made under the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2019*, explanatory notes, p 1.

2019-nCoV, it is considered necessary to extend the declared public health emergency for a further 90 days.²²

On 7 February 2020, the Public Health (Declared Public Health Emergencies) Amendment Act 2020 received Royal Assent (Amendment Act), amending the *Public Health Act 2005* to allow declared public health emergencies to be extended by regulation for a period of up to 90 days, rather than seven.²³

The effect of the Public Health (Further Extension of Declared Public Health Emergency-Coronavirus (2019-nCoV)) Regulation (No. 2) 2020 is that the declared public health emergency will be extended until midnight on 19 May 2020.²⁴

Committee comment

The same issues of fundamental legislative principle arise here as are discussed above under SL No. 7 of 2020. For the same reasons set out in relation to SL No. 7 above, committee is satisfied that the limitation of rights to freedom of movement, and to liberty and security of a person relating to persons who have, or are suspected of having, coronavirus in the Public Health (Further Extension of Declared Public Health Emergency-Coronavirus (2019-nCoV)) Regulation (No. 2) 2020 is reasonable and demonstrably justifiable.

The explanatory notes comply with part 4 of the LSA.

7 Recommendation

The committee recommends that the House notes this report.



Aaron Harper MP

Chair

April 2020

Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

Chair Mr Aaron Harper MP, Member for Thuringowa, Chair

Deputy Chair Mr Mark McArdle MP, Member for Caloundra, Deputy Chair

Members

Mr Michael Berkman MP, Member for Maiwar

Mr Martin (Marty) Hunt MP, Member for Nicklin

Mr Barry O'Rourke MP, Member for Rockhampton

Ms Joan Pease MP, Member for Lytton

²² Public Health (Further Extension of Declared Public Health Emergency-Coronavirus (2019-nCoV)) Regulation (No. 2) 2020, explanatory notes, p 2.

²³ Public Health (Further Extension of Declared Public Health Emergency-Coronavirus (2019-nCoV)) Regulation (No. 2) 2020, explanatory notes, p 2.

²⁴ Public Health (Further Extension of Declared Public Health Emergency-Coronavirus (2019-nCoV)) Regulation (No. 2) 2020, explanatory notes, p 2.