

EXPLANATORY MEMORANDUM

PUBLIC HEALTH AMENDMENT (COVID-19 RESPONSE) BILL 2020

The Public Health Amendment (COVID-19 Response) Bill 2020 (the Bill) is a bill to amend the *Public Health Act 2016* (WA) to enable mandatory fees to be imposed on persons arriving in Western Australia who are required to quarantine at a hotel, and to recover reasonable costs and expenses associated with the decontamination (cleaning and disinfecting) of premises including vessels. This Bill contemplates quarantine that occurs under both the *Public Health Act* and the *Emergency Management Act 2005* (WA) for public health purposes.

The Bill also includes essential ancillary amendments to the *Public Health Act* to streamline management and review of periods of quarantine, to enable authorised and emergency officers to issue directions to a group or class of persons and to narrow the circumstances in which compensation may be claimed by the general public to reflect the more conservative positions under the *Emergency Management Act*.

These amendments will enable continued and congruous management of COVID-19 without compromising the safety and security of the Western Australian community.

The Bill is set out as follows:

PART 1 — PRELIMINARY

Clause 1 Short title

The Act will be called the *Public Health Amendment (COVID-19 Response) Act 2020*.

Clause 2 Commencement

This clause provides for the commencement of the Act.

Sections 1 and 2 of the Act will come into operation on the day on which the Act receives the Royal Assent. These sections are the Short Title of the Act and the Commencement clause.

All other sections of the Act will become operational on a day fixed by proclamation. This will allow for regulations necessary to be made under the Act to be made and come into effect in line with the proclamation, and for the progression of other administrative matters.

Clause 3 Act amended

This clause makes clear that the Act amends the *Public Health Act*.

Clause 4 **Section 4 amended** [Terms used]

This clause amends and defines necessary terms for the purposes of the Bill.

Key definitions (as they appear in the Bill) include:

Emergency officer – subclauses (1) and (2) amend the definition of *emergency officer* in the *Public Health Act* to include the Chief Health Officer. Currently only persons authorised by the Chief Health Officer under section 174(2) of the *Public Health Act* may exercise emergency powers. In circumstances where fees are imposed for quarantine, where quarantine is managed, and other broader public health emergency powers are exercised under the *Public Health Act*, it is essential for the Chief Health Officer to have oversight of the exercise of these powers. This is consistent with new provisions in the Bill that allow for directions to be made to a class of persons, as it is necessary for the Chief Health Officer to make direction to wider classes of persons.

quarantine direction – this clause (under subclause (2)), in relation to a person, means a direction given to a person under particular legislative provisions, the effect of which is that the person must remain at premises or an area for quarantine-related purposes or quarantined from other persons. The legislative provisions pertain to directions given under Part 11 Division 2 or Part 12 Division 5 of the *Public Health Act*, or under Part 6 Division 1 of the *Emergency Management Act*.

Authorised officer – subclauses (3) and (4) amend the definition of *authorised officer* in the *Public Health Act* to include the Chief Health Officer. Currently only persons authorised by the Chief Health Officer under section 152(1) of the *Public Health Act* may exercise serious public health incident powers. In circumstances where fees are imposed for quarantine, where quarantine is managed, and broader public health incident powers are exercised under the *Public Health Act*, it is essential for the Chief Health Officer to have oversight of the exercise of these powers. This is consistent with new provisions in the Bill that allow for directions to be made to a class of persons, as it is necessary for the Chief Health Officer to make direction to wider classes of persons.

Clause 5 **Section 9 amended** [Chief Officer may delegate]

This clause inserts a new subsection 9(6) of the *Public Health Act* to enable the Chief Health Officer to delegate his/her functions under new Part 12B to a public service officer employed within the department of the Public Service.

New Part 12B pertains to the recovery of costs relating to the exercise of certain powers regarding the quarantine of persons and the cleaning and disinfecting of premises.

PART 11 — SERIOUS PUBLIC HEALTH INCIDENT POWERS

Clause 6 Section 157 amended [Serious public health incident powers]

Subclause (1) amends subsection 157(1)(a) to enable an authorised officer to direct any person to close any premises as part of their power to exercise a serious public health incident power.

Subclause (2) inserts a new subsection 157(4) to expand the serious public health incident powers of an authorised officer under subsections 157(1)(a), (b), (c), (i), (j) and (k) so that the authorised officer can issue directions to a group or class of persons, and not be limited to 'any person' as is currently the case. This amendment is considered necessary to respond to an emergency such as a human epidemic or pandemic.

Subclause (2) also inserts a new subsection 157(5) to make clear that a direction given under specified sections of the *Public Health Act* to a class of persons does not need to be given directly to a person to whom it applies and does not have to be published in the Gazette but must be published in a manner the Minister for Health considers suitable. A failure to publish does not invalidate the direction.

This clause recognises that it is not always practical for individual directions to be given directly to those affected. Furthermore, directions given during serious public health incidents are, at times, very time-constrained environments and do not lend themselves to immediate publication of these directions.

Clause 7 Section 159 amended [Provisions relating to requirements to remain at premises or remain quarantined]

This clause inserts a new subsection 159(5) to reflect the amendment made to section 157 so that the explanation required under section 159 to be given to a class of persons may be set out in the direction itself. This amendment is considered necessary to respond to an emergency such as a human epidemic or pandemic.

Clause 8 Section 160 amended [Review of requirement to remain at premises or remain quarantined]

This clause removes the requirement under subsections 157(1)(c) or (i) to have a decision to detain a person reviewed every 24 hours by the Chief Health Officer where an infectious disease extreme circumstance declaration is in effect. The requirement may only be removed for persons subject to a quarantine direction in relation to an urgently notifiable infectious disease specified in the IDEC declaration at the time the person became subject to the direction.

The review of the detainment decision (i.e. the decision that a person must quarantine or remain in an area) is not required in these circumstances as the period for which the person is being detained is the incubation period for the particular infectious disease. As such, it would be redundant to require the detainment decision to be reviewed every day. Furthermore, it is operationally impractical to review the detainment of every person so detained in an infectious disease extreme circumstance such as a human epidemic or pandemic.

It should be noted that the requirements set out under subsections 160(1) and (2) of the *Public Health Act* relate only to review of the decision to detain a person. It is not a review of the person's health or welfare needs, which will continue to be provided.

PART 12 — PUBLIC HEALTH EMERGENCIES

Clause 9 Section 180 amended [Powers relating to movement and evacuation]

This clause inserts a new subsection 180(d) so that an emergency officer can direct that any road, access route or area of water in or leading to the emergency area be closed.

This is necessary as it may not be practicable for the emergency officer to themselves meet the requirements of 180(c) to close any road, access route or area of water in or leading to the emergency area. Giving relevant officers the ability to direct others to carry out this function overcomes the current restriction in the provisions that these relevant officers need to carry out this function themselves, which is not always practical.

This amendment reflects same amendment as s67(d) of the *Emergency Management Act*.

Clause 10 Section 184 amended [Powers in relation to quarantine and medical or other procedures]

This clause inserts a new subsection 184(3) to expand the powers in relation to quarantine and medical or other procedures under subsections 184(1) so that the emergency officer can issue directions to a group or class of persons, and not be limited to 'any person' as is currently the case. This amendment is considered necessary to respond to an emergency such as a human epidemic or pandemic.

Clause 11 Section 186 amended [Further provisions relating to requirement to remain in area or remain quarantined]

This clause inserts a new subsection 186(5) to reflect the amendment made to section 184 so that the explanation required under section 186 to be given to a class of persons may be set out in the direction itself. This amendment is considered necessary to respond to an emergency such as a human epidemic or pandemic.

Clause 12 Section 187 amended [Review of requirement to remain at premises or remain quarantined]

This clause removes the requirement for a detained person to have the detainment reviewed every 24 hours by the Chief Health Officer where an infectious disease extreme circumstance declaration is in effect. The requirement may only be removed for persons subject to a quarantine direction in relation to an urgently notifiable infectious disease specified in the IDEC declaration at the time the person became subject to the direction.

The review of the detainment decision (i.e. the decision that a person must quarantine or remain in an area) is not required in these circumstances as the period for which the person is being detained is the incubation period for the particular infectious disease. As such, it would be redundant to require the detainment decision to be reviewed every day. Furthermore, it is operationally impractical to review the detainment of every person so detained in an infectious disease extreme circumstance such as a human epidemic or pandemic.

It should be noted that the requirements set out under subsections 160(1) and (2) of the *Public Health Act* relate only to review of the decision to detain a person. It is not a review of the person's health or welfare needs, which will continue to be provided.

Clause 13 **Section 200 amended** [General provisions regarding powers]

This clause inserts a new subsection 200(2A) to make clear that a direction given under sections 180 or 184(1)(a) of the *Public Health Act* to a class of persons does not need to be given directly to a person to whom it applies and does not have to be published in the Gazette but must be published in a manner the Minister for Health considers suitable. A failure to publish does not invalidate the direction.

This clause recognises that it is not always practical for individual directions to be given directly to those affected. Furthermore, directions given during serious public health incidents are, at times, very time-constrained environments and do not lend themselves to immediate publication of these directions.

PART 12A — IDEC DECLARATIONS

Clause 14 **Parts 12A and 12B inserted**

202A Minister may make IDEC declaration

This clause inserts a new provision whereby the Minister (in writing) may make an infectious disease extreme circumstance declaration. This is a declaration that an infectious disease extreme circumstance exists in the whole or part of the State.

The declaration may be made during a serious public health risk (Part 11 *Public Health Act*) or a public health state of emergency (Part 12 *Public Health Act*). It enlivens particular provisions under those Parts.

To make such a declaration, the Minister (for Health) must have fulfilled the following:

- Have considered the advice of the Chief Health Officer.
- Be satisfied that an urgently notifiable infectious disease is posing a severe and immediate threat, or is causing harm, to human health on a nationally significant scale. *Urgently notifiable infectious diseases* are set out under Part 2 of the Public Health Regulations and may also be made by Order by the Minister for Health.
- Be satisfied that the ability to quarantine persons for longer than 24 hours is likely to be needed to help prevent or control the entry of that disease into the State; or the emergence, establishment or spread of that disease in the State.

202B to 202F

These clauses set out the operational matters relating to the making and application of an infectious disease extreme circumstance declaration.

202B sets out the duration of the IDEC declaration.

202C allows the Minister to extend the duration of the IDEC declaration, and amend the areas set out in the declaration for that period of extension.

202D allows the Minister to revoke the IDEC declaration.

202E requires the Minister to make public and Gazette a declaration made 202A, C or D. A failure to publish does not invalidate the declaration.

202F places a limitation on the ability of a court or tribunal to make an interlocutory order that has the effect of staying the operation of the declaration.

PART 12B — RECOVERY OF COSTS RELATING TO EXERCISE OF POWERS

Division 1 – Fees payable by hotel-quarantined persons

This Division introduces new sections 202G to 202L to enable fees to be imposed on persons arriving in Western Australia from interstate or overseas who are required to adhere to particular directions under Part 11 Division 2 or Part 12 Division 5 of the *Public Health Act*, or under Part 6 Division 1 of the *Emergency Management Act*, to remain in a hotel.

202G to 202L

202G sets out the terms used in this Part. Of note is the definition of *hotel-quarantined person*, which allows for the retrospective application of fees (for hotel-quarantine) to persons who entered the State (international or interstate travellers) on or after 17 July 2020, and for positive cases and close contacts who may be required to remain in hotel accommodation subsequent to entry into the State.

202H enables the Chief Health Officer to charge a fee (as prescribed in regulations) that the hotel-quarantined person is to pay, subject to a fee waiver permitted under this Part. The Chief Health Officer will have the power to charge a fee prescribed by the regulations payable by a hotel-quarantined person or class of persons.

The Chief Health Officer's power under 202H is discretionary, so that he/she may charge or omit to charge fees as is appropriate to the circumstances giving rise to the quarantine-direction. For example, fees may be charged during a wide spread health epidemic which has a serious economic impact on the State due to hotel-quarantine numbers, but may not be charged for a small, localised incidents where hotel-quarantine numbers are negligible.

202H(4) also allows for regulations to be made in regards to the invoicing of hotel-quarantined persons in circumstances where 2 or more of these persons share accommodation. In these circumstances, each adult person is jointly and severally liable for the combined fee.

202I sets out the period for payment of the fee and extension thereof.

202J allows the fee to be waived by the Chief Health Officer for reasons including financial hardship.

202K sets out that unpaid fees are recoverable as a debt due to the State.

202L allows regulations to be made to provide for the payment of a fee by instalments, the recovery of fees and the imposition of interest for late payment.

Division 2 – Recovery of costs and expenses of exercising powers

This Division introduces new section 202M to enable the Chief Health Officer to recover reasonable costs and expenses incurred in the exercise of powers under Parts 11 and 12 of the *Public Health Act*, or under Part 6 Division 1 of the *Emergency Management Act*. Namely, this would be in regard to directions made for decontamination purposes (cleaning and disinfection). The power under section 202M(1) is discretionary, so the Chief Health Officer may seek to recover reasonable costs and expenses as is appropriate to the circumstances giving rise to the decontamination. For example, costs may be sought to be recovered from merchant vessels and cruise ships but not in the case where the decontamination is required

for a vehicle used by the State for emergency purposes. In any case, the Chief Health Officer is responsible to the Minister for Health.

Clause 15 **Section 203 amended** [Compensation]

This clause narrows the circumstances in which compensation may be claimed by the general public under section 203 of the *Public Health Act*.

This is an essential amendment to ensure that the State is not liable automatically to compensation claims by persons affected by the exercise of serious public health incident powers, emergency powers (including quarantine powers) and more general powers under the *Public Health Act*. It also reflects the more conservative positions reflected under section 78 of the *Emergency Management Act*.

Clause 16 **Section 297A inserted** [Offence of giving false or misleading information]

This clause inserts new section 279A to prohibit a person from giving false or misleading information in a material particular to an authorised officer, emergency officer or police officer, or a person assisting them. The penalty will be a maximum fine of \$50,000.

This provision aligns with section 89 of the *Emergency Management Act* and is particularly important as persons being quarantined will be required to provide correct details in order for fees to be charged.