Chief Health Officer Advice to Minister for Health

Advice relating to Declaration of State of Emergency

Introduction and Summary of Advice

1. Advice to the Minister for Health, from the Chief Health Officer, regarding a declaration of a state of emergency under s198 of the Public Health and Wellbeing Act 2008 (Vic) (the Act) in relation to Novel Coronavirus 2019 (2019-nCov).

2. I advise that there is a serious, and potentially catastrophic, risk to public health arising from 2019-nCoV throughout the State of Victoria.

3. Arising from this, I advise the Minister
   (a) to declare a state of emergency under the Act;
   (b) to declare the state of emergency throughout the State of Victoria; and
   (c) to declare the state of emergency immediately and for a period of 4 weeks.

4. I explain my reasons for this advice below.

Background

5. Late 2019 and early 2020 saw a Novel Coronavirus, now referred to as COVID-19, originate from the city of Wuhan in the Hubei province of mainland China.

6. The formal designation of this infectious disease in Victoria is 'Novel Coronavirus 2019 (2019-nCoV)'.


9. The Victorian Government has currently designated 2019-nCoV as a class 2 public health emergency and nominated the Department of Health and Human Services as the control agency.

10. On 27 February 2020, the Commonwealth Government announced that Australia is treating 2019-nCoV as a pandemic and that it had activated an Australian Health Sector Emergency Response Plan.

11. On 11 March 2020, the World Health Organization announced their assessment that 2019-nCoV should be characterized as a pandemic.

12. I am informed that as at 13 March 2020, there have been 38 confirmed cases of 2019-nCoV in Victoria and that as at 6 March 2020 there were 10 confirmed cases of 2019-nCoV in Victoria.
13. Projections indicate there will be approximately 170 confirmed cases of 2019-nCoV in Victoria by 20 March 2020, with approximately 1400 close contacts requiring tracing by that date.

14. On 12 March 2020 I was also informed that the first case of 2019-nCoV with no known or traceable source, had occurred in Victoria. An additional case in South Australia with no international travel history, did report travel to Victoria during the likely period of acquisition. These cases indicate there is very likely to be community transmission in Victoria at this time, with no clear link to imported cases or travel.

15. More significant and targeted action is now required to slow transmission of 2019-nCoV in Victoria.

Relevant Legislation Informing the Advice

16. Pursuant to section 198(1) of the Act, the Minister may declare a state of emergency arising out of any circumstances causing serious risk to public health.

17. Serious risk to public health is defined in section 3 of the Act to mean a material risk that substantial injury or prejudice to the health of human beings has or may occur having regard to:

(a) the number of persons likely to be affected;
(b) the location, immediacy and seriousness of the threat to the health of persons;
(c) the nature, scale and effects of the harm, illness or injury that may develop; and
(d) the availability and effectiveness of any precaution, safeguard, treatment or other measure to eliminate or reduce the risk to the health of human beings.

18. This legislative definition has framed my advice to the Minister for Health.

Approach to advice

19. In formulating my advice, I am guided by the objectives of the Act (see section 4) and I have taken an evidence based approach (section 5 of the Act) in providing advice whether there is a material risk that substantial injury or prejudice to health is or will be caused by 2019-nCoV without action, taking into account the factors outlined in the definition of serious risk to public health.

20. In formulating advice, it is based upon the best available evidence, however I note that the lack of full scientific certainty should not be used as a reason for postponing measures to prevent or control the public health risk (section 6 of the Act). The Act also provides that the prevention of disease and illness is preferable to remedial measures (section 7 of the Act)
21. In formulating my advice, I understand that decisions made under the Act should be proportionate to the public health risk in question (see section 9 of the Act). In addition, the availability and effectiveness of the measures that are proposed to prevent, manage and reduce the risk of infection of 2019-nCoV are highly relevant.

22. The primary focus of my advice is on health impacts of 2019-nCoV to the Victorian community.

23. My advice has considered the current evidence on the projection of numbers of people impacted, seriousness of the threat, how widespread the threat is throughout the Victorian community, whether action is required now, the likely outcome to human health from not taking action, how many people may be impacted from not taking action, the health and social consequences from not taking action – including to certain categories of the population including our most vulnerable, and what available effective measures may be put in place to effectively manage the health threats identified.

24. My advice has considered the steps necessary to respond to the serious risk to public health arising from 2019-nCoV, and the powers available under the Act to take those steps. In particular, I have considered the emergency powers in section 200 of the Act, which may be used in conjunction with the public health risk powers in section 190 of the Act.

25. I note that the powers under s 200:
(a) are only available if a state of emergency has been declared;
(b) allow a broader range of actions to be taken than under s 190, particularly in relation to imposing restrictions on the movement of groups of people; and
(c) may be exercised in relation to the whole of the “emergency area” as declared, not only particular “premises”.

**Number of persons likely to be affected**

26. 2019-nCoV is a novel coronavirus that has not been seen in humans previously.

27. 2019-nCoV may be transmitted in people in an early stage of illness where symptoms may be negligible or be unnoticed and one infected person is estimated to potentially infect 2-4 other people. This increases the potential number of persons likely to be affected.

28. Potentially, the entire Victorian population (~6.6 million) is vulnerable to infection 2019-nCoV.
29. Current modelling suggests that at the peak of a moderate severity epidemic over 120,000 infections will be occurring in the Victorian community daily, with approximately 13,000 people seeking healthcare daily, 580 requiring hospitalisation daily, and of those, 145 requiring Intensive Care Unit admission daily.

30. At the peak of a moderate severity epidemic, modelling estimates that 5,112 people will be admitted to hospital and, of these, 1,273 people will be admitted to Victoria’s intensive Care Units for 2019-nCoV cases.


32. Event attendances increase the number of people in close proximity and therefore increase the number of people likely to be affected.

**Location, immediacy and seriousness of the threat to the health of persons**

33. There is strong evidence of sustained human to human transmission of 2019-nCoV in many countries, causing or expected to cause significant impacts on the healthcare systems in these countries. It is expected the same will occur throughout Victoria.

34. Transmission rates are significant enough to have prompted significant travel restrictions, although there remains a material, ongoing risk of imported cases into Australia.

35. The threat to Victorians and the healthcare system is immediate and serious, with the threat existing to the entire population regardless of location.

**Nature, scale and effects of the harm, illness or injury that may develop**

36. Disease severity of 2019-nCoV ranges from mild respiratory symptoms through to severe illness and death.

37. Elderly people and those with co-existing medical conditions are much more likely to become severely unwell. 94% of deaths have occurred in people older than 50 years old.

38. Vulnerable members of society are expected to be disproportionately impacted.
39. The current best available international evidence and modelling indicates that throughout Victoria, in a severe scenario, if the mitigating steps are not taken, in the next four months 54,939 people will require hospitalisation across the epidemic, with 12,552 in hospital at peak and 1,556 daily hospital admissions at the peak. This severe unmitigated scenario may result in 6808 people in Victoria dying from 2019-nCoV. This figure does not take account of deaths that would occur because the health system is overwhelmed and that those requiring care for other conditions will be unable to receive it.

40. Estimates from published literature and epidemiological sources indicate the case fatality rate for coronavirus disease varies and can be dependent on how high case ascertainment is. For example, in South Korea, which has a high number of case ascertainment and effective social distancing measures in place, the case fatality rate is currently estimated as 0.8% which is 8 times higher than seasonal influenza. Conversely in Italy, where there has been less initial social distancing measures, the case fatality rate is currently estimated as 6.6%, in part likely due to health services being overwhelmed. The World Health Organisation currently estimate the case mortality rate as between 2.2% and 4.3%.

41. The morbidity and mortality projections for Victoria are a serious threat to the population, create serious risks particularly for the elderly, chronically ill and vulnerable, and a significant burden will be placed on the Victorian health system to respond at a scale that has little precedent.

Availability and effectiveness of any precaution, safeguard, treatment or other measure to eliminate or reduce the risk to the health of human beings

42. There is currently no vaccination and no widely used pharmaceutical countermeasures are available for 2019-nCoV.

43. Early evidence suggests measures such as quarantine, contact tracing, infection prevention and control interventions will assist to control spread, minimise morbidity and mortality, delay and reduce the epidemic peak and preserve health resources.

44. Isolation of confirmed 2019-nCoV cases, and quarantining of close contacts, is a particularly critical public health measure to reduce transmission of the infection and potential morbidity and mortality in the Victorian community.

45. The required measures that are necessary also include social distancing, targeted closures of events/premises/business, heightened enforcement capability and timely sharing of all available information.
46. The power to regulate public gatherings is also necessary to support compliance with the new Commonwealth guideline that non-essential gatherings of more than 500 people not proceed throughout Australia from Monday 16 March 2020. A measure of this nature is important as it is aimed at slowing the transmission of 2019-nCoV.

47. Strategic management of available clinical and health resources, including facilities, workforce, medicines and other critical consumables is necessary.

48. The emergency powers under the Act are required in order to best achieve these objectives.

Advice

49. I consider that having regard to the above factors, there is a serious and potentially catastrophic risk to public health on the basis that there is a material risk that substantial injury or prejudice to the health of human beings has or may occur in Victoria related to 2019-nCoV.

50. I consider that the emergency powers (including in combination with the other powers) are necessary to manage the threat effectively and I consider the response will be much less effective in the absence of the emergency powers under section 200 of the Act.

51. I consider that it has now become necessary to exercise the emergency powers under section 200 of the Act and that it is necessary for me to grant authorisations under section 199 of the Act to exercise those emergency powers, in order to eliminate or reduce a serious risk to public health arising from 2019-nCoV.

52. Arising from this, I advise the Minister to declare a state of emergency under the Act for a period of four weeks.

53. I advise the Minister to declare the state of emergency throughout the State of Victoria given the nature of 2019-nCoV, including its transmission without apparent symptoms, such that specific measures will be required at short notice in targeted areas within Victoria and broader consistent measures across the entire State.

54. I advise the Minister to declare the state of emergency immediately in order to increase the prospects of slowing transmission of 2019-nCoV in Victoria and minimising as much as possible the serious risk to public health arising from 2019-nCoV.

Dated this 15th day of March 2020.

[Signature]
Public Health and Wellbeing Act 2008

Request for assistance from Chief Health Officer to Chief Commissioner of Police

Interpretation:

**Act** means the *Public Health and Wellbeing Act 2008*.

**Chief Health Officer** means the person appointed as Chief Health Officer under section 20 of the Act.

**emergency powers** means the powers set out in section 200 of the Act.

**public health risk powers** means the powers set out in section 190 of the Act.

**serious risk to public health** has the meaning set out in section 3 of the Act.

**state of emergency** means a state of emergency declared under section 198 of the Act.

A state of emergency was declared in Victoria on 16 March 2020.

Pursuant to section 202(2) of the Act, I, **Adjunct Clinical Professor Brett Sutton, Chief Health Officer of Department of Health and Human Services**, request of the Chief Commissioner of Police that police officers provide assistance to authorised officers exercising public health risk powers and emergency powers for the purpose of eliminating or reducing the serious risk to public health during the state of emergency, including all reasonable steps to enforce compliance with directions made under section 200 of the Act. This request includes, but is not limited to, any actions that police officers need to take to monitor compliance with the directions, investigate and respond to alleged breaches of the directions and, where it is determined that persons have failed to comply with the directions without lawful excuse, take any necessary enforcement action, by taking steps to compel compliance and or by issuing of fines or charging people for breaching s203 of the Act or any other steps lawfully available to them.

Signed at **Melbourne** in the **State of Victoria**

29th day of **March** 2020

Time:

Adjunct Clinical Professor Brett Sutton
Chief Health Officer
Department of Health and Human Services