Chief Health Officer Advice to Minister for Health

Advice relating to Declaration of Extension to State of Emergency

Introduction and Summary of Advice

1. Set out below is advice to the Minister for Health, from the Chief Health Officer, regarding a declaration of extension to the state of emergency under section 198 of the *Public Health and Wellbeing Act 2008* (Vic) (**the Act**) declared on 16 March 2020, and extended on 12 April 2020, 11 May 2020, 31 May 2020, 21 June 2020, 19 July 2020 and 16 August 2020 in relation to Novel Coronavirus 2019 (COVID-19 or coronavirus).
2. I advise that there continues to be a serious, and potentially catastrophic, risk to public health arising from coronavirus throughout the State of Victoria.
3. Arising from this, I advise the Minister to:
   (a) declare an extension to the state of emergency declared on 16 March 2020, and extended on 12 April 2020, 11 May 2020, 31 May 2020, 21 June 2020, 19 July 2020 and 16 August 2020 under the Act; and
   (b) declare to extend the state of emergency from 11:59:00pm 13 September 2020 for a further period until 11:59:00pm 11 October 2020.
4. I explain my reasons for this advice below.

Background

5. Late 2019 and early 2020 saw a Novel Coronavirus, causing an illness 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)', generally known internationally as SARS-CoV-2.
7. On 21 January 2020, Australia declared the emerging coronavirus pandemic as a communicable disease incident of national significance.
8. On 30 January 2020, the World Health Organisation declared coronavirus a public health emergency of international concern.
9. On 27 February 2020, the Commonwealth Government announced that Australia is treating coronavirus as a pandemic and that it had activated an Australian Health Sector Emergency Response Plan.
10. On 11 March 2020, the World Health Organization announced their assessment that coronavirus should be characterised as a pandemic.

11. On 16 March 2020, the Minister declared a state of emergency under section 198 of the Act throughout Victoria for a period of 4 weeks in response to the serious risk to public health presented by coronavirus. The state of emergency was then extended by the Minister on the following dates:
    a. 12 April 2020, the Minister extended the state of emergency until 11 May 2020;
    b. 11 May 2020, the Minister extended the state of emergency until 31 May 2020;
    c. 31 May 2020, the Minister extended the state of emergency until 21 June 2020;
    d. 21 June 2020, the Minister extended the state of emergency until 19 July 2020;
    e. 19 July 2020, the Minister extended the state of emergency until 16 August 2020; and
    f. 16 August 2020, the Minister extended the state of emergency until 13 September 2020.
12. I am informed that as at 7 September 2020, there have been 26,363 confirmed cases of coronavirus in Australia and that as at 8 September 2020, there have been 19,615 confirmed cases of coronavirus in Victoria.
13. On 8 September 2020, I was also informed that of these cases in Victoria:
    a. 985 (5%) were acquired overseas;
    b. 14,246 (72.6%) were acquired locally, through contact with a confirmed case;
    c. 4,344 (22.1%) were acquired in Victoria with an unknown source; and
    d. 40 (0.2%) cases are still under investigation.
14. The cases acquired locally indicate there is community transmission in Victoria with no clear link to imported cases or travel.
15. As at 8 September 2020, there were 3,077 close contacts of confirmed cases being monitored.
16. As at 6 September 2020, there were 227 people in quarantine including returned travellers, emergency relief accommodation and frontline worker quarantine accommodation.
17. As a result of the evidence of coronavirus transmission in the community, a number of emergency powers in section 200 of the Act have been exercised to address the serious public health risk coronavirus poses to the community, and their use has been adjusted to address this risk based on the ongoing collection of information about the spread of coronavirus as the state of emergency has progressed.

18. There are strong indications that these measures have reduced the transmission of coronavirus in Victoria. For example, the number of active cases peaked at 6,791 in early August 2020, and with the extension of the state of emergency on 16 August 2020 and the further use of emergency powers, the number of active cases steadily declined to current levels as stronger measures limiting the movement of people have taken effect within an expected timeframe.
19. This is an indication that the continued application of these measures is critical to managing the ongoing risk and to avoid the risk of an increase in transmission.
20. It also continues to be necessary to assess the effectiveness of the core measures in place. This will ensure that critical measures are not prematurely removed and will facilitate the further exercise of emergency powers pursuant to section 200 of the Act as necessary.
21. Continued significant broad and targeted action is required to slow and strongly suppress transmission of coronavirus in Victoria.

Relevant Legislation Informing the Advice

22. Section 198(7)(c) of the Act provided that a declaration of a state of emergency could be extended by another declaration for further periods not exceeding 4 weeks, but the total period that the declaration continues in force cannot exceed 6 months, unless the declaration relates to the coronavirus pandemic, in which case the total period that the declaration continues in force cannot exceed 12 months. The total period started when the first declaration was made on 16 March 2020.
23. Consequently, my advice to the Minister to extend the state of emergency until at least 11 October 2020 falls within the new 12-month of total period in relation to the coronavirus pandemic.
24. Pursuant to section 198(1) of the Act, the Minister may declare an extension to a state of emergency arising out of any circumstances that continue to present a **serious risk to public health**.
25. **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.

26. Section 3(4) of the Act provides that without limiting the definition of serious risk to public health, coronavirus may still pose a material risk of substantial injury or prejudice to the health of human beings even when the rate of community transmission of coronavirus in Victoria is low or there have been no notified cases of coronavirus for a period of time.

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

Approach to advice

28. 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 coronavirus without continued action, taking into account the factors outlined in the definition of serious risk to public health.

29. My advice is based upon the best available evidence. I note, however, 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).

30. 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 coronavirus are highly relevant.

31. The primary focus of my advice is on the health impacts of coronavirus to the Victorian community.

32. My advice has considered the current evidence on the modelling of numbers of people impacted; seriousness of the threat; how widespread the threat is throughout the Victorian community; the period for which continued action is required; the likely outcome to human health from not taking continued action as enabled by the state of emergency; how many people may be impacted from not taking such continued action; the health and social consequences from not taking such continued action – including to certain categories of the population including our most vulnerable; and what available measures may be put in place to effectively manage the health threats identified.

33. The evidence I have used to develop my advice includes case data and analysis; location and outbreak data and analysis; the results from available modelling; emerging evidence from medical literature; lessons from transmission patterns and outbreaks; and public health interventions in response to these in Victoria, Australia and internationally. My advice considered (among several inputs) the results of recent modelling commissioned from the University of Melbourne. The model used was specifically designed to reflect Victorian settings.

34. The model ran 1,000 simulations and determined the likelihood of re-entering restrictions before Christmas if current restrictions were eased at different 14-day average case numbers. The modelling found that there was a 62% chance that further restrictions would be required if current restrictions were eased at a 14-day average of 25 cases per day. As of 6 September 2020, the average number of cases over the previous 14 days was 78.6 cases. The University of Melbourne projects that Victoria will have 63 cases on average over the previous 14 days at 17 September 2020.

35. With the benefit of these multiple inputs, my advice has considered the steps necessary to continue to respond to the serious risk to public health arising from coronavirus, and the powers available under the Act to take those steps.

36. 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.

37. I note that the powers under section 200 of the Act:

    (a) are only available if a state of emergency has been declared;

    (b) allow a broader range of actions to be taken than under section 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

38. 2019-nCoV is a novel coronavirus that has not been seen in humans previously.

39. Coronavirus may be transmitted in people just prior to or in the early stages of illness where symptoms may be negligible or unnoticed. Without mitigations in place, such as limitations on gathering sizes, one infected person is estimated to potentially infect, on average, 2-4 other people (noting that an infected person could potentially infect many more than that).

40. It is also possible that up to 40% of transmission may occur prior to symptom onset. Infectiousness appears to be highest at the time of symptom onset (rather than when symptoms have been apparent for hours or days). Isolating cases only at the point of symptom onset may, therefore, be inadequate to sufficiently reduce transmission to low or controllable levels.
41. Coronavirus is also highly transmissible, and although close contact is more likely to result in transmission, transmission may be possible from short periods of contact, or through contact with surfaces contaminated with the virus that causes coronavirus. This increases the potential number of persons likely to be affected.
42. The entire Victorian population (~6.6 million) is potentially vulnerable to infection with coronavirus. The presence of active cases in Victoria means there is an ongoing public health risk presented by the mobility of Victorians, despite areas demonstrating a decline in active coronavirus cases. This means it is critical that some level of restrictions remain in place to protect every part of Victoria from the infection risk arising from active cases and travel such as, for example, within regional areas with low to no notified cases, or between metropolitan areas with higher cases than regional areas.
43. While there are fewer cases of coronavirus in regional Victoria, the threat continues to exist throughout Victoria because the exact location of infectious individuals in Victoria is not known. In addition, there is sufficient movement – including between metropolitan Melbourne and regional Victoria for permitted reasons – throughout the state that the risk is potentially present in all parts of Victoria.
44. During the period 25 August 2020 to 7 September 2020, for example, there were 10 cases with an unknown source detected in regional Victoria, and 159 in metropolitan Melbourne. These cases suggest there is an ongoing threat of undetected transmission in the community, and that limiting the movement of populations within and between metropolitan and regional areas to the extent feasible continues to be necessary to reduce the risk of coronavirus spreading.
45. This risk is present in both metropolitan Melbourne and regional Victoria and is dynamic due to the movement of people between these areas in Victoria. In metropolitan Melbourne, the presence of coronavirus in higher-risk work settings, and the transmission of coronavirus through community interactions as well as household settings demonstrates the need to impose restrictions to limit the spread of coronavirus in these areas and impose them broadly given the way the virus moved across geographic areas and through the community.

46. For example, the introduction of more localised restrictions based on postcodes within metropolitan Melbourne were introduced on 2 July 2020. These restrictions sought to limit the movement of people from areas of higher case numbers to areas of lower case numbers. However, due to the seeding (introduction of infectious cases) of coronavirus in lower case number areas, restrictions were introduced across metropolitan Melbourne on 7 July 2020.
47. Seeding also occurred between metropolitan Melbourne and regional Victoria. For example, prior to introducing stronger restrictions in metropolitan Melbourne in July 2020, the level of coronavirus transmission in regional Victoria declined significantly. However, a seeding of coronavirus in regional Victoria from metropolitan Melbourne and Geelong and surrounding areas occurred, leading to a growth in case numbers, outbreaks of increasing size and increased numbers of cases with an unknown source in regional Victoria. To address this risk, Victoria's coronavirus restrictions contain strong measures to limit movement between these areas.
48. Finally, in regional Victoria there are diverse locations with varying levels of population density and vulnerabilities in industry that result in a dynamic set of risk factors for coronavirus transmission. As noted above, in regional Victoria areas with more density and higher-risk work settings, such as major regional cities, seeding of coronavirus cases occurred. Because of the connections between rural and regional Victoria, including patterns of employment; the distribution of key goods and services providers; and other inter-community connections, restrictions were applied in regional Victoria to limit the spread of coronavirus.
49. The data on the epidemiology of coronavirus in Victoria has demonstrated that enhanced action was required to mitigate public health risk and to effectively suppress the virus. Every Victorian community is susceptible to coronavirus transmission. This is because the frequent movement between metropolitan and regional areas, whether it is for employment, visiting friends and family, or tourism, can result in the spread of coronavirus to areas where there was previously little or no virus.
50. However, in considering that the extension of the declaration to the whole of Victoria is justified, I note that the level of restrictions has always been set to reflect the risk posed to different parts of Victoria.

The location, immediacy and seriousness of the threat to the public health of Victorians

51. There is strong evidence that the sustained transmission of coronavirus in many countries causes significant impacts on healthcare systems. However, the impacts of sustained coronavirus transmission on the Victorian healthcare system can be mitigated through continued measures designed to restrict the level of transmission.

52. As I have discussed at paragraphs 12-15, community transmission of coronavirus is occurring in Victoria and there are a significant number of outbreaks occurring across Victoria**.**

53. Of the 19,615 confirmed coronavirus cases in Victoria as of 8 September, there are:
    a. 1,178 confirmed active cases within regional Victoria, which includes 0 new cases on this day;
    b. 18,251 confirmed active cases within metropolitan Melbourne, which includes 55 new cases on this day; and
    c. 224 active outbreaks and complex cases in Victoria, including 76 in residential aged care.

54. This is an indication that the continued application of these measures is required to manage the ongoing risk and to mitigate the risk of an increase in transmission. In addition to this, the transmission rates internationally continue to be significant enough to maintain international travel restrictions and quarantine requirements for international arrivals into Victoria.

55. The threat to Victorians and the healthcare system is serious and ongoing, with the threat existing to the entire population regardless of location. In addition, the capacity of regional Victoria's healthcare system is more limited as compared to metropolitan areas. If further outbreaks were to occur in regional Victoria, the impact on the healthcare system would be more significant compared to the impact in metropolitan areas. While some groups in the Victorian population are at greater risk of severe illness or death from coronavirus, all Victorians are potentially vulnerable to infection.

56. In addition, there are active clusters of cases in other high-risk settings across Victoria, such as aged care facilities and healthcare settings. Previous outbreaks in other high-risk settings, such as meat processing facilities, cold storage facilities, childcare and schools have reduced significantly but not completely as a result of the control measures put in place in Victoria.

57. Initial national and Victorian modelling used as a foundation for Victoria's suppression strategy suggested that in the absence of stringent control measures, over 10,000 people would die from coronavirus in Victoria. This is more than ten-fold greater than average estimated annual deaths from seasonal influenza, for example.
58. Once control measures were introduced in Victoria, supplementary modelling was completed to determine the appropriate level of restrictions required to reduce the risk of a rebound in case numbers. Avoiding the risk of a rebound in case numbers is necessary in order to avoid another lockdown and cases overwhelming the hospital system, or a higher fatality rate, given the Victorian population's vulnerability to coronavirus infection.

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

59. Disease severity of coronavirus ranges from mild respiratory symptoms through to severe illness and death. Vulnerable members of society have been shown to be disproportionately impacted and are at ongoing risk. Elderly people and those with co-existing medical conditions are much more likely to become severely unwell.
60. However, while some demographic profiles are at greater risk of severe illness and death, all Victorians are potentially vulnerable to infection, and it is not possible to determine with confidence who will have mild self-limiting illness and who will have a poor outcome. As we have seen in Victoria, young people can also succumb to severe illness and the severity of illness cannot always be predicted by age or comorbidities alone.
61. In addition, the long-term sequelae of illness for those who have been infected but recovered is also not yet fully understood. It is possible that a person may continue to feel the impacts of coronavirus long after they are deemed to have recovered. There is increasing evidence of significant multi-organ involvement from coronavirus infection with uncertainty as to how long such sequelae might persist.
62. Estimates from published literature and epidemiological sources indicate the case fatality rate for coronavirus disease varies and can be dependent on the degree of case ascertainment.
63. For example, in Iceland, where widespread community testing, strict quarantine procedures and social distancing measures were quickly implemented, the case fatality rate is currently estimated as 0.6%.

64. Conversely in Italy, where there were fewer initial social distancing measures and health services were overwhelmed early in the epidemic, the case fatality rate is currently estimated as 14.5%. Globally, the current case fatality rate is estimated to be 2.3% (case fatality data from the University of Oxford Centre for Evidence Based Medicine).
65. Current estimates of the adjusted case fatality rate in Victoria are between 0.76% and 1.05% for individuals under 80 and 31% to 36% for individuals aged over 80.
66. The morbidity and mortality projections in the event of control not being maintained 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.
67. Since March 2020, coronavirus has been attributed to 683 deaths in the community and projections indicate that without an extension of the state of emergency, cases would continue to increase, which would then lead to more deaths.
68. As case numbers continued to climb over July and August 2020, the number of deaths in Victoria grew significantly. Although the restrictions have been successful in preventing the significant numbers of deaths predicted by the earlier modelling in the absence of intervention, there is a clear link between growing numbers of cases and the resulting number of deaths.
69. While the Victorian health system has more facilities to respond to coronavirus cases, hospital care is only a partial mitigation against the risk of serious infection and death from coronavirus infection. There remains no definitive therapeutic intervention, no vaccine, and respiratory support for severely ill people infected with coronavirus is not completely effective in preventing death from coronavirus.

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

70. There are currently no vaccines or widely used pharmaceutical countermeasures available for coronavirus. Some therapeutics, such as dexamethasone, may reduce mortality by between a fifth and a third in those with more severe illness.
71. Evidence suggests that measures such as physical distancing, self-isolation, quarantine and hygiene measures can assist to control the spread of coronavirus, but restrictions on the wider population are necessary to effectively control a pandemic where there are higher cases numbers and levels of transmission.

72. Significant amounts of testing (over 2,412,092 tests since identification of this pandemic) have identified cases in the community that would have otherwise been undetected. As at 8 September 2020, there are 711 outbreaks that have been identified.

73. Given the above, it is critical to continue to have in place measures that require physical distancing; the isolation of individuals who are at risk of spreading coronavirus; the closures of events and certain facilities and businesses; restrictions on gatherings; and heightened enforcement capability to effectively address the public health risk coronavirus poses to the community, supplemented by other operational responses (e.g. contract tracing and testing).

74. These measures have reduced transmission of coronavirus in Victoria. Following the introduction of stronger restrictions in Victoria in August 2020, cases dropped from over 700 cases per day to as low as under 50 cases per day.

75. The introduction of broad restrictions on social activity, such as Stay at Home Directions and Restricted Activity Directions, and targeted restrictions, such as the Hospital Visitor Directions, Care Facilities Directions, and Diagnosed Persons and Close Contacts Directions, have prevented or minimised the risk of transmission from people who have, or are at higher risk of having, coronavirus.

76. Given the extent of the recent outbreaks in aged care facilities and other supported residential and healthcare settings, these targeted measures are critical to preventing and minimising the risk of transmission of coronavirus in those settings, and from those settings into the broader community. The broader restrictions to restrict social activity are necessary to ensure these outbreaks do not threaten the public health of the broader community, as well as minimising the risks posed by unknown sources of community transmission.

77. The exercise of emergency powers to regulate the size of public and private gatherings, the interaction of people and the undertaking of business and activities continues to be necessary to manage the risk to public health posed by coronavirus.

The proportionate response to address the serious public health risk

78. In addition to the issues framed above in accordance with the definition of the serious risk to public health as defined in section 3 of the Act, I note the measures to stop the spread of coronavirus will have a significant impact on the community.

79. While my primary focus is whether these measures are proportionate to the public health risk, I have referenced these impacts as part of my consideration on whether the extension of the state of emergency is a proportionate response to the serious public health risk coronavirus poses to the community.
80. To the extent possible, these impacts have been considered in formulating the restrictions that respond to coronavirus transmission. With appropriate consideration to the level of coronavirus transmission risk in regional Victoria, restrictions have been implemented to ensure Victorians in these areas can undertake more social and economic activity, while carefully balancing the coronavirus transmission risk resulting from the essential movement of people within regional Victoria and from metropolitan Melbourne.
81. I acknowledge the measures taken to slow the spread of coronavirus will have a significant impact on the wellbeing of Victorians, especially those who are living or parenting alone, as well as those who have mental health conditions or other complex needs.
82. While there has been evidence of the strong resilience of the Victorian community during the state of emergency (for example, a Coroner's Court of Victoria report on 27 August 2020 found that the number of suicide fatalities remained consistent at 466 this year compared to 468 from last year), there is significant evidence of the community's distress due to the significant limits on social movement and interaction (such as a 40% increase in calls to Lifeline when restrictions were strengthened in August 2020).
83. The measures will also have significant economic impacts, especially for those businesses and industries that are required to close or operate under heavy restrictions. The broader impacts on Victorian workers are also likely to be significant and be felt well beyond the period of restrictions.
84. I have also noted, however, that countries that elected not to implement significant restrictions on activities and business have still seen a negative impact on their economy that may be related to the impacts of coronavirus. For example, although Sweden took a much less restrictive approach to restrictions, its economy shrank by 8.6 per cent in the April-to-June quarter.
85. I have also noted the impact lifting restrictions early only to have to re-introduce them could have on businesses in Victoria. The impact of the second lockdown on Victoria's and Australia's economy has been significant. Re-introducing restrictions again would have even more significant impacts.

86. These considerations have been factored into appropriately ensuring that Victoria's coronavirus restrictions properly balance the public health risk and the level of safe social and economic activity in the community, especially in relation to areas with less coronavirus transmission, such as regional Victoria. This will continue to be the case under the extension of the state of emergency.

87. However, in formulating my advice on extending the state of emergency and whether it is a proportionate response to coronavirus, I must focus on the serious public health risk coronavirus poses to the Victorian community, which is primarily evidenced by coronavirus resulting in 683 deaths since March 2020, and that the modelling suggests coronavirus would continue to spread and have potentially exponential increase in transmission, without the extension of the state of emergency.

Advice

88. I consider that having regard to the above factors, there continues to be 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 coronavirus.

89. I consider that this risk continues to exist throughout the State of Victoria, as there continues to be evidence of identified cases arising across the State and its ease of transmission between different parts of the State.

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

91. I consider that it continues to be necessary for the emergency powers in section 200 of the Act to be available to be exercised and that it continues to be necessary for me to exercise these powers or to continue to grant new authorisations under section 199 of the Act to exercise those emergency powers, in order to eliminate or reduce the serious risk to public health arising from coronavirus.

92. Arising from this, I advise the Minister to extend the state of emergency declared on 16 March 2020 under the Act, for a further period from 11:59:00pm on 13 September 2020 until 11:59:00pm on 11 October 2020.

93. I advise the Minister to extend the state of emergency throughout the State of Victoria given the nature of coronavirus, including its transmission without apparent symptoms and that new cases of community transmission continue to be identified, such that specific measures continue to be required in areas within Victoria and broader consistent measures across the entire State.

94. I advise the Minister to declare the extension to the state of emergency from 11:59:00pm on 13 September 2020 in order to increase the prospects of further slowing transmission of coronavirus in Victoria and continue to minimise as much as possible the serious risk to public health arising from coronavirus.

Dated this eleventh day of September 2020.

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