Report to Parliament on declaration of State of Disaster – Coronavirus (COVID-19) pandemic – Report 1

Report under section 23(7) of the Emergency Management Act 1986
Contents

Contents

Contents ...................................................................................................................................................... 2
Purpose of the report .................................................................................................................................. 3
Summary of the State of Disaster ............................................................................................................... 4
Timeline of key decisions taken in support of declaration of a State of Disaster ....................................... 6
Summary of powers exercised under the Emergency Management Act 1986 ........................................ 8
Purpose of the report

This report is provided pursuant to section 23(7) of the *Emergency Management Act 1986* (the Emergency Management Act) on the State of Disaster declared on 2 August 2020 and the powers exercised between 2 August 2020 and 14 August 2020.
Summary of the State of Disaster

Background

As at 2 August 2020, Victoria had experienced 11,557 confirmed positive cases of Coronavirus (COVID-19) and 123 Victorians had tragically lost their lives. Among these cases were 1,962 cases of COVID-19 that had been acquired from an unknown source and were suspected to have been transmitted in the community. While a State of Emergency under section 198 of the Public Health and Wellbeing Act 2008 (PHW Act) had been in effect since 16 March 2020, additional measures were required to limit the spread of COVID-19.

State of Disaster declaration

On 2 August 2020, the Minister for Police and Emergency Services, the Hon Lisa Neville MP, (the Minister) and the Emergency Management Commissioner, Andrew Crisp, advised the Premier of Victoria that the emergency known as the COVID-19 pandemic constituted or was likely to constitute a significant and widespread danger to life and property in Victoria. This assessment was informed by the following factors:

- Victoria’s case numbers were continuing to increase, and the number of new daily cases had risen significantly over the previous week.
- There were 5,919 active cases, with 1,841 of these from an unknown source.
- There were 24 new deaths over the previous three days totalling 116 as of 31 July 2020.
- Despite restrictions being in place in metropolitan Melbourne and Mitchell Shire, including the mandatory use of face coverings, there remained significant and unabated growth within these restricted areas.
- Over the previous two weeks the proportion of cases in unrestricted LGAs had grown from 1.4% to 5%, with significant outbreaks continuing to occur in aged care facilities and workplaces.
- The morbidity and mortality projections for Victoria suggested a significant burden would be placed on the Victorian health system to respond at a scale that has little precedent.

On this advice, the Premier declared a State of Disaster pursuant to section 23(1) of the Emergency Management Act. The declaration covered the whole of Victoria and was made on Sunday 2 August 2020. The declaration is to be in force from 6:00pm on 2 August 2020 until 6.00pm on 2 September 2020.

The decision to declare a State of Disaster was made having regard to the scale and severity of the COVID-19 pandemic at 2 August 2020. The decision was made to ensure that the Victorian Government was in the best possible position to respond to pandemic and to allow for enhanced powers considered necessary to assist with reducing further transmissions.

Under section 24(2)(b) of the Emergency Management Act, in a state of disaster, the Minister may declare that the operation of the whole or any part of an Act or subordinate instrument is suspended if it appears that compliance with it by a government agency would inhibit the response to or recovery from the disaster.
On 2 August 2020, the Minister exercised this power to confirm beyond doubt that the procedural requirements under section 200(2)-(9) of the PHW Act, which ordinarily apply to detention under section 200(1)(a) of the PHW Act, did not apply in relation to the directions giving effect to “stage 4” restrictions in metropolitan Melbourne. “Stage 4” restrictions were made by a series of directions under section 200 of the PHW Act. In particular, “Stage 4” restrictions imposed a curfew and restrictions on the amount of time Victorians can spend outside their homes and the distance they can travel from their homes.

On 13 August 2020, the Minister subsequently issued directions under section 24(2)(a) of the Emergency Management Act to ensure that Authorised Officers (appointed under section 30 of the PHW Act) comply with certain procedural requirements under sections 200(2)-(8) of the PHW Act in relation to the issuing of any detention notice. This does not apply to the directions given under section 200(1) of the PHW Act giving effect to “stage 4” restrictions in metropolitan Melbourne. The Minister’s direction also ensured Authorised Officers comply with section 200(4) of the PHW Act before exercising emergency powers to restrict movement, prevent entry or give any other reasonably necessary direction under sections 200(1)(a)-(d) of the PHW Act.

On 13 August 2020, the Minister also directed each police officer appointed pursuant to section 27 of the Victorian Police Act 2013 (VP Act) and each protective services officer appointed pursuant to section 38 of the VP Act to exercise the public health risk powers contained in sections 190(1)(c), 190(1)(d), 190(1)(e), and 190(1)(f) of the PHW Act, subject to sections 190(2)-(4), 190(7)-(8) of the PHW Act.

A summary of key decisions taken in support of the declaration of the State of Disaster is provided at page 6 of this report.

A summary of powers exercised under the Emergency Management Act covering the period 2 August-14 August 2020 is provided at page 7 of this report.
Timeline of key decisions taken in support of declaration of a State of Disaster

<table>
<thead>
<tr>
<th>Date</th>
<th>Summary of decision</th>
<th>Rationale for making the decision</th>
<th>Reference document</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 August 2020</td>
<td>Declaration of State of Disaster under s 23(1) of the <em>Emergency Management Act 1986</em> in force from 6.00pm on 2 August 2020 until 6.00pm on 2 September 2020.</td>
<td>Consideration of advice from the Minister for Police and Emergency Services and the Emergency Management Commissioner dated 2 August 2020 that the coronavirus (COVID-19) pandemic constitutes or is likely to constitute a significant and widespread danger to life or property in Victoria.</td>
<td>Victorian Government Gazette No. S 383 2 August 2020 (Attachment A)</td>
</tr>
<tr>
<td>2 August 2020</td>
<td>Ministerial Direction made under s 24(2)(b) of the EM Act by the Minister for Police and Emergency Services to suspend operation of section 200(2)-(9) of the <em>Public Health and Wellbeing Act 2008</em> (PHW Act).</td>
<td>The Minister for Police and Emergency Services was satisfied that that compliance with section 200(2)-(9) of the PHW Act (which prescribe functions, powers, duties and responsibilities of government agencies) would inhibit response to the coronavirus (COVID-19) pandemic.</td>
<td>Ministerial direction dated 2 August 2020 (Attachment B)</td>
</tr>
<tr>
<td>13 August 2020</td>
<td>Ministerial Direction made under s 24(2)(a) of the EM Act by the Minister for Police and Emergency Services directing authorised officers appointed under the PHW Act to comply with certain procedural requirements under sections 200(2)-(8) of the PHW Act in relation to the issuing of any detention notice, and section 200(4) before exercising emergency powers to restrict movement, prevent entry or give any other reasonably necessary direction under sections 200(1)(a)-(d) of the PHW Act.</td>
<td>To ensure procedural fairness by directing that procedural requirements under sections 200(2)-(8) of the PHW Act continue to apply to the issuing of any detention notice, as well as complying with section 200(4) before exercising of emergency powers to restrict movement, prevent entry or give any other reasonably necessary direction under sections 200(1)(a)-(d) of the PHW Act.</td>
<td>Ministerial direction dated 13 August 2020 (Attachment C)</td>
</tr>
<tr>
<td>Date</td>
<td>Summary of decision</td>
<td>Rationale for making the decision</td>
<td>Reference document</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------</td>
</tr>
<tr>
<td>13 August 2020</td>
<td>Ministerial Direction made under s 24(2)(a) of the EM Act by the Minister for Police and Emergency Services directing police officers and protective service officers to exercise the public health risk powers contained in sections 190(1)(c), 190(1)(d), 190(1)(e), and 190(1)(f) of the PHW Act, subject to sections 190(2)-(4), 190(7)-(8) of the PHW Act.</td>
<td>To ensure Victoria Police has appropriate powers to enforce existing restrictions, issued by Authorised Officers under the PHW Act.</td>
<td>Ministerial direction dated 13 August 2020 (Attachment D)</td>
</tr>
</tbody>
</table>
Summary of powers exercised under the *Emergency Management Act 1986*

### 1. Ministerial directions issued under section 24(2)(a) of the *Emergency Management Act 1986*

<table>
<thead>
<tr>
<th>Date of direction</th>
<th>Summary of direction</th>
<th>Government agency receiving the direction</th>
<th>Rationale for making the direction</th>
</tr>
</thead>
<tbody>
<tr>
<td>13 August 2020</td>
<td>Ministerial Direction made under s 24(2)(a) of the EM Act by the Minister for Police and Emergency Services directing authorised officers appointed under the PHW Act to comply with certain procedural requirements under sections 200(2)-(8) of the PHW Act in relation to the issuing of any detention notice, and section 200(4) before exercising of emergency powers under sections 200(1)(a)-(d) of the PHW Act.</td>
<td>Authorised Officers as defined by s 30 of the PHW Act</td>
<td>To ensure procedural fairness by directing that procedural requirements under sections 200(2)-(8) of the PHW Act continue to apply to the issuing of any detention notice, as well as complying with section 200(4) before exercising of emergency powers under section 200(1)(a)-(d) of the PHW Act.</td>
</tr>
<tr>
<td>13 August 2020</td>
<td>Ministerial Direction made under s 24(2)(a) of the EM Act by the Minister for Police and Emergency Services directing police officers and protective service officers to exercise the public health risk powers contained in sections 190(1)(c), 190(1)(d), 190(1)(e), and 190(1)(f) of the PHW Act, subject to sections 190(2)-(4), 190(7), 190(8) of the PHW Act.</td>
<td>Victoria Police</td>
<td>To ensure Victoria Police has appropriate powers to enforce existing restrictions, issued by Authorised Officers under the PHW Act.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date action commenced</th>
<th>Summary of action</th>
<th>Government agency performing the action</th>
<th>Part of disaster area in which action is performed</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

3. Exercise of other emergency powers by the Minister under section 24 of the *Emergency Management Act 1986*

<table>
<thead>
<tr>
<th>Date power exercised</th>
<th>Section 24 power exercised</th>
<th>Summary of action relevant to exercise of the power</th>
<th>Government agency impacted or undertaking action in response</th>
<th>Part of disaster area in which power is exercised</th>
<th>Rationale for the exercise of the power</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 August 2020</td>
<td>24(2)(b)</td>
<td>Ministerial Direction made under s 24(2)(b) of the Emergency Management Act by the Minister for Police and Emergency Services to suspend operation of s 200(2) (9) of the PHW Act.</td>
<td>Authorised Officers under the PHW Act and the Chief Health Officer.</td>
<td>State-wide</td>
<td>The Minister exercised this power to confirm beyond doubt that the procedural requirements under s 200(2)-(9) of the PHW Act which ordinarily apply to detentions under s 200(1) of the PHW Act, did not apply in relation to the directions giving effect to “stage 4” restrictions in metropolitan Melbourne, particularly the curfew and restrictions on the amount of time Victorians could spend outside their homes and distance from home they can travel.</td>
</tr>
</tbody>
</table>
4. Ministerial delegations under section 7 of the *Emergency Management Act 1986*

<table>
<thead>
<tr>
<th>Date of delegation</th>
<th>Statutory reference to power delegated</th>
<th>Summary of delegation made and power(s) delegated</th>
<th>Government agency which is the delegate</th>
<th>Rationale for making the direction</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

5. Powers exercised pursuant to Ministerial delegations

<table>
<thead>
<tr>
<th>Date power exercised</th>
<th>Power exercised</th>
<th>Summary of exercise of power</th>
<th>Government agency performing the action</th>
<th>Part of disaster area in which action is performed</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>
Emergency Management Act 1986
PREMIER’S DECLARATION OF A STATE OF DISASTER
(Section 23(1))

I, Daniel Andrews, Premier, after considering the advice of the Minister for Police and Emergency Services, being the Minister responsible for the giving of advice under section 23 of the Emergency Management Act 1986 (‘the Act’), and the advice of the Emergency Management Commissioner, am satisfied that the emergency known as the coronavirus (COVID-19) pandemic constitutes or is likely to constitute a significant and widespread danger to life or property in Victoria.

Accordingly, I declare under section 23(1) of the Act that a state of disaster exists in relation to the whole of Victoria.

This declaration remains in force from 6.00 pm on 2 August 2020 until 6.00 pm on 2 September 2020, unless revoked earlier.

Dated 2 August 2020
Time 1.43 pm

THE HON. DANIEL ANDREWS MP
Premier
Ministerial Declaration

Emergency Management Act 1986

Section 24

I, the Hon. Lisa Neville, the Minister for Police and Emergency Services, as the Minister responsible for the Emergency Management Act 1986 (Act), and pursuant to the State of Disaster declared on 2 August 2020 in relation to the Coronavirus (COVID-19) pandemic, HEREBY DECLARE under the power in section (2)(b) of the Act that the operation of the following legislation is suspended:

Sections 200(2) – (9) of the Public Health and Wellbeing Act 2008.

I make this declaration on the basis that I am satisfied that compliance by a government agency with those parts of the Public Health and Wellbeing Act, which prescribe functions, powers duties and responsibilities, would inhibit response to the Coronavirus (COVID-19) pandemic.

Signed:

Hon Lisa Neville MP

Minister for Police and Emergency Services

2/8/2020
Ministerial Direction

Emergency Management Act 1986

Section 24

I, the Hon Lisa Neville, the Minister for Police and Emergency Services, as the Minister responsible for the Emergency Management Act 1986 (Act), and pursuant to the State of Disaster declared on 2 August 2020 in relation to the Coronavirus (COVID-19) pandemic, HEREBY DIRECT under the power in section 24(2)(a) of the Act:

1. Each authorised officer appointed under section 30 of the Public Health and Wellbeing Act 2008 (PHW Act):
   a. when exercising the power in section 200(1)(a) of the PHW Act by issuing a detention notice to a person, to comply with the following obligations:
      i. unless paragraph (ii) applies, before any person is subject to detention under the powers in section 200(1)(a) of the PHW Act, the officer must briefly explain the reason why it is necessary to detain the person;
      ii. if in the particular circumstances in which the power to detain the person is to be exercised, it is not practicable to briefly explain the reason why it is necessary to detain the person before the power is exercised, the officer must do so as soon as is practicable; and
   b. before exercising any emergency powers under sections 200(1)(a) – (d) of the PHW Act, the officer must, unless it is not practicable to do so, warn the person that a refusal or failure to comply without a reasonable excuse, is an offence.

2. If:
   a. a person has been issued with a detention notice under section 200(1)(a) of the PHW Act by an authorised officer; or
   b. a person has been detained by a police officer or a protective services officer and notification of that detention has been given to an authorised officer,

an authorised officer must:
c. facilitate any reasonable request for communication made by a person subject to detention under the powers in section 200(1)(a) of the PHW Act;

d. at least once every 24 hours during the period that a person is subject to detention review whether the continued detention of the person is reasonably necessary to eliminate or reduce a serious risk to public health;

e. as soon as is reasonably practicable give written notice to the Chief Health Officer—

   i. that a person has been made subject to detention under section 200(1)(a) of the PHW Act;

   ii. that following a review under paragraph (d) a person is to continue to be subject to detention under section 200(1)(a) of the PHW Act;

f. include in a notice given under paragraph (e)—

   i. the name of the person being detained; and

   ii. a brief statement as to the reason why the person is being, or continues to be, subject to detention under section 200(1)(a) of the PHW Act.

Definitions

In this Direction:

1. **authorised officer** means an officer that has been authorised under the PHW Act to exercise the emergency powers;

2. **emergency powers** has the same meaning as in the PHW Act;

3. **police officer** means a police officer appointed pursuant to section 27 of the *Victoria Police Act 2013*;

4. **protective services officer** means a protective services officer appointed pursuant to section 38 of the *Victoria Police Act 2013*.

Signed:

[Signature]

Hon Lisa Neville MP

Minister for Police and Emergency Services

13 / 08 / 2020
Ministerial Direction

Emergency Management Act 1986

Section 24

I, the Hon Lisa Neville, the Minister for Police and Emergency Services, as the Minister responsible for the Emergency Management Act 1986 (Act), and pursuant to the State of Disaster declared on 2 August 2020 in relation to the Coronavirus (COVID-19) pandemic, HEREBY DIRECT under the power in section 24(2)(a) of the Act:

1. each police officer appointed pursuant to section 27 of the Victorian Police Act 2013 (VP Act) and each protective services officer appointed pursuant to section 38 of the VP Act:

   a. to exercise the public health risk powers contained in sections 190(1)(c), 190(1)(d), 190(1)(e), and 190(1)(f) of the Public Health and Wellbeing Act 2008 (PHW Act) from time to time as the circumstances arise, subject to sections 190(2)-(4), 190(7), 190(8) of the PHW Act, as if the references to an ‘authorised officer’ in those sections were references to a ‘police officer’ or a ‘protective services officer’ (as the case requires).

Signed:

Hon Lisa Neville MP

Minister for Police and Emergency Services

13 / 08 / 2020