



ANALYSIS

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**An Act to implement measures to protect the Cook Islands from COVID-19
(Coronavirus Disease 2019) —**

(25 March 2020)

The Parliament of the Cook Islands enacts as follows—

- 1 Title**
This Act may be cited as the **COVID-19 Act 2020**.
- 2 Parliamentary declaration**
Parliament declares that COVID-19 is considered to be a serious and imminent threat to the lives of people living in the Cook Islands.
- 3 Purpose of Act**
The purpose of this Act is to implement measures to prevent, limit, or mitigate the spread of COVID-19 and its effects.
- 4 Commencement and duration**
- (1) This Act comes into force at the date and time on which it is assented to by the Queen's Representative.
- (2) This Act will automatically be repealed at the expiration of 12 months from commencement unless—
- (a) it is repealed sooner by Order in Executive Council; or
- (b) it is extended by Parliament.
- 5 Application**
This Act applies only for the purpose set out in section 3.
- 6 Interpretation**
- category quarantine order** means a quarantine order made under section 12
- child** means anyone under the age of 18
- constable** has the meaning given in section 3 of the Police Act 2012
- COVID-19 Economic Response Plan** means the official plan put in place by the Ministry of Finance and Economic Management to address the economic impacts of COVID-19, as amended from time to time
- Government agency** means any ministry, department, agency or instrument of the Government; and includes a body corporate or an organization that is wholly owned or controlled by the Crown
- health officer** means any person designated by the Secretary of Health to perform this function
- isolation order** means an order made under section 13
- Minister** means the Minister of Health or, in the event of unavailability (due to illness), the acting Minister of Health
- Ministerial order** means an order made under section 8
- premises** include any school, workplace, business, entertainment or recreation facility, sporting facility, church, tourist accommodation, private accommodation, or any other place where people gather
- quarantine order** means a quarantine order made under section 11

responsible adult means, in relation to a child, a person with parental responsibility (within the meaning of the Family Protection and Support Act 2017) or a person who has custody or charge of the child for the time being

Secretary of Health includes any Acting Secretary or person or persons delegated by the Secretary of Health to perform any such power or powers otherwise given to the Secretary under this Act

transportation means any mode of transport (land, air or sea) capable of carrying 2 or more persons

under supervision means the supervision of someone in accordance with the rules or directions made by the Secretary of Health.

7 **Conflict with other enactments**

- (1) If any provision of this Act conflicts with any provision of another enactment other than the Constitution, the provision of this Act prevails.
- (2) If any provision of a Ministerial order conflicts with any provision of another enactment other than the Constitution, the provision of the Ministerial order prevails.
- (3) This section is subject to section 26(2).

Ministerial order

8 **Ministerial order**

- (1) The Minister, with the concurrence of Cabinet, may for the purpose of this Act make orders to do any of the following:
 - (a) impose conditions on any premises (or type of premises) concerning their use:
 - (b) prohibit, restrict, or impose conditions, on any form of transportation (including public transport):
 - (c) require any specified premises or type of premises to be closed for a fixed period:
 - (d) prohibit or impose conditions on any specified gathering or type of gathering:
 - (e) prohibit, restrict, or impose conditions on any travel of persons, aircraft, or vessels between islands or within islands:
 - (f) restrict or limit the purchase of goods or services:
 - (g) prohibit or restrict any activity:
 - (h) impose conditions relating to social distancing between persons.
- (2) The Minister must not make an order unless the Minister—
 - (a) has consulted the Secretary of Health; and
 - (b) is satisfied that the order is reasonably required to achieve the purpose of this Act.
- (3) An order must—
 - (a) be in writing:
 - (b) state the date on which it is made:
 - (c) state the date on which it comes into force:

- (d) state the date on which it expires:
 - (e) be published on the COVID-19 Cook Islands Response government website.
- (4) An order has no effect until it has been publically notified in two or more of the following mediums:
- (a) newspaper:
 - (b) announcement on a television channel publically available:
 - (c) announcement broadcast on a radio station:
 - (d) social media platform:
 - (e) any other mechanism that is likely to reach the majority of the population either directly or indirectly.
- (5) However, an order that relates to the Pa Enea must, in addition to subsection (4), be notified to the relevant Island Council.
- (6) While an order is in force, the Minister must review the order at least once every 6 weeks.
- (7) An order may be issued more than once and the Minister may revoke an order at any time before it expires.

9 Enforcement of ministerial orders

- (1) The Secretary of Health may appoint any person or persons to monitor compliance with a Ministerial order.
- (2) Every person appointed under subsection (1) must notify the Secretary of Health and the Commissioner of Police of any non-compliance with a Ministerial order.
- (3) An individual who fails to comply with, or contributes to a breach of, a Ministerial order commits an offence and is liable on conviction to a term of imprisonment not exceeding 12 months or to a fine not exceeding \$10,000.
- (4) A non-individual who fails to comply with a Ministerial order is liable on conviction to a fine not exceeding \$200,000.

Directions

10 Commissioner of Police or Secretary of Health may give direction in urgent situation

- (1) If the Commissioner of Police or the Secretary of Health considers that there is insufficient time to obtain a ministerial order, they may give a verbal or written direction to any person in respect of anything that may be the subject of a ministerial order.
- (2) However, the Commissioner of Police or the Secretary of Health must not give a direction unless satisfied that the direction is reasonably required to achieve the purpose of this Act.
- (3) A direction has effect for a period of 72 hours only. After that period, a Ministerial order is required to continue the matter to which the direction relates.
- (4) The person who gives a verbal direction must, when it is practicable to do so, give the person to whom the direction applies a written copy of the direction which must include the reasons for the direction.

*Quarantine and Isolation***11 Quarantine powers: individual**

- (1) If a health officer has reason to suspect that an individual may be a carrier or at risk of carrying and transmitting COVID-19, the health officer may order that person to go into quarantine.
- (2) At the time of ordering a person into quarantine, the health officer must give the person the reasons for the quarantine order and the conditions of the quarantine order.
- (3) The conditions of a quarantine order include (but are not limited to)—
 - (a) the place where the person must undertake quarantine:
 - (b) the duration of the quarantine:
 - (c) what a person can and cannot do under quarantine:
 - (d) whether or not the quarantine is to be under supervision.
- (4) The conditions of a quarantine order—
 - (a) must be given to the affected person in writing within 24 hours of the quarantine starting; and
 - (b) may be varied at any time by a health officer by giving notice in writing to the affected person.
- (5) As soon as practicable after making a quarantine order, a health officer must report (in writing) to the Secretary of Health.
- (6) The Secretary of Health must give written approval if a quarantine order is to exceed 14 days.
- (7) The Secretary of Health may revoke a quarantine order at any time.

12 Quarantine powers: general

- (1) If the Secretary of Health has reason to believe that any category of persons poses an undue risk in respect of the carriage and transmission or possible carriage and transmission of COVID-19, the Secretary of Health may order that category of persons into quarantine.
- (2) A category quarantine order may be subject to any conditions that the Secretary of Health considers appropriate including (but not limited to)—
 - (a) the type of premises where quarantine is to be carried out:
 - (b) the duration of the quarantine:
 - (c) what a person can and cannot do under quarantine:
 - (d) whether or not the quarantine is to be under supervision.
- (3) A category quarantine order and any conditions of that order does not have effect until the Secretary of Health notifies it through a medium that is likely to be received by the category of persons affected.
- (4) If the duration of a category quarantine order exceeds 14 days, the Secretary of Health must make public the reasons for that decision.

13 Isolation

- (1) A health officer may order any person whom the officer has reasonable grounds to believe has COVID-19 to isolate in a manner specified by the Secretary of Health.

- (2) A health officer must give a written report of any isolation order to the Secretary of Health as soon as possible after the isolation order is made.
- (3) The Secretary of Health is required to release a person from isolation as soon as the Secretary of Health is satisfied that the person isolated poses no risk of transmitting COVID-19 to any other person.
- (4) A person who is subject to an isolation order must be under supervision.

14 General obligation on Secretary of Health in respect of persons subject to quarantine and isolation

If a person is subject to a quarantine order, category quarantine order, or isolation order, the Secretary of Health must have due regard to the person's wellbeing and, to the extent possible, provide support to the person if needed.

15 Enforcement of quarantine and isolation

- (1) A constable and any health officer may take any action (including entry into premises) to ensure that the conditions of any quarantine order, category quarantine order, or isolation order are being complied with.
- (2) A constable may arrest any person who does not comply with a quarantine order, category quarantine order, or isolation order and detain a person in any place that the Secretary of Health orders for the duration of the order.

Medical testing

16 Medical testing

- (1) A health officer may order that any person be tested for COVID-19.
- (2) A person who is tested for COVID-19 may be ordered to go into quarantine under section 11 or into isolation under section 13 until such time as the test results are known.
- (3) Any person who fails to comply with an order under subsection (1) must go into quarantine under section 11 or into isolation under section 13 and those sections apply to the extent applicable.

Information sharing

17 Information sharing

- (1) This Act authorises the sharing of information between any Government Agency, or between any Government Agency and any individuals or other countries, as is necessary to manage and mitigate the spread of COVID-19.
- (2) A Government Agency that uses information shared under subsection (1) for a purpose not related to the management or mitigation of COVID-19 commits an offence and is liable on conviction to a fine not exceeding \$10,000.
- (3) A person who uses information shared under subsection (1) for a purpose not related to the management or mitigation of COVID-19 commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 months or to a fine not exceeding \$1000.

*Acquisition of premises and property***18 Acquisition of premises**

- (1) The Secretary of Health may order, in writing, that any premises to be used as a quarantine, isolation facility, operations centre or for some other function necessary for the purposes of this Act.
- (2) The owner of, or any person who has an interest in, a premises that is being used as a quarantine, isolation facility, operation centre or other function must be compensated for the use of those premises at a rate set by the Financial Secretary.
- (3) The rate set by the Financial Secretary under subsection (2) must be a rate that is adequate having regard to—
 - (a) the type of premises;
 - (b) the ordinary use of that premises; and
 - (c) the loss of income or financial cost that the owner will otherwise suffer as a result of the order; and
 - (d) any other relevant matters.
- (4) Any person who is dissatisfied with the rate of compensation set by the Financial Secretary may apply to a Judge of the High Court for a determination of the appropriate compensation.
- (5) Any party who is dissatisfied with any order of the High Court may appeal that decision to the Court of Appeal as if it were a civil proceeding.

19 Acquisition of property

- (1) The Minister, Secretary of Health, or Commissioner of Police may order, in writing, that any property (not premises) be seized or used by officials if that property is needed to prevent or minimise the spread of COVID-19.
- (2) The owner of, or any person who has an interest in, any property seized or used under subsection (1) must be compensated for the seizure or use of that property.
- (3) The compensation must be set by the Financial Secretary at a level that is reasonable having regard to—
 - (a) the type of property used or seized; and
 - (b) any damage or depreciation that may occur to the property as a result of its seizure or use; and
 - (c) any inconvenience otherwise caused to the owner; and
 - (d) any other relevant matters.
- (4) Any person who is dissatisfied with the level of compensation set by the Financial Secretary may apply to a Judge of the High Court for a determination of the appropriate compensation.
- (5) A party who is dissatisfied with any order of the High Court may appeal that decision to the Court of Appeal as if it were a civil proceeding.

*Obligation to answer COVID-19 health questions truthfully***20 Obligation on persons regarding health questions**

- (1) Every person must answer truthfully any health enquiry relating to COVID-19 made by a health officer or other authorised official.

- (2) A person commits an offence if they intentionally or recklessly provide false or misleading information when answering an enquiry under subsection (1).
- (3) However, it is defence to a charge under subsection (2) if the person was not warned of their obligation under subsection (1).
- (4) On conviction for an offence against subsection (2), a person is liable to a term of imprisonment not exceeding 12 months or to a fine not exceeding \$10,000.

Obligations in respect of children

21 Obligations in respect of children

- (1) A person who is a responsible adult for a child must ensure that the child complies with any orders or directions given under this Act in so far as the responsible adult is reasonably able to do so.
- (2) A responsible adult who, without reasonable excuse, fails to comply with their obligation under subsection (1)—
 - (a) commits an offence; and
 - (b) is liable on conviction to a term of imprisonment not exceeding 12 months or to a fine not exceeding \$10,000.

Harmful information about COVID-19

22 Prohibition on publishing, disseminating, or communicating harmful information in relation to COVID-19

- (1) No person may intentionally publish, disseminate or otherwise communicate harmful information in relation to COVID-19.
- (2) A person who contravenes subsection (1) commits an offence, and is liable on conviction—
 - (a) in the case of an individual, to a term of imprisonment not exceeding 12 months or to a fine not exceeding \$10,000; and
 - (b) in the case of a non-individual, to a fine not exceeding \$200,000.
- (3) In this section, **harmful information** means information that—
 - (a) the person knows or reasonably ought to have known, to be false information about COVID-19; or
 - (b) is intended to promote racial disharmony or racial harassment; or
 - (c) is intended to promote civil disorder or civil unrest.
- (4) No prosecution may be brought under this section unless the Attorney-General gives consent.

Miscellaneous

23 Offences

- (1) A person commits an offence who, without reasonable excuse, fails to comply with a direction given under section 10.
- (2) A person commits an offence if they, without reasonable excuse, breach their obligations under sections 82, 83, and 84 of the Public Health Act 2004.

- (3) A person commits an offence who obstructs or hinders, without reasonable excuse, any person carrying out a function under this Act.
- (4) A person commits an offence who, without reasonable excuse, fails to comply with an isolation order.
- (5) A person commits an offence who breaches, without reasonable excuse, any condition of a quarantine order or category quarantine order.
- (6) On conviction for an offence under this section a person is liable to a term of imprisonment not exceeding 12 months or to a fine not exceeding \$10,000.

24 Immunity

No person who does or omits to do any act in connection with the performance or exercise of any duty, function, or power conferred by or under this Act is under any civil or criminal liability in respect of that act or omission, unless the act or omission was done in bad faith or without reasonable care.

25 Detention

- (1) A category quarantine order, a quarantine order, and an isolation order are each deemed to be a detention for the purpose of the writ of habeas corpus under Article 65(1)(c) of the Constitution.
- (2) Nothing in subsection (1) limits the Court's ability to view any other order given under this Act as detention.

26 State of emergency or state of disaster

- (1) In the event that a state of emergency or a state of disaster is declared under sections 19 or 20 of the Disaster Risk Management Act 2007, the Secretary of Health is deemed to be appointed to the Response Executive under section 11(5) of that Act.
- (2) Sections 7(1) and (2) do not apply in respect of the Disaster Risk Management Act 2007. However, the Response Executive and the National Controller may, if they consider it reasonable to do so in the circumstances, determine that the provisions or any part of this Act apply in the event of any overlap or inconsistency with the provisions of, or obligations under, the Disaster Risk Management Act 2007.

27 Public health emergency

- (1) If a public health emergency is declared under section 118 of the Public Health Act 2004, that emergency is automatically extended to last for the duration of this Act and no resolution of Parliament is required.
- (2) Any emergency regulations made under section 123 of the Public Health Act 2004 continue for the duration of the public health emergency.
- (3) If a public health emergency relating to COVID-19 is, before this Act comes into force, declared under section 118 of the Public Health Act 2004, the Minister may exercise the powers conferred under section 119 of that Act only if the Minister is satisfied that the powers under this Act are insufficient to respond appropriately to the public health emergency.

28 Ministry of Health regulations

- (1) Any regulations made under the Ministry of Health Act 2013 relating to COVID-19 continue to have effect to the extent necessary for any matters that have commenced.
- (2) Any orders or obligations imposed by those regulations—
 - (a) continue to have effect as if they were a Ministerial order made under this Act; and
 - (b) cease to have effect on the date that the regulations expire.
- (3) However, subsection (2)(b) does not prevent any orders or obligations imposed by those regulations from being given effect in a new Ministerial order.

29 Tax Orders

- (1) The Minister of Finance may make an order suspending, varying, reducing or removing any tax obligation, if the minister is satisfied that such an order is in accordance with the COVID-19 Economic Response Plan.
- (2) Any order made under subsection (1) continues in force until revoked by order in Executive Council.

30 Welfare payments

The Financial Secretary may approve any additional welfare payments if such payments are in accordance with the COVID-19 Economic Response Plan.

This Act is administered by the Ministry of Health
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