

**Public Health Directions – Human Rights Assessment**  
Quarantine for International Arrivals Direction

<b>Title</b>	<i>Quarantine for International Arrivals Direction</i>
<b>Date effective</b>	12 December 2020

### *Background*

The *Quarantine for International Arrivals Direction* (the Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis should be read in conjunction with the Human Rights Statement of Compatibility prepared in accordance with section 38 of the *Human Rights Act 2019* with respect to the Public Health and Other Legislation (Public Health Emergency) Amendment Bill 2020. This Bill amended the *Public Health Act 2005* to enable the Chief Health Officer to issue directions that are reasonably necessary to assist in containing or responding to the spread of COVID-19.

### *Purpose of the Direction*

The purpose of the Direction is to limit the spread of COVID-19 into Queensland from travellers and Australian residents arriving from overseas. The purpose of the Direction is also to allow people from New Zealand to enter Queensland without needing to quarantine for 14 days, as part of the ‘[Safe Travel Zone](#)’ national agreement, unless they are coming from an area of New Zealand that the Chief Health Officer considers poses an unacceptable risk.

In Queensland, a majority of cases to date have been overseas acquired. This indicates a significantly lower proportion of community transmission, likely as a result of Queensland’s domestic border measures and effective monitoring of individuals in quarantine who enter from overseas.

Travellers from New Zealand, who have travelled to Australia on a flight with other people who also have only been in New Zealand for the last 14 days (‘quarantine-free flight’), are considered very low risk in terms of transmission of COVID-19 into Queensland. As at 11 December 2020, New Zealand has had no locally acquired infections for **29 days** and no unlinked community transmission for **222 days**.

The Direction revokes and replaces the *Self-quarantine for Persons Arriving in Queensland from Overseas Direction (No. 6)*.

### *How the Direction achieves the purpose*

The Direction requires persons who arrive in Queensland and have been overseas or in a ‘Safe travel zone country hotspot’ in the 14 days immediately before their arrival to quarantine for 14 days. A Safe travel zone country hotspot means an area within a ‘Safe travel zone country’ that has been specified by the Chief Health Officer by a direction published on the Queensland Government website. This allows the Chief Health Officer to declare an area of New Zealand a hotspot and require a person travelling from there to quarantine upon arrival in Queensland.

Persons who have only been in a ‘Safe travel zone country’ in the 14 days immediately before their arrival, and travelled to Australia on a ‘quarantine-free flight’, do not need to quarantine for 14 days. New Zealand is the only country currently specified in the direction as Safe travel zone country.

After completing immigration and customs, persons arriving into Queensland are required to travel directly to their nominated quarantine premises, and may not leave during the 14-day period except for the purpose of obtaining essential medical care or supplies, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

Those in quarantine are also prohibited from allowing others to enter the nominated premises unless the person also resides in the premises for the purpose of complying with the direction, enters to provide emergency, medical or other essential care to a person at the premises, or is otherwise required or permitted under a direction given by a relevant authority.

Most people required to quarantine need to do so in a hotel or other place nominated by the Chief Health Officer or a relevant authority. Some persons may quarantine in other suitable premises, such as their residence. This includes consular employees and air crew (who may also leave for their next work voyage prior to the expiry of the 14-day quarantine period or to attend flight related duties, such as flight simulation training). A person unable to live independently without ongoing or regular support, including disability support, due to significant health needs, may have a carer or support person quarantine at the nominated premises with them at their own expense.

A person must wear a mask when leaving quarantine or whenever directed to do so by an emergency officer (public health).

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test at any point. A person will be detained for a further period of 10 days if the person denies an emergency officer's (public health) request to be tested.

An emergency officer (public health) may also require a person in quarantine to answer questions or provide evidence about whether they have had symptoms consistent with COVID-19, their possible exposure to COVID-19 and their name and contact information.

The Chief Health Officer may grant a person an exemption from all or part of the Direction on the basis of exceptional circumstances.

#### *Human rights engaged*

The human rights engaged by the Direction are:

- Right to life (section 16)
- Protection from torture and cruel, inhuman or degrading treatment (section 17)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Freedom of expression (section 21)
- Peaceful assembly and freedom of association (section 22)
- Taking part in public life (section 23)
- Privacy (section 25)
- Protection of families (section 26)
- Cultural rights (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to liberty and security (section 29)
- Right to humane treatment when deprived of liberty (section 30)
- Right to education (section 36)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, by reducing the risk of the spread of COVID-19 into Queensland from overseas.

#### *Limitations*

This Direction does not impose any new limitations on human rights from the previous iteration.

The right to protection from torture and cruel, inhuman or degrading treatment includes the right not to be subjected to medical treatment without consent. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine, or be subjected to an additional 10 days of quarantine. The requirement may be considered to limit a person's ability to make an autonomous decision about medical treatment as a person's right to provide full, free and informed consent to the test is limited as their ability to leave quarantine after 14 days is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.

Every person has the right to move freely, enter or leave Queensland, and choose where they live. As such, public entities cannot act in a way that unduly restricts a person's freedom of movement, including by arbitrarily forcing a person to remain in, or move to or from, a particular place. The Direction limits the right to freedom of movement by requiring people who arrive in Queensland from overseas, other than on a quarantine-free flight from New Zealand, to travel to and remain at nominated accommodation, primarily at hotels selected for them.

The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief either individually or as part of a community. The right to hold a belief is so important that it is considered to be an absolute right. However, limits on how a person manifests their belief can be justified. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days. This limits the ability of returning travellers to publicly demonstrate and practice their religion or beliefs, as they are not permitted to attend a church, mosque, temple or other religious institution to perform their usual religious practice.

Section 21 of the Human Rights Act provides that the right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds. It protects almost all kinds of expression, providing it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. The Direction limits this right by restricting a person from leaving their place of quarantine and prohibiting them from receiving visitors, although they may continue to engage with others via other means including telephone and video conferencing.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both participants and organisers of peaceful assemblies. Restricting a person's movements and prohibiting a person from receiving visitors limits their ability to peacefully assemble, although they may continue to 'assemble' and engage with others via other means such as telephone and video conferencing.

The right to privacy in section 25 of the Human Rights Act is broadly construed. A person has the right to not have their privacy, family or home arbitrarily interfered with. The right encompasses an individual's rights to establish and develop meaningful social relations (*Kracke v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620])). The Direction limits this right as it temporarily interferes with people's ability to make and maintain social and family connections. Interference with privacy will occur by making a person provide personal details and answer questions about their health and possible exposure to COVID-19 when the person is directed to by an emergency officer (public health).

The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work.

The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without

consent.’ See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test, or be subjected to an additional 10 days of quarantine.<sup>1</sup> Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.

Queensland recognises families as the fundamental unit of society entitled to protection. The right to the protection of families encompasses more than non-interference; it is a guarantee of institutional protection of the family by society and the state. ‘Family’ is interpreted broadly, extending to different cultural understandings of family. The Direction imposes a temporary limit on a quarantined person’s ability to meet with and engage with their family in person, but does recognise the unique position of unaccompanied minors who arrive in Australia, and provides that they must quarantine with a parent, guardian or other responsible adult. This also recognises the protection needed by children.

Section 27 of the Human Rights Act states that all people with particular cultural, religion, racial and linguistic backgrounds have a right to enjoy their culture, declare and practice their religion and use their language in community with other people of that background. This promotes the practise and maintenance of shared traditions and activities.

The Human Rights Act specifies that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights as Australia’s first people. Section 28 provides that Aboriginal and Torres Strait Islander peoples must not be denied this right, together with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practice their culture.

The direction may limit cultural rights under sections 27 and 28 of the Human Rights Act, for people who may ordinarily share their culture with their loved ones who visit are limited from doing so due to the restrictions on visitors in quarantine.

Every person in Queensland has the right to liberty and security and must not be subjected to arbitrary arrest or detention or deprived of their liberty except on grounds, and in accordance with procedures, established by law. The concept of detention includes not only detention in a prison, but all forms of detention, including for the purposes of medical treatment. The Direction restricting people to certain designated accommodation constitutes detention and, thus, limits the right to liberty and security.

Section 30 of the Human Rights Act states that everyone must be treated with respect when deprived of liberty. The underlying principle is that a person’s rights should only be limited by the confinement itself, not additional hardships or constraints, noting that some rights are unavoidably restricted in a closed environment including freedom of movement and elements of freedom of expression. However, the Direction recognises that individuals with particular health needs should be able to quarantine in their residence with their carers because of the unique strain that detention in another setting may pose.

Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty. Like all rights in the Act, this right can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Section 36 of the Human Rights Act protects the right of every child to access primary and secondary education appropriate to their needs without discrimination. The scope of the right is tied to public education service delivery and does not extend to private and non-government schools or early childhood services.

### *Compatibility with Human Rights*

#### Proper purpose (section 13(2)(b))

The purpose of the Direction is to reduce the spread of COVID-19 within Queensland from those people arriving from overseas, other than New Zealand, who have a higher risk of having, and thus spreading, COVID-19. This is due to both the higher prevalence of COVID-19 in most other countries, and the exposure potential associated with travel.

Requiring most people entering Queensland from overseas to quarantine in nominated premises is to confine potential outbreaks and enable appropriate support of quarantined individuals within available resources. It also enables monitoring and enforcement of the requirements under the Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is in effect for a temporary period, and the restrictions as applying to a person only last for 14-days, which is tied with the typical incubation period for COVID-19. Ultimately, the purpose of quarantine is to limit the opportunity for transmission of COVID-19 during the potential incubation period.

The aim of protecting public health is a proper purpose. Protecting people in the community from the risk of COVID-19 also promotes their human rights to life (section 16) and health (section 37). At international law, the right to health includes '[t]he prevention, treatment and control of epidemic, endemic, ... and other diseases': *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12(2)(c).

The purpose of protecting and promoting human rights is necessarily consistent with a society 'based on human dignity, equality and freedom' (section 13(2)(b) of the Human Rights Act).

#### Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose of protecting public health by limiting the opportunities for transmission of COVID-19 from persons arriving from overseas, during the potential incubation period.

The quarantine requirements have been tailored to the needs of different cohorts. For example, those who are unable to live independently without ongoing or regular support may have a carer or support person quarantine with them at the nominated premises, and unaccompanied minors arriving in Queensland from overseas can be met on arrival and accompanied in quarantine by a parent, guardian or other responsible adult. Also, people who have only been in New Zealand in the last 14 days and travelled to Australia on a quarantine-free flight do not need to quarantine upon arriving in Queensland.

People in quarantine are also permitted to leave their place of quarantine in certain circumstances, including to obtain essential medical care or supplies or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

#### Necessary (s 13(2)(d))

The limits on human rights are necessary to achieve the purpose. There is no other way to address the risk of COVID-19 spreading into Queensland from overseas which would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights.

In particular:

- Prohibiting entry of all people from overseas would be more restrictive of human rights.

- People from New Zealand who arrived on a quarantine-free flight do not need to quarantine, unless they have come from an area that the Chief Health Officer declares a 'Safe travel zone hotspot'. This is a less restrictive approach based on the public health situation in New Zealand.
- Relying on other measures such as contact tracing and testing on arrival in Queensland (without quarantine restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from overseas may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Permitting people to quarantine at a location of their choosing would not be practicable or as effective given the resourcing requirements of policing and providing assistance to the number of locations that would be involved.

#### Fair balance (section 13(2)(e), (f) and (g))

This Direction does not impose any new limitations on human rights from the previous iteration.

Given the risk posed by overseas arrivals, the purpose of the Direction can only be reasonably achieved by temporarily restricting the contact of new overseas arrivals, other than people who have only been in New Zealand, with the broader community through quarantine arrangements.

Many of the limits on human rights are incidental. For example, although quarantine limits the right to demonstrate religion or belief as part of a community, people are not prevented from practising their religion or beliefs through private prayer or with others through video conferencing or other remote means. As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.

The extent of the limitation on human rights is further reduced in other ways. The Direction is in effect for a temporary period, and the restrictions that apply to a person only last for 14-days, unless a person refuses a COVID-19 test, which is based on public health advice about the typical incubation period for COVID-19. The Direction also recognises the hardship that certain persons would face in quarantine, including unaccompanied minors and persons with particular health needs, and allows them to quarantine with another person.

The Direction applies the least restrictive approach in the circumstances to people who have only been in New Zealand in the last 14 days and arrived in Australia on a quarantine-free flight.

The requirements of the Direction are proportionate and necessary to the unprecedented threat to public health, including the pressing need for social distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in more remote ways.

The limits on human rights by requiring a person to wear a mask when leaving quarantine or agree to a COVID-19 test or be subject to an additional 10 days quarantine are justifiable. Requiring a person to agree to undergo a COVID-19 test is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. For example, a person who is released from quarantine may potentially be asymptomatic and there will be no means of confirmation without a test. The person could potentially infect people in the wider community once they are released from quarantine. Tackling such a scenario would require resources for contact tracing (one person could have up to 200 contacts) and may divert resources from other critical areas. The need to address the risk of a potential outbreak



or community transmission of COVID-19 in Queensland, outweighs the impact on human rights. A person also has the option of agreeing to the test or remaining in quarantine for a further 10 days. Additionally, section 362L of the *Public Health Act 2005* expressly authorises an emergency officer (public health) to take action to enforce a requirement or direction, using reasonable and necessary force. The provisions indicate that Parliament has considered liberty interests and decided to curtail those rights to address public health risks.

The Direction provides a broad exemption power enabling the Chief Health Officer to grant an exemption to any of its requirements based on exceptional circumstances. This broad power was included to protect against unintended consequences of the Direction, and to acknowledge that there may be circumstances where quarantine in a designated premises may not be reasonable or appropriate.

The impact on some human rights will be large, in particular, the right to equality for residents returning from overseas and the freedom of movement. However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) outweighs the impact on other human rights. Indeed, it is difficult to overstate the importance to society of addressing the risk posed by a pandemic. Ultimately, the Direction strikes a fair balance between the human rights it limits and the need to reduce the risk of COVID-19 spreading into Queensland.

RTI RELEASED

**Public Health Directions – Human Rights Assessment**  
Quarantine for International Arrivals Direction (No.2)

<b>Title</b>	<i>Quarantine for International Arrivals Direction (No. 2)</i>
<b>Date effective</b>	22 December 2020

### *Background*

The *Quarantine for International Arrivals Direction (No.2)* (the Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis should be read in conjunction with the Human Rights Statement of Compatibility prepared in accordance with section 38 of the *Human Rights Act 2019* with respect to the Public Health and Other Legislation (Public Health Emergency) Amendment Bill 2020. This Bill amended the *Public Health Act 2005* to enable the Chief Health Officer to issue directions that are reasonably necessary to assist in containing or responding to the spread of COVID-19.

### *Purpose of the Direction*

The purpose of the Direction is to limit the spread of COVID-19 into Queensland from travellers and Australian residents arriving from overseas. The purpose of the Direction is also to allow people from New Zealand to enter Queensland without needing to quarantine for 14 days, as part of the '[Safe Travel Zone](#)' national agreement, unless they are coming from an area of New Zealand that the Chief Health Officer considers poses an unacceptable risk.

In Queensland, a majority of cases to date have been overseas acquired. This indicates a significantly lower proportion of community transmission, likely as a result of Queensland's domestic border measures and effective monitoring of individuals in quarantine who enter from overseas.

Travellers from New Zealand, who have travelled to Australia on a flight with other people who also have only been in New Zealand for the last 14 days ('quarantine-free flight'), are considered very low risk in terms of transmission of COVID-19 into Queensland.

The Direction revokes and replaces the *Quarantine for International Arrivals Direction*. The changes from the original Direction are to remove the quarantine requirements for air crew. These requirements are now contained in a separate public health direction *Quarantine and COVID-19 Testing for International Air Crew*.

In preparing the Direction, risks to the health and safety of Queenslanders were identified and the current epidemiological situation, both in and beyond Queensland, were considered. The risks and epidemiological situation are more fully set out in the Policy Rationale that informed the direction, and form part of the purpose of the Direction. As the below human rights analysis draws on the information contained in the Policy Rationale, they should be read together.

### *How the Direction achieves the purpose*

The Direction requires persons who arrive in Queensland and have been overseas or in a 'Safe travel zone country hotspot' in the 14 days immediately before their arrival to quarantine for 14 days. A Safe travel zone country hotspot means an area within a 'Safe travel zone country' that has been specified by the Chief Health Officer by a direction published on the Queensland Government website. This allows the Chief Health Officer to declare an area of New Zealand a hotspot and require a person travelling from there to quarantine upon arrival in Queensland.



Persons who have only been in a 'Safe travel zone country' in the 14 days immediately before their arrival, and travelled to Australia on a 'quarantine-free flight', do not need to quarantine for 14 days. New Zealand is the only country currently specified in the direction as Safe travel zone country.

After completing immigration and customs, persons arriving into Queensland are required to travel directly to their nominated quarantine premises, and may not leave during the 14-day period except for the purpose of obtaining essential medical care or supplies, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

Those in quarantine are also prohibited from allowing others to enter the nominated premises unless the person also resides in the premises for the purpose of complying with the direction, enters to provide emergency, medical or other essential care to a person at the premises, or is otherwise required or permitted under a direction given by a relevant authority.

Most people required to quarantine need to do so in a hotel or other place nominated by the Chief Health Officer or a relevant authority. Some persons may quarantine in other suitable premises, such as their residence. This includes consular employees and a person unable to live independently without ongoing or regular support, including disability support, due to significant health needs. These people may also have a carer or support person quarantine at the nominated premises with them at their own expense.

A person must wear a mask when leaving quarantine or whenever directed to do so by an emergency officer (public health).

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test at any point. A person will be detained for a further period of 10 days if the person denies an emergency officer's (public health) request to be tested.

An emergency officer (public health) may also require a person in quarantine to answer questions or provide evidence about whether they have had symptoms consistent with COVID-19, their possible exposure to COVID-19 and their name and contact information.

The Chief Health Officer may grant a person an exemption from all or part of the Direction on the basis of exceptional circumstances.

### *Human rights engaged*

The human rights engaged by the Direction are:

- Right to life (section 16)
- Protection from torture and cruel, inhuman or degrading treatment (section 17)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Freedom of expression (section 21)
- Peaceful assembly and freedom of association (section 22)
- Taking part in public life (section 23)
- Privacy (section 25)
- Protection of families (section 26)
- Cultural rights (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to liberty and security (section 29)
- Right to humane treatment when deprived of liberty (section 30)
- Right to education (section 36)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts

on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, by reducing the risk of the spread of COVID-19 into Queensland from overseas.

### *Limitations*

The right to protection from torture and cruel, inhuman or degrading treatment includes the right not to be subjected to medical treatment without consent. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine, or be subjected to an additional 10 days of quarantine. The requirement may be considered to limit a person's ability to make an autonomous decision about medical treatment as a person's right to provide full, free and informed consent to the test is limited as their ability to leave quarantine after 14 days is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.

Every person has the right to move freely, enter or leave Queensland, and choose where they live. As such, public entities cannot act in a way that unduly restricts a person's freedom of movement, including by arbitrarily forcing a person to remain in, or move to or from, a particular place. The Direction limits the right to freedom of movement by requiring people who arrive in Queensland from overseas, other than on a quarantine-free flight from New Zealand, to travel to and remain at nominated accommodation, primarily at hotels selected for them.

The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief either individually or as part of a community. The right to hold a belief is so important that it is considered to be an absolute right. However, limits on how a person manifests their belief can be justified. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days. This limits the ability of returning travellers to publicly demonstrate and practice their religion or beliefs, as they are not permitted to attend a church, mosque, temple or other religious institution to perform their usual religious practice.

Section 21 of the Human Rights Act provides that the right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds. It protects almost all kinds of expression, providing it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. The Direction limits this right by restricting a person from leaving their place of quarantine and prohibiting them from receiving visitors, although they may continue to engage with others via other means including telephone and video conferencing.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both participants and organisers of peaceful assemblies. Restricting a person's movements and prohibiting a person from receiving visitors limits their ability to peacefully assemble, although they may continue to 'assemble' and engage with others via other means such as telephone and video conferencing.

The right to privacy in section 25 of the Human Rights Act is broadly construed. A person has the right to not have their privacy, family or home arbitrarily interfered with. The right encompasses an individual's rights to establish and develop meaningful social relations (*Kracke v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620])). The Direction limits this right as it temporarily interferes with people's ability to make and maintain social and family connections. Interference with privacy will occur by making a person provide personal details and answer questions about their health and possible exposure to COVID-19 when the person is directed to by an emergency officer (public health).

The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work.

The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test, or be subjected to an additional 10 days of quarantine.<sup>1</sup> Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.

Queensland recognises families as the fundamental unit of society entitled to protection. The right to the protection of families encompasses more than non-interference; it is a guarantee of institutional protection of the family by society and the state. 'Family' is interpreted broadly, extending to different cultural understandings of family. The Direction imposes a temporary limit on a quarantined person's ability to meet with and engage with their family in person, but does recognise the unique position of unaccompanied minors who arrive in Australia, and provides that they must quarantine with a parent, guardian or other responsible adult. This also recognises the protection needed by children.

Section 27 of the Human Rights Act states that all people with particular cultural, religion, racial and linguistic backgrounds have a right to enjoy their culture, declare and practice their religion and use their language in community with other people of that background. This promotes the practise and maintenance of shared traditions and activities.

The Human Rights Act specifies that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people. Section 28 provides that Aboriginal and Torres Strait Islander peoples must not be denied this right, together with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practice their culture.

The direction may limit cultural rights under sections 27 and 28 of the Human Rights Act, for people who may ordinarily share their culture with their loved ones who visit are limited from doing so due to the restrictions on visitors in quarantine.

Every person in Queensland has the right to liberty and security and must not be subjected to arbitrary arrest or detention or deprived of their liberty except on grounds, and in accordance with procedures, established by law. The concept of detention includes not only detention in a prison, but all forms of detention, including for the purposes of medical treatment. The Direction restricting people to certain designated accommodation constitutes detention and, thus, limits the right to liberty and security.

Section 30 of the Human Rights Act states that everyone must be treated with respect when deprived of liberty. The underlying principle is that a person's rights should only be limited by the confinement itself, not additional hardships or constraints, noting that some rights are unavoidably restricted in a closed environment including freedom of movement and elements of freedom of expression. However, the Direction recognises that individuals with particular health needs should be able to quarantine in their residence with their carers because of the unique strain that detention in another setting may pose.

Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty. Like all rights in the Act, this right can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Section 36 of the Human Rights Act protects the right of every child to access primary and secondary education appropriate to their needs without discrimination. The scope of the right is tied to public education service delivery and does not extend to private and non-government schools or early childhood services.

#### *Compatibility with Human Rights*

##### Proper purpose (section 13(2)(b))

The purpose of the Direction is to reduce the spread of COVID-19 within Queensland from those people arriving from overseas, other than New Zealand, who have a higher risk of having, and thus spreading, COVID-19. This is due to both the higher prevalence of COVID-19 in most other countries, and the exposure potential associated with travel.

Requiring most people entering Queensland from overseas to quarantine in nominated premises is to confine potential outbreaks and enable appropriate support of quarantined individuals within available resources. It also enables monitoring and enforcement of the requirements under the Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is in effect for a temporary period, and the restrictions as applying to a person only last for 14-days, which is tied with the typical incubation period for COVID-19. Ultimately, the purpose of quarantine is to limit the opportunity for transmission of COVID-19 during the potential incubation period.

The aim of protecting public health is a proper purpose. Protecting people in the community from the risk of COVID-19 also promotes their human rights to life (section 16) and health (section 37). At international law, the right to health includes '[t]he prevention, treatment and control of epidemic, endemic, ... and other diseases': *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12(2)(c).

The purpose of protecting and promoting human rights is necessarily consistent with a society 'based on human dignity, equality and freedom' (section 13(2)(b) of the Human Rights Act).

##### Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose of protecting public health by limiting the opportunities for transmission of COVID-19 from persons arriving from overseas, during the potential incubation period.

The quarantine requirements have been tailored to the needs of different cohorts. For example, those who are unable to live independently without ongoing or regular support may have a carer or support person quarantine with them at the nominated premises, and unaccompanied minors arriving in Queensland from overseas can be met on arrival and accompanied in quarantine by a parent, guardian or other responsible adult. Also, people who have only been in New Zealand in the last 14 days and travelled to Australia on a quarantine-free flight do not need to quarantine upon arriving in Queensland.

People in quarantine are also permitted to leave their place of quarantine in certain circumstances, including to obtain essential medical care or supplies or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

##### Necessary (s 13(2)(d))

The limits on human rights are necessary to achieve the purpose. There is no other way to address the risk of COVID-19 spreading into Queensland from overseas which would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights.

In particular:

- Prohibiting entry of all people from overseas would be more restrictive of human rights.
- People from New Zealand who arrived on a quarantine-free flight do not need to quarantine, unless they have come from an area that the Chief Health Officer declares a 'Safe travel zone hotspot'. This is a less restrictive approach based on the public health situation in New Zealand.
- Relying on other measures such as contact tracing and testing on arrival in Queensland (without quarantine restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from overseas may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Permitting people to quarantine at a location of their choosing would not be practicable or as effective given the resourcing requirements of policing and providing assistance to the number of locations that would be involved.

#### Fair balance (section 13(2)(e), (f) and (g))

This Direction does not impose any new limitations on human rights from the previous iteration.

Given the risk posed by overseas arrivals, the purpose of the Direction can only be reasonably achieved by temporarily restricting the contact of new overseas arrivals, other than people who have only been in New Zealand, with the broader community through quarantine arrangements.

Many of the limits on human rights are incidental. For example, although quarantine limits the right to demonstrate religion or belief as part of a community, people are not prevented from practising their religion or beliefs through private prayer or with others through video conferencing or other remote means. As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment

The extent of the limitation on human rights is further reduced in other ways. The Direction is in effect for a temporary period, and the restrictions that apply to a person only last for 14-days, unless a person refuses a COVID-19 test, which is based on public health advice about the typical incubation period for COVID-19. The Direction also recognises the hardship that certain persons would face in quarantine, including unaccompanied minors and persons with particular health needs, and allows them to quarantine with another person.

The Direction applies the least restrictive approach in the circumstances to people who have only been in New Zealand in the last 14 days and arrived in Australia on a quarantine-free flight.

The requirements of the Direction are proportionate and necessary to the unprecedented threat to public health, including the pressing need for social distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in more remote ways.

The limits on human rights by requiring a person to wear a mask when leaving quarantine or agree to a COVID-19 test or be subject to an additional 10 days quarantine are justifiable. Requiring a person

to agree to undergo a COVID-19 test is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. For example, a person who is released from quarantine may potentially be asymptomatic and there will be no means of confirmation without a test. The person could potentially infect people in the wider community once they are released from quarantine. Tackling such a scenario would require resources for contact tracing (one person could have up to 200 contacts) and may divert resources from other critical areas. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights. A person also has the option of agreeing to the test or remaining in quarantine for a further 10 days. Additionally, section 362L of the *Public Health Act 2005* expressly authorises an emergency officer (public health) to take action to enforce a requirement or direction, using reasonable and necessary force. The provisions indicate that Parliament has considered liberty interests and decided to curtail those rights to address public health risks.

The Direction provides a broad exemption power enabling the Chief Health Officer to grant an exemption to any of its requirements based on exceptional circumstances. This broad power was included to protect against unintended consequences of the Direction, and to acknowledge that there may be circumstances where quarantine in a designated premises may not be reasonable or appropriate.

The impact on some human rights will be large, in particular, the right to equality for residents returning from overseas and the freedom of movement. However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) outweighs the impact on other human rights. Indeed, it is difficult to overstate the importance to society of addressing the risk posed by a pandemic. Ultimately, the Direction strikes a fair balance between the human rights it limits and the need to reduce the risk of COVID-19 spreading into Queensland.



**Public Health Directions – Human Rights Assessment**  
Quarantine for International Arrivals Direction (No. ~~32~~)

<b>Title</b>	<i>Quarantine for International Arrivals Direction (No. <del>32</del>)</i>
<b>Date effective</b>	<del>22 December 2020</del> 25 January 2021

*Background*

The *Quarantine for International Arrivals Direction (No. ~~32~~)* (the Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis should be read in conjunction with the Human Rights Statement of Compatibility prepared in accordance with section 38 of the *Human Rights Act 2019* with respect to the Public Health and Other Legislation (Public Health Emergency) Amendment Bill 2020. This Bill amended the *Public Health Act 2005* to enable the Chief Health Officer to issue directions that are reasonably necessary to assist in containing or responding to the spread of COVID-19.

*Purpose of the Direction*

The purpose of the Direction is to limit the spread of COVID-19 into Queensland from travellers and Australian residents arriving from overseas. ~~The purpose of the Direction is also to allow people from New Zealand to enter Queensland without needing to quarantine for 14 days, as part of the ‘Safe Travel Zone’ national agreement, unless they are coming from an area of New Zealand that the Chief Health Officer considers poses an unacceptable risk.~~

In Queensland, a majority of cases to date have been overseas acquired. This indicates a significantly lower proportion of community transmission, likely as a result of Queensland’s domestic border measures and effective monitoring of individuals in quarantine who enter from overseas.

~~Travellers from New Zealand, who have travelled to Australia on a flight with other people who also have only been in New Zealand for the last 14 days (‘quarantine free flight’), are considered very low risk in terms of transmission of COVID-19 into Queensland.~~

The Direction revokes and replaces the *Quarantine for International Arrivals Direction (No. 2)*. The changes from the ~~original previous~~ Direction ~~are is~~ to remove New Zealand as a safe travel zone country due to the new case of COVID-19 detected while in the community, ~~the quarantine requirements for air crew. These requirements are now contained in a separate public health direction *Quarantine and COVID-19 Testing for International Air Crew*.~~

In preparing the Direction, risks to the health and safety of Queenslanders were identified and the current epidemiological situation, both in and beyond Queensland, were considered. The risks and epidemiological situation are more fully set out in the Policy Rationale that informed the direction, and form part of the purpose of the Direction. As the below human rights analysis draws on the information contained in the Policy Rationale, they should be read together.

*How the Direction achieves the purpose*

The Direction requires persons who arrive in Queensland and have been overseas or in a ‘Safe travel zone country hotspot’ in the 14 days immediately before their arrival to quarantine for 14 days. A Safe travel zone country hotspot means an area within a ‘Safe travel zone country’ that has been specified by the Chief Health Officer by a direction published on the Queensland Government website. ~~This allows the Chief Health Officer to declare an area of New Zealand within a ‘Safe travel zone country’ a hotspot and require a person travelling from there to quarantine upon arrival in Queensland.~~

Persons who have only been in a 'Safe travel zone country' in the 14 days immediately before their arrival, and travelled to Australia on a 'quarantine-free flight', do not need to quarantine for 14 days. [There is currently no listed Safe Travel Zone Country. New Zealand is the only country currently specified in the direction as Safe travel zone country.](#)

After completing immigration and customs, persons arriving into Queensland are required to travel directly to their nominated quarantine premises, and may not leave during the 14-day period except for the purpose of obtaining essential medical care or supplies, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

Those in quarantine are also prohibited from allowing others to enter the nominated premises unless the person also resides in the premises for the purpose of complying with the direction, enters to provide emergency, medical or other essential care to a person at the premises, or is otherwise required or permitted under a direction given by a relevant authority.

Most people required to quarantine need to do so in a hotel or other place nominated by the Chief Health Officer or a relevant authority. Some persons may quarantine in other suitable premises, such as their residence. This includes consular employees and a person unable to live independently without ongoing or regular support, including disability support, due to significant health needs. These people may also have a carer or support person quarantine at the nominated premises with them at their own expense.

A person must wear a mask when leaving quarantine or whenever directed to do so by an emergency officer (public health).

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test at any point. A person will be detained for a further period of 10 days if the person denies an emergency officer's (public health) request to be tested.

An emergency officer (public health) may also require a person in quarantine to answer questions or provide evidence about whether they have had symptoms consistent with COVID-19, their possible exposure to COVID-19 and their name and contact information.

The Chief Health Officer may grant a person an exemption from all or part of the Direction on the basis of exceptional circumstances.

#### *Human rights engaged*

The human rights engaged by the Direction are:

- Right to life (section 16)
- Protection from torture and cruel, inhuman or degrading treatment (section 17)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Freedom of expression (section 21)
- Peaceful assembly and freedom of association (section 22)
- Taking part in public life (section 23)
- Privacy (section 25)
- Protection of families (section 26)
- Cultural rights (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to liberty and security (section 29)
- Right to humane treatment when deprived of liberty (section 30)
- Right to education (section 36)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health

emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, by reducing the risk of the spread of COVID-19 into Queensland from overseas.

#### *Limitations*

The right to protection from torture and cruel, inhuman or degrading treatment includes the right not to be subjected to medical treatment without consent. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine, or be subjected to an additional 10 days of quarantine. The requirement may be considered to limit a person's ability to make an autonomous decision about medical treatment as a person's right to provide full, free and informed consent to the test is limited as their ability to leave quarantine after 14 days is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.

Every person has the right to move freely, enter or leave Queensland, and choose where they live. As such, public entities cannot act in a way that unduly restricts a person's freedom of movement, including by arbitrarily forcing a person to remain in, or move to or from, a particular place. The Direction limits the right to freedom of movement by requiring people who arrive in Queensland from overseas, ~~other than on a quarantine free flight from New Zealand,~~ to travel to and remain at nominated accommodation, primarily at hotels selected for them.

The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief either individually or as part of a community. The right to hold a belief is so important that it is considered to be an absolute right. However, limits on how a person manifests their belief can be justified. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days. This limits the ability of returning travellers to publicly demonstrate and practice their religion or beliefs, as they are not permitted to attend a church, mosque, temple or other religious institution to perform their usual religious practice.

Section 21 of the Human Rights Act provides that the right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds. It protects almost all kinds of expression, providing it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. The Direction limits this right by restricting a person from leaving their place of quarantine and prohibiting them from receiving visitors, although they may continue to engage with others via other means including telephone and video conferencing.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both participants and organisers of peaceful assemblies. Restricting a person's movements and prohibiting a person from receiving visitors limits their ability to peacefully assemble, although they may continue to 'assemble' and engage with others via other means such as telephone and video conferencing.

The right to privacy in section 25 of the Human Rights Act is broadly construed. A person has the right to not have their privacy, family or home arbitrarily interfered with. The right encompasses an individual's rights to establish and develop meaningful social relations (*Kracke v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620])). The Direction limits this right as it temporarily interferes with people's ability to make and maintain social and family connections. Interference with privacy will occur by making a person provide personal details and answer questions about their health and possible exposure to COVID-19 when the person is directed to by an emergency officer (public health).

The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work.

The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599) and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test, or be subjected to an additional 10 days of quarantine.<sup>1</sup> Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.

Queensland recognises families as the fundamental unit of society entitled to protection. The right to the protection of families encompasses more than non-interference; it is a guarantee of institutional protection of the family by society and the state. 'Family' is interpreted broadly, extending to different cultural understandings of family. The Direction imposes a temporary limit on a quarantined person's ability to meet with and engage with their family in person, but does recognise the unique position of unaccompanied minors who arrive in Australia, and provides that they must quarantine with a parent, guardian or other responsible adult. This also recognises the protection needed by children.

Section 27 of the Human Rights Act states that all people with particular cultural, religion, racial and linguistic backgrounds have a right to enjoy their culture, declare and practice their religion and use their language in community with other people of that background. This promotes the practise and maintenance of shared traditions and activities.

The Human Rights Act specifies that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people. Section 28 provides that Aboriginal and Torres Strait Islander peoples must not be denied this right, together with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practice their culture.

The direction may limit cultural rights under sections 27 and 28 of the Human Rights Act, for people who may ordinarily share their culture with their loved ones who visit are limited from doing so due to the restrictions on visitors in quarantine.

Every person in Queensland has the right to liberty and security and must not be subjected to arbitrary arrest or detention or deprived of their liberty except on grounds, and in accordance with procedures, established by law. The concept of detention includes not only detention in a prison, but all forms of detention, including for the purposes of medical treatment. The Direction restricting people to certain designated accommodation constitutes detention and, thus, limits the right to liberty and security.

Section 30 of the Human Rights Act states that everyone must be treated with respect when deprived of liberty. The underlying principle is that a person's rights should only be limited by the confinement itself, not additional hardships or constraints, noting that some rights are unavoidably restricted in a closed environment including freedom of movement and elements of freedom of expression. However, the Direction recognises that individuals with particular health needs should be able to quarantine in their residence with their carers because of the unique strain that detention in another setting may pose.

Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty. Like all rights in the Act, this right can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Section 36 of the Human Rights Act protects the right of every child to access primary and secondary education appropriate to their needs without discrimination. The scope of the right is tied to public education service delivery and does not extend to private and non-government schools or early childhood services.

#### *Compatibility with Human Rights*

##### Proper purpose (section 13(2)(b))

The purpose of the Direction is to reduce the spread of COVID-19 within Queensland from those people arriving from overseas, ~~other than New Zealand~~, who have a higher risk of having, and thus spreading, COVID-19. This is due to both the higher prevalence of COVID-19 in most other countries, and the exposure potential associated with travel.

Requiring ~~most~~ people entering Queensland from overseas to quarantine in nominated premises is to confine potential outbreaks and enable appropriate support of quarantined individuals within available resources. It also enables monitoring and enforcement of the requirements under the Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is in effect for a temporary period, and the restrictions as applying to a person only last for 14-days, which is tied with the typical incubation period for COVID-19. Ultimately, the purpose of quarantine is to limit the opportunity for transmission of COVID-19 during the potential incubation period.

The aim of protecting public health is a proper purpose. Protecting people in the community from the risk of COVID-19 also promotes their human rights to life (section 16) and health (section 37). At international law, the right to health includes '[t]he prevention, treatment and control of epidemic, endemic, ... and other diseases': *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12(2)(c).

The purpose of protecting and promoting human rights is necessarily consistent with a society 'based on human dignity, equality and freedom' (section 13(2)(b) of the Human Rights Act).

##### Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose of protecting public health by limiting the opportunities for transmission of COVID-19 from persons arriving from overseas, during the potential incubation period.

The quarantine requirements have been tailored to the needs of different cohorts. For example, those who are unable to live independently without ongoing or regular support may have a carer or support person quarantine with them at the nominated premises, and unaccompanied minors arriving in Queensland from overseas can be met on arrival and accompanied in quarantine by a parent, guardian or other responsible adult. ~~Also, people who have only been in New Zealand in the last 14 days and travelled to Australia on a quarantine-free flight do not need to quarantine upon arriving in Queensland.~~

People in quarantine are also permitted to leave their place of quarantine in certain circumstances, including to obtain essential medical care or supplies or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

##### Necessary (s 13(2)(d))

The limits on human rights are necessary to achieve the purpose. There is no other way to address the risk of COVID-19 spreading into Queensland from overseas which would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights.

In particular:

- Prohibiting entry of all people from overseas would be more restrictive of human rights.
- ~~People from New Zealand who arrived on a quarantine-free flight do not need to quarantine, unless they have come from an area that the Chief Health Officer declares a 'Safe travel zone hotspot'. This is a less restrictive approach based on the public health situation in New Zealand.~~
- Relying on other measures such as contact tracing and testing on arrival in Queensland (without quarantine restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from overseas may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- ~~Permitting people to quarantine at a location of their choosing would not be practicable or as effective given the resourcing requirements of policing and providing assistance to the number of locations that would be involved.~~
- ~~The Direction allows the Chief Health Officer to declare an area within a 'Safe travel zone country' a hotspot and require a person travelling from there to quarantine upon arrival in Queensland. However, New Zealand's latest COVID-19 case was detected in the community, has been diagnosed with the South African variant of COVID-19 and has been in the community while infectious. As the risk of spread within New Zealand has yet to be ascertained, a more cautious approach is required, and it is necessary to remove New Zealand as a 'Safe travel zone country'.~~

Formatted: Font:

Formatted: Space Before: 0 pt, After: 6 pt, No bullets or numbering

#### Fair balance (section 13(2)(e), (f) and (g))

~~This Direction does not impose any new limitations on human rights from the previous iteration.~~

Given the risk posed by overseas arrivals, the purpose of the Direction can only be reasonably achieved by temporarily restricting the contact of new overseas arrivals, ~~other than people who have only been in New Zealand,~~ with the broader community through quarantine arrangements.

Formatted: Space Before: 0 pt, After: 6 pt

Many of the limits on human rights are incidental. For example, although quarantine limits the right to demonstrate religion or belief as part of a community, people are not prevented from practising their religion or beliefs through private prayer or with others through video conferencing or other remote means. As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment

The extent of the limitation on human rights is further reduced in other ways. The Direction is in effect for a temporary period, and the restrictions that apply to a person only last for 14-days, unless a person refuses a COVID-19 test, which is based on public health advice about the typical incubation period for COVID-19. The Direction also recognises the hardship that certain persons would face in quarantine, including unaccompanied minors and persons with particular health needs, and allows them to quarantine with another person.



**Public Health Directions – Human Rights Assessment**  
Quarantine for International Arrivals Direction (No.4)

<b>Title</b>	<i>Quarantine for International Arrivals Direction (No. 4)</i>
<b>Date effective</b>	1 February 2021

### *Background*

The *Quarantine for International Arrivals Direction (No.4)* (the Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis should be read in conjunction with the Human Rights Statement of Compatibility prepared in accordance with section 38 of the *Human Rights Act 2019* with respect to the Public Health and Other Legislation (Public Health Emergency) Amendment Bill 2020. This Bill amended the *Public Health Act 2005* to enable the Chief Health Officer to issue directions that are reasonably necessary to assist in containing or responding to the spread of COVID-19.

### *Purpose of the Direction*

The purpose of the Direction is to limit the spread of COVID-19 into Queensland from travellers and Australian residents arriving from overseas. The purpose of the Direction is also to allow people from New Zealand to enter Queensland without needing to quarantine for 14 days, as part of the '[Safe Travel Zone](#)' national agreement, unless they are coming from an area of New Zealand that the Chief Health Officer considers poses an unacceptable risk.

In Queensland, a majority of cases to date have been overseas acquired. This indicates a significantly lower proportion of community transmission, likely as a result of Queensland's domestic border measures and effective monitoring of individuals in quarantine who enter from overseas.

Travellers from New Zealand, who have travelled to Australia on a flight with other people who also have only been in New Zealand for the last 14 days ('quarantine-free flight'), are considered very low risk in terms of transmission of COVID-19 into Queensland.

The Direction revokes and replaces the *Quarantine for International Arrivals Direction (No. 3)*. The change from the previous Direction is to reinstate New Zealand as a safe travel zone country with new screening requirements when a person arrives in Queensland from New Zealand which align with the screening that will be undertaken prior to a person departing New Zealand.

In preparing the Direction, risks to the health and safety of Queenslanders were identified and the current epidemiological situation, both in and beyond Queensland, were considered. The risks and epidemiological situation are more fully set out in the Policy Rationale that informed the direction, and form part of the purpose of the Direction. As the below human rights analysis draws on the information contained in the Policy Rationale, they should be read together.

### *How the Direction achieves the purpose*

The Direction requires persons who arrive in Queensland and have been overseas or in a 'Safe travel zone country hotspot' in the 14 days immediately before their arrival to quarantine for 14 days. A Safe travel zone country hotspot means an area within a 'Safe travel zone country' that has been specified by the Chief Health Officer by a direction published on the Queensland Government website. This allows the Chief Health Officer to declare an area within a 'Safe travel zone country' a hotspot and require a person travelling from there to quarantine upon arrival in Queensland.

Persons who have only been in a 'Safe travel zone country' in the 14 days immediately before their arrival, and travelled to Australia on a 'quarantine-free flight', will only need to quarantine for 14 days

on arrival to Queensland if they have been in a 'Safe travel zone country hotspot' in the 14 days immediately before their arrival. New Zealand is the only country currently specified in the direction as Safe travel zone country.

After completing immigration and customs, persons arriving into Queensland are required to travel directly to their nominated quarantine premises, and may not leave during the 14-day period except for the purpose of obtaining essential medical care or supplies, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

Those in quarantine are also prohibited from allowing others to enter the nominated premises unless the person also resides in the premises for the purpose of complying with the direction, enters to provide emergency, medical or other essential care to a person at the premises, or is otherwise required or permitted under a direction given by a relevant authority.

Most people required to quarantine need to do so in a hotel or other place nominated by the Chief Health Officer or a relevant authority. Some persons may quarantine in other suitable premises, such as their residence. This includes consular employees and a person unable to live independently without ongoing or regular support, including disability support, due to significant health needs. These people may also have a carer or support person quarantine at the nominated premises with them at their own expense.

A person must wear a mask when leaving quarantine or whenever directed to do so by an emergency officer (public health).

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test at any point. A person will be detained for a further period of 10 days if the person denies an emergency officer's (public health) request to be tested.

An emergency officer (public health) may also require a person in quarantine to answer questions or provide evidence about whether they have had symptoms consistent with COVID-19, their possible exposure to COVID-19 and their name and contact information.

The Chief Health Officer may grant a person an exemption from all or part of the Direction on the basis of exceptional circumstances.

### *Human rights engaged*

The human rights engaged by the Direction are:

- Right to life (section 16)
- Protection from torture and cruel, inhuman or degrading treatment (section 17)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Freedom of expression (section 21)
- Peaceful assembly and freedom of association (section 22)
- Taking part in public life (section 23)
- Privacy (section 25)
- Protection of families (section 26)
- Cultural rights (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to liberty and security (section 29)
- Right to humane treatment when deprived of liberty (section 30)
- Right to education (section 36)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts

on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, by reducing the risk of the spread of COVID-19 into Queensland from overseas.

### *Limitations*

The right to protection from torture and cruel, inhuman or degrading treatment includes the right not to be subjected to medical treatment without consent. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 10 days of quarantine. The requirement may be considered to limit a person's ability to make an autonomous decision about medical treatment as a person's right to provide full, free and informed consent to the test is limited as their ability to leave quarantine after 14 days is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.

Every person has the right to move freely, enter or leave Queensland, and choose where they live. As such, public entities cannot act in a way that unduly restricts a person's freedom of movement, including by arbitrarily forcing a person to remain in, or move to or from, a particular place. The Direction limits the right to freedom of movement by requiring people who arrive in Queensland from overseas, other than those people who arrive on a quarantine-free flight from New Zealand, to travel to and remain at nominated accommodation, primarily at hotels selected for them.

The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief either individually or as part of a community. The right to hold a belief is so important that it is considered to be an absolute right. However, limits on how a person manifests their belief can be justified. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days. This limits the ability of returning travellers to publicly demonstrate and practice their religion or beliefs, as they are not permitted to attend a church, mosque, temple or other religious institution to perform their usual religious practice.

Section 21 of the Human Rights Act provides that the right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds. It protects almost all kinds of expression, providing it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. The Direction limits this right by restricting a person from leaving their place of quarantine and prohibiting them from receiving visitors, although they may continue to engage with others via other means including telephone and video conferencing.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both participants and organisers of peaceful assemblies. Restricting a person's movements and prohibiting a person from receiving visitors limits their ability to peacefully assemble, although they may continue to 'assemble' and engage with others via other means such as telephone and video conferencing.

The right to privacy in section 25 of the Human Rights Act is broadly construed. A person has the right to not have their privacy, family or home arbitrarily interfered with. The right encompasses an individual's rights to establish and develop meaningful social relations (*Kracke v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620])). The Direction limits this right as it temporarily interferes with people's ability to make and maintain social and family connections. Interference with privacy will occur by making a person provide personal details and answer questions about their health and possible exposure to COVID-19 when the person is directed to by an emergency officer (public health).

The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work.

The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test, or be subjected to an additional 10 days of quarantine.<sup>1</sup> Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.

Queensland recognises families as the fundamental unit of society entitled to protection. The right to the protection of families encompasses more than non-interference; it is a guarantee of institutional protection of the family by society and the state. 'Family' is interpreted broadly, extending to different cultural understandings of family. The Direction imposes a temporary limit on a quarantined person's ability to meet with and engage with their family in person, but does recognise the unique position of unaccompanied minors who arrive in Australia, and provides that they must quarantine with a parent, guardian or other responsible adult. This also recognises the protection needed by children.

Section 27 of the Human Rights Act states that all people with particular cultural, religion, racial and linguistic backgrounds have a right to enjoy their culture, declare and practice their religion and use their language in community with other people of that background. This promotes the practise and maintenance of shared traditions and activities.

The Human Rights Act specifies that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people. Section 28 provides that Aboriginal and Torres Strait Islander peoples must not be denied this right, together with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practice their culture.

The direction may limit cultural rights under sections 27 and 28 of the Human Rights Act, for people who may ordinarily share their culture with their loved ones who visit are limited from doing so due to the restrictions on visitors in quarantine.

Every person in Queensland has the right to liberty and security and must not be subjected to arbitrary arrest or detention or deprived of their liberty except on grounds, and in accordance with procedures, established by law. The concept of detention includes not only detention in a prison, but all forms of detention, including for the purposes of medical treatment. The Direction restricting people to certain designated accommodation constitutes detention and, thus, limits the right to liberty and security.

Section 30 of the Human Rights Act states that everyone must be treated with respect when deprived of liberty. The underlying principle is that a person's rights should only be limited by the confinement itself, not additional hardships or constraints, noting that some rights are unavoidably restricted in a closed environment including freedom of movement and elements of freedom of expression. However, the Direction recognises that individuals with particular health needs should be able to quarantine in their residence with their carers because of the unique strain that detention in another setting may pose.

Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty. Like all rights in the Act, this right can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Section 36 of the Human Rights Act protects the right of every child to access primary and secondary education appropriate to their needs without discrimination. The scope of the right is tied to public education service delivery and does not extend to private and non-government schools or early childhood services.

#### *Compatibility with Human Rights*

##### Proper purpose (section 13(2)(b))

The purpose of the Direction is to reduce the spread of COVID-19 within Queensland from those people arriving from overseas, other than New Zealand, who have a higher risk of having, and thus spreading, COVID-19. This is due to both the higher prevalence of COVID-19 in most other countries, and the exposure potential associated with travel.

Requiring most people entering Queensland from overseas to quarantine in nominated premises is to confine potential outbreaks and enable appropriate support of quarantined individuals within available resources. It also enables monitoring and enforcement of the requirements under the Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is in effect for a temporary period, and the restrictions as applying to a person only last for 14-days, which is tied with the typical incubation period for COVID-19. Ultimately, the purpose of quarantine is to limit the opportunity for transmission of COVID-19 during the potential incubation period.

The aim of protecting public health is a proper purpose. Protecting people in the community from the risk of COVID-19 also promotes their human rights to life (section 16) and health (section 37). At international law, the right to health includes '[t]he prevention, treatment and control of epidemic, endemic, ... and other diseases': *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12(2)(c).

The purpose of protecting and promoting human rights is necessarily consistent with a society 'based on human dignity, equality and freedom' (section 13(2)(b) of the Human Rights Act).

##### Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose of protecting public health by limiting the opportunities for transmission of COVID-19 from persons arriving from overseas, during the potential incubation period.

The quarantine requirements have been tailored to the needs of different cohorts. For example, those who are unable to live independently without ongoing or regular support may have a carer or support person quarantine with them at the nominated premises, and unaccompanied minors arriving in Queensland from overseas can be met on arrival and accompanied in quarantine by a parent, guardian or other responsible adult. Also, people who have only been in New Zealand in the last 14 days and travelled to Australia on a quarantine-free flight do not need to quarantine upon arriving in Queensland.

People in quarantine are also permitted to leave their place of quarantine in certain circumstances, including to obtain essential medical care or supplies or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

##### Necessary (s 13(2)(d))

The limits on human rights are necessary to achieve the purpose. There is no other way to address the risk of COVID-19 spreading into Queensland from overseas which would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights.

In particular:

- Prohibiting entry of all people from overseas would be more restrictive of human rights.
- People from New Zealand who arrived on a quarantine-free flight do not need to quarantine, unless they have come from an area that the Chief Health Officer declares a 'Safe travel zone hotspot'. This is a less restrictive approach based on the public health situation in New Zealand.
- Relying on other measures such as contact tracing and testing on arrival in Queensland (without quarantine restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from overseas may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Permitting people to quarantine at a location of their choosing would not be practicable or as effective given the resourcing requirements of policing and providing assistance to the number of locations that would be involved.

#### Fair balance (section 13(2)(e), (f) and (g))

Given the risk posed by overseas arrivals, the purpose of the Direction can only be reasonably achieved by temporarily restricting the contact of new overseas arrivals, other than people who have only been in New Zealand, with the broader community through quarantine arrangements.

Many of the limits on human rights are incidental. For example, although quarantine limits the right to demonstrate religion or belief as part of a community, people are not prevented from practising their religion or beliefs through private prayer or with others through video conferencing or other remote means. As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment

The extent of the limitation on human rights is further reduced in other ways. The Direction is in effect for a temporary period, and the restrictions that apply to a person only last for 14-days, unless a person refuses a COVID-19 test, which is based on public health advice about the typical incubation period for COVID-19. The Direction also recognises the hardship that certain persons would face in quarantine, including unaccompanied minors and persons with particular health needs, and allows them to quarantine with another person.

The Direction applies the least restrictive approach in the circumstances to people who have only been in New Zealand in the last 14 days and arrived in Australia on a quarantine-free flight.

The requirements of the Direction are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in more remote ways.

The limits on human rights by requiring a person to wear a mask when leaving quarantine or agree to a COVID-19 test or be subject to an additional 10 days quarantine are justifiable. Requiring a person to agree to undergo a COVID-19 test is aimed at addressing the risk presented by COVID-19 and will



assist in addressing that risk. For example, a person who is released from quarantine may potentially be asymptomatic and there will be no means of confirmation without a test. The person could potentially infect people in the wider community once they are released from quarantine. Tackling such a scenario would require resources for contact tracing (one person could have up to 200 contacts) and may divert resources from other critical areas. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights. A person also has the option of agreeing to the test or remaining in quarantine for a further 10 days. Additionally, section 362L of the *Public Health Act 2005* expressly authorises an emergency officer (public health) to take action to enforce a requirement or direction, using reasonable and necessary force. The provisions indicate that Parliament has considered liberty interests and decided to curtail those rights to address public health risks.

The Direction provides a broad exemption power enabling the Chief Health Officer to grant an exemption to any of its requirements based on exceptional circumstances. This broad power was included to protect against unintended consequences of the Direction, and to acknowledge that there may be circumstances where quarantine in a designated premises may not be reasonable or appropriate.

The impact on some human rights will be large, in particular, the right to equality for residents returning from overseas and the freedom of movement. However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) outweighs the impact on other human rights. Indeed, it is difficult to overstate the importance to society of addressing the risk posed by a pandemic. Ultimately, the Direction strikes a fair balance between the human rights it limits and the need to reduce the risk of COVID-19 spreading into Queensland.

~~The Direction applies the least restrictive approach in the circumstances to people who have only been in New Zealand in the last 14 days and arrived in Australia on a quarantine free flight.~~

The requirements of the Direction are proportionate and necessary to the unprecedented threat to public health, including the pressing need for [social-physical](#) distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in more remote ways.

The limits on human rights by requiring a person to wear a mask when leaving quarantine or agree to a COVID-19 test or be subject to an additional 10 days quarantine are justifiable. Requiring a person to agree to undergo a COVID-19 test is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. For example, a person who is released from quarantine may potentially be asymptomatic and there will be no means of confirmation without a test. The person could potentially infect people in the wider community once they are released from quarantine. Tackling such a scenario would require resources for contact tracing (one person could have up to 200 contacts) and may divert resources from other critical areas. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights. A person also has the option of agreeing to the test or remaining in quarantine for a further 10 days. Additionally, section 362L of the *Public Health Act 2005* expressly authorises an emergency officer (public health) to take action to enforce a requirement or direction, using reasonable and necessary force. The provisions indicate that Parliament has considered liberty interests and decided to curtail those rights to address public health risks.

The Direction provides a broad exemption power enabling the Chief Health Officer to grant an exemption to any of its requirements based on exceptional circumstances. This broad power was included to protect against unintended consequences of the Direction, and to acknowledge that there may be circumstances where quarantine in a designated premises may not be reasonable or appropriate.

The impact on some human rights will be large, in particular, the right to equality for residents returning from overseas and the freedom of movement. However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) outweighs the impact on other human rights. Indeed, it is difficult to overstate the importance to society of addressing the risk posed by a pandemic. Ultimately, the Direction strikes a fair balance between the human rights it limits and the need to reduce the risk of COVID-19 spreading into Queensland.

**Public Health Directions – Human Rights Assessment**  
Quarantine for International Arrivals Direction (No.5)

<b>Title</b>	<i>Quarantine for International Arrivals Direction (No. 5)</i>
<b>Date effective</b>	19 February 2021

### *Background*

The *Quarantine for International Arrivals Direction (No.5)* (the Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis should be read in conjunction with the Human Rights Statement of Compatibility prepared in accordance with section 38 of the *Human Rights Act 2019* with respect to the Public Health and Other Legislation (Public Health Emergency) Amendment Bill 2020. This Bill amended the *Public Health Act 2005* to enable the Chief Health Officer to issue directions that are reasonably necessary to assist in containing or responding to the spread of COVID-19.

### *Purpose of the Direction*

The purpose of the Direction is to limit the spread of COVID-19 into Queensland from travellers and Australian residents arriving from overseas. The purpose of the Direction is also to allow people from New Zealand to enter Queensland without needing to quarantine for 14 days, as part of the '[Safe Travel Zone](#)' national agreement, unless they are coming from an area of New Zealand that the Chief Health Officer considers poses an unacceptable risk.

In Queensland, a majority of cases to date have been overseas acquired. This indicates a significantly lower proportion of community transmission, likely as a result of Queensland's domestic border measures and effective monitoring of individuals in quarantine who enter from overseas.

Travellers from New Zealand, who have travelled to Australia on a flight with other people who also have only been in New Zealand for the last 14 days ('quarantine-free flight'), are considered very low risk in terms of transmission of COVID-19 into Queensland.

The Direction revokes and replaces the *Quarantine for International Arrivals Direction (No. 4)*.

In preparing the Direction, risks to the health and safety of Queenslanders were identified and the current epidemiological situation, both in and beyond Queensland, were considered. The risks and epidemiological situation are more fully set out in the Policy Rationale that informed the direction, and form part of the purpose of the Direction. As the below human rights analysis draws on the information contained in the Policy Rationale, they should be read together.

### *How the Direction achieves the purpose*

The Direction requires persons who arrive in Queensland and have been overseas or in a 'Safe travel zone country hotspot' in the 14 days immediately before their arrival to quarantine for 14 days. A Safe travel zone country hotspot means an area within a 'Safe travel zone country' that has been specified by the Chief Health Officer by a direction published on the Queensland Government website. This allows the Chief Health Officer to declare an area within a 'Safe travel zone country' a hotspot and require a person travelling from there to quarantine upon arrival in Queensland.

Persons who have only been in a 'Safe travel zone country' in the 14 days immediately before their arrival, and travelled to Australia on a 'quarantine-free flight', will only need to quarantine for 14 days on arrival to Queensland if they have been in a 'Safe travel zone country hotspot' in the 14 days immediately before their arrival. New Zealand is the only country currently specified in the direction as Safe travel zone country.

The Direction allows persons who arrive in Queensland from overseas to transit through a Queensland airport in line with the Commonwealth Government's position on transit of overseas arrivals. A person can transit through a Queensland airport without having to complete 14 days of quarantine provided they remain in the confines of the airport or quarantine at a government-nominated hotel until their next international flight to leave Australia.

The Direction requires all persons arriving in Queensland who have been in a place outside of Australia in the last 14 days to complete a Queensland International Arrivals Registration (QIAR) except for those arrivals from a safe travel zone country who have arrived on a quarantine-free flight. The Direction requires that any international arrival to Queensland required to complete the QIAR must provide information about:

- their name, date of birth, primary residential address in Australia, phone number and email address
- whether they are unaccompanied minor and, if so, the details of the parent, guardian or responsible adult who will consent to quarantine with the minor
- their travel details including arrival date in Queensland

The International Arrivals Registration The completion of the QIAR allows for a streamlined process for issuing Quarantine Directions to overseas travellers on their arrival to Queensland.

After completing immigration and customs, persons arriving into Queensland are required to travel directly to their nominated quarantine premises, and may not leave during the 14-day period except for the purpose of obtaining essential medical care at a hospital, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority. Any travel to and from a nominated quarantine premises must be via ambulance service, emergency services vehicle or transport arranged by a government authority. If a person needs to leave quarantine for essential medical care at a hospital transport must be via ambulance service both to the hospital and when returning to the nominated premises, if applicable.

Those in quarantine are also prohibited from allowing others to enter the nominated premises unless the person also resides in the premises for the purpose of complying with the direction, enters to provide emergency, medical or other essential care to a person at the premises, or is otherwise required or permitted under a direction given by a relevant authority.

The Direction also restricts the reasons that a person quarantining at a nominated premises can open the door to their room and requires that surgical masks must be worn by all occupants of a room any time the door is open. Unless the quarantined person is leaving the nominated premises for a permitted purpose, they must only open the door to their allocated room when permitted to do so by a quarantine facility worker.

Most people required to quarantine need to do so in a hotel or other place nominated by the Chief Health Officer or a relevant authority. Some persons may quarantine in other suitable premises, such as their residence. This includes consular employees and a person unable to live independently without ongoing or regular support, including disability support, due to significant health needs. These people may also have a carer or support person quarantine at the nominated premises with them at their own expense.

A person must wear a mask when leaving quarantine or whenever directed to do so by an emergency officer (public health).

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test at any point. A person will be detained for a further period of 10 days if the person denies an emergency officer's (public health) request to be tested.

An emergency officer (public health) may also require a person in quarantine to answer questions or provide evidence about whether they have symptoms consistent with COVID-19, their possible exposure to COVID-19, their contact information, flight information and information about the places the person has been in the last 14 days. An emergency officer may also ask a person if they have undertaken quarantine at a government-nominated premises in a Safe Travel Zone country in the 14 days prior to arrival in Queensland.

The Chief Health Officer may grant a person an exemption from all or part of the Direction on the basis of exceptional circumstances.

### *Human rights engaged*

The human rights engaged by the Direction are:

- Right to life (section 16)
- Protection from torture and cruel, inhuman or degrading treatment (section 17)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Freedom of expression (section 21)
- Peaceful assembly and freedom of association (section 22)
- Taking part in public life (section 23)
- Privacy (section 25)
- Protection of families (section 26)
- Cultural rights (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to liberty and security (section 29)
- Right to humane treatment when deprived of liberty (section 30)
- Right to education (section 36)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, by reducing the risk of the spread of COVID-19 into Queensland from overseas.

### *Limitations*

The right to protection from torture and cruel, inhuman or degrading treatment includes the right not to be subjected to medical treatment without consent. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 10 days of quarantine. The requirement may be considered to limit a person's ability to make an autonomous decision about medical treatment as a person's right to provide full, free and informed consent to the test is limited as their ability to leave quarantine after 14 days is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.

Every person has the right to move freely, enter or leave Queensland, and choose where they live. As such, public entities cannot act in a way that unduly restricts a person's freedom of movement, including by arbitrarily forcing a person to remain in, or move to or from, a particular place. The Direction limits the right to freedom of movement by requiring people who arrive in Queensland from overseas, other than those people who arrive on a quarantine-free flight from New Zealand, to travel to and remain at nominated accommodation, primarily at hotels selected for them.

The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief either individually or as part of a community. The right to hold a belief is so important that it is considered to be an absolute right. However, limits on how a person manifests their belief can be justified. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days. This limits the ability of returning travellers to publicly demonstrate and practice their religion or beliefs, as they are not permitted to attend a church, mosque, temple or other religious institution to perform their usual religious practice.

Section 21 of the Human Rights Act provides that the right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds. It protects almost all kinds of expression, providing it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. The Direction limits this right by restricting a person from leaving their place of quarantine and prohibiting them from receiving visitors, although they may continue to engage with others via other means including telephone and video conferencing.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both participants and organisers of peaceful assemblies. Restricting a person's movements and prohibiting a person from receiving visitors limits their ability to peacefully assemble, although they may continue to 'assemble' and engage with others via other means such as telephone and video conferencing.

The right to privacy in section 25 of the Human Rights Act is broadly construed. A person has the right to not have their privacy, family or home arbitrarily interfered with. The right encompasses an individual's rights to establish and develop meaningful social relations (*Kracke v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620])). The Direction limits this right as it temporarily interferes with people's ability to make and maintain social and family connections. Interference with privacy will occur by making a person provide personal details and answer questions about their health and possible exposure to COVID-19 when the person is directed to by an emergency officer (public health).

The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work.

The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test, or be subjected to an additional 10 days of quarantine.<sup>1</sup> Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.

Queensland recognises families as the fundamental unit of society entitled to protection. The right to the protection of families encompasses more than non-interference; it is a guarantee of institutional protection of the family by society and the state. 'Family' is interpreted broadly, extending to different cultural understandings of family. The Direction imposes a temporary limit on a quarantined person's ability to meet with and engage with their family in person, but does recognise the unique position of unaccompanied minors who arrive in Australia, and provides that they must quarantine with a parent, guardian or other responsible adult. This also recognises the protection needed by children.



Section 27 of the Human Rights Act states that all people with particular cultural, religion, racial and linguistic backgrounds have a right to enjoy their culture, declare and practice their religion and use their language in community with other people of that background. This promotes the practise and maintenance of shared traditions and activities.

The Human Rights Act specifies that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people. Section 28 provides that Aboriginal and Torres Strait Islander peoples must not be denied this right, together with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practice their culture.

The direction may limit cultural rights under sections 27 and 28 of the Human Rights Act, for people who may ordinarily share their culture with their loved ones who visit are limited from doing so due to the restrictions on visitors in quarantine.

Every person in Queensland has the right to liberty and security and must not be subjected to arbitrary arrest or detention or deprived of their liberty except on grounds, and in accordance with procedures, established by law. The concept of detention includes not only detention in a prison, but all forms of detention, including for the purposes of medical treatment. The Direction restricting people to certain designated accommodation constitutes detention and, thus, limits the right to liberty and security.

Section 30 of the Human Rights Act states that everyone must be treated with respect when deprived of liberty. The underlying principle is that a person's rights should only be limited by the confinement itself, not additional hardships or constraints, noting that some rights are unavoidably restricted in a closed environment including freedom of movement and elements of freedom of expression. However, the Direction recognises that individuals with particular health needs should be able to quarantine in their residence with their carers because of the unique strain that detention in another setting may pose.

Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty. Like all rights in the Act, this right can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Section 36 of the Human Rights Act protects the right of every child to access primary and secondary education appropriate to their needs without discrimination. The scope of the right is tied to public education service delivery and does not extend to private and non-government schools or early childhood services.

### *Compatibility with Human Rights*

#### Proper purpose (section 13(2)(b))

The purpose of the Direction is to reduce the spread of COVID-19 within Queensland from those people arriving from overseas, other than New Zealand, who have a higher risk of having, and thus spreading, COVID-19. This is due to both the higher prevalence of COVID-19 in most other countries, and the exposure potential associated with travel.

Requiring most people entering Queensland from overseas to quarantine in nominated premises is to confine potential outbreaks and enable appropriate support of quarantined individuals within available resources. It also enables monitoring and enforcement of the requirements under the Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is in effect for a temporary period, and the restrictions as applying to a person only last for 14-days, which is tied with the typical incubation period for COVID-19. Ultimately, the purpose of quarantine is to limit the opportunity for transmission of COVID-19 during the potential incubation period.

The aim of protecting public health is a proper purpose. Protecting people in the community from the risk of COVID-19 also promotes their human rights to life (section 16) and health (section 37). At international law, the right to health includes '[t]he prevention, treatment and control of epidemic, endemic, ... and other diseases': *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12(2)(c).

The purpose of protecting and promoting human rights is necessarily consistent with a society 'based on human dignity, equality and freedom' (section 13(2)(b) of the Human Rights Act).

#### Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose of protecting public health by limiting the opportunities for transmission of COVID-19 from persons arriving from overseas, during the potential incubation period.

The quarantine requirements have been tailored to the needs of different cohorts. For example, those who are unable to live independently without ongoing or regular support may have a carer or support person quarantine with them at the nominated premises, and unaccompanied minors arriving in Queensland from overseas can be met on arrival and accompanied in quarantine by a parent, guardian or other responsible adult. Also, people who have only been in New Zealand in the last 14 days and travelled to Australia on a quarantine-free flight do not need to quarantine upon arriving in Queensland.

People in quarantine are also permitted to leave their place of quarantine in certain circumstances, including to obtain essential medical care or supplies or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

#### Necessary (s 13(2)(d))

The limits on human rights are necessary to achieve the purpose. There is no other way to address the risk of COVID-19 spreading into Queensland from overseas which would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights.

In particular:

- Prohibiting entry of all people from overseas would be more restrictive of human rights.
- People from New Zealand who arrived on a quarantine-free flight do not need to quarantine, unless they have come from an area that the Chief Health Officer declares a 'Safe travel zone hotspot'. This is a less restrictive approach based on the public health situation in New Zealand.
- Relying on other measures such as contact tracing and testing on arrival in Queensland (without quarantine restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from overseas may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Permitting people to quarantine at a location of their choosing would not be practicable or as effective given the resourcing requirements of policing and providing assistance to the number of locations that would be involved.

#### Fair balance (section 13(2)(e), (f) and (g))

Given the risk posed by overseas arrivals, the purpose of the Direction can only be reasonably achieved by temporarily restricting the contact of new overseas arrivals, other than people who have only been in New Zealand, with the broader community through quarantine arrangements.

Many of the limits on human rights are incidental. For example, although quarantine limits the right to demonstrate religion or belief as part of a community, people are not prevented from practising their religion or beliefs through private prayer or with others through video conferencing or other remote means. As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment

The extent of the limitation on human rights is further reduced in other ways. The Direction is in effect for a temporary period, and the restrictions that apply to a person only last for 14-days, unless a person refuses a COVID-19 test, which is based on public health advice about the typical incubation period for COVID-19. The Direction also recognises the hardship that certain persons would face in quarantine, including unaccompanied minors and persons with particular health needs, and allows them to quarantine with another person.

The Direction applies the least restrictive approach in the circumstances to people who have only been in New Zealand in the last 14 days and arrived in Australia on a quarantine-free flight.

The requirements of the Direction are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in more remote ways.

The limits on human rights by requiring a person to wear a mask when leaving quarantine or agree to a COVID-19 test or be subject to an additional 10 days quarantine are justifiable. Requiring a person to agree to undergo a COVID-19 test is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. For example, a person who is released from quarantine may potentially be asymptomatic and there will be no means of confirmation without a test. The person could potentially infect people in the wider community once they are released from quarantine. Tackling such a scenario would require resources for contact tracing (one person could have up to 200 contacts) and may divert resources from other critical areas. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights. A person also has the option of agreeing to the test or remaining in quarantine for a further 10 days. Additionally, section 362L of the *Public Health Act 2005* expressly authorises an emergency officer (public health) to take action to enforce a requirement or direction, using reasonable and necessary force. The provisions indicate that Parliament has considered liberty interests and decided to curtail those rights to address public health risks.

The Direction provides a broad exemption power enabling the Chief Health Officer to grant an exemption to any of its requirements based on exceptional circumstances. This broad power was included to protect against unintended consequences of the Direction, and to acknowledge that there may be circumstances where quarantine in a designated premises may not be reasonable or appropriate.

The impact on some human rights will be large, in particular, the right to equality for residents returning from overseas and the freedom of movement. However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) outweighs the impact on other human rights. Indeed, it is difficult to overstate the importance to society of addressing the risk posed by a pandemic. Ultimately, the Direction strikes a fair balance between the human rights it limits and the need to reduce the risk of COVID-19 spreading into Queensland.

RTI RELEASE

## Public Health Directions – Human Rights Assessment

### Self-quarantine for Persons Arriving in Queensland from Overseas Direction

<b>Title</b>	<i>Self-quarantine for Persons Arriving in Queensland from Overseas Direction (No. 6)</i>
<b>Date effective</b>	22 October 2020

#### *Background*

The *Self-quarantine for Persons Arriving in Queensland from Overseas Direction (No. 6)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis should be read in conjunction with the Human Rights Statement of Compatibility prepared in accordance with section 38 of the *Human Rights Act 2019* with respect to the Public Health and Other Legislation (Public Health Emergency) Amendment Bill 2020. This Bill amended the *Public Health Act 2005* to enable the Chief Health Officer to issue directions that are reasonably necessary to assist in containing or responding to the spread of COVID-19.

#### *Purpose of the Direction*

The purpose of the Direction is to limit the spread of COVID-19 into Queensland from travellers and Australian residents arriving from overseas.

In Queensland, a majority of cases to date (76 per cent) have been overseas acquired. This indicates a significantly lower proportion of community transmission, likely as a result of Queensland's domestic border measures and effective monitoring of individuals in self-quarantine who enter from overseas. In comparison, Victoria is reporting significantly more cases of locally acquired COVID-19, including large numbers of cases with no known source of infection, which is indicative of widespread community transmission.

The Direction revokes and replaces the *Self-quarantine for Persons Arriving in Queensland from Overseas Direction (No. 5)*.

#### *How the Direction achieves the purpose*

The Direction requires persons who arrive in Queensland from overseas to self-quarantine for 14-days. After completing immigration and customs, persons arriving into Queensland are required to travel directly to the quarantine premises, and may not leave during the 14-day period except for the purpose of obtaining essential medical care or supplies, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

Those in self-quarantine are also prohibited from allowing others to enter the nominated premises unless the person also resides in the premises for the purpose of complying with the direction, enters to provide emergency, medical or other essential care to a person at the premises, or is otherwise required or permitted under a direction given by an relevant authority.

Most people required to self-quarantine need to do so in a hotel or other place nominated by the Chief Health Officer or a relevant authority. Some persons may self-quarantine in other suitable premises, such as their residence. This includes consular employees and air crew (who may also leave for their next work voyage prior to the expiry of the 14-day quarantine period or to attend flight related duties, such as flight simulation training). A person unable to live independently without ongoing or regular support, including disability support, due to significant health needs, may have a carer or support person self-quarantine at the nominated premises with them at their own expense.

A person must provide a negative COVID-19 test result prior to being able to leave quarantine for any reason other than to avoid injury or illness or to escape a risk of harm or an emergency situation. They must also wear a mask when leaving self-quarantine or whenever directed to do so by an emergency officer (public health).

A person required to self-quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test at another point. A person will be detained for a further period of 10 days if the person denies an emergency officer's (public health) request to be tested. They will also be required to provide a negative COVID-19 test result prior to being able to leave quarantine, unless there is an emergency.

Data from a Queensland trial of testing on day 11 or 12 of hotel quarantine shows that uptake varies:

- initially had 60-70% voluntarily comply, but that this number has reduced to around 50%.
- parents often do not consent to children being swabbed.

Testing of people in hotel quarantine would identify cases who are late in the incubation period but have remained asymptomatic, pre-symptomatic or with undeclared symptoms during their period of quarantine.

The Chief Health Officer may grant a person an exemption from all or part of the Direction on the basis of exceptional circumstances.

#### *Human rights engaged*

The human rights engaged by the Direction are:

- Right to life (section 16)
- Protection from torture and cruel, inhuman or degrading treatment (section 17)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Freedom of expression (section 21)
- Peaceful assembly and freedom of association (section 22)
- Taking part in public life (section 23)
- Privacy (section 25)
- Protection of families (section 26)
- Cultural rights (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to liberty and security (section 29)
- Right to humane treatment when deprived of liberty (section 30)
- Right to education (section 36)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, by reducing the risk of the spread of COVID-19 into Queensland from overseas.

#### *Limitations*

The right to protection from torture and cruel, inhuman or degrading treatment includes the right not to be subjected to medical treatment without consent. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine, or be subjected to an additional 10 days of quarantine. This right is also engaged through the requirement for a person to provide a negative COVID-19 test result prior being able to leave quarantine. The requirement may be considered to limit a person's ability to make an autonomous



decision about medical treatment as a person's right to provide full, free and informed consent to the test is limited as their ability to leave quarantine after 14 days is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.

Every person has the right to move freely, enter or leave Queensland, and choose where they live. As such, public entities cannot act in a way that unduly restricts a person's freedom of movement, including by arbitrarily forcing a person to remain in, or move to or from, a particular place. The Direction limits the right to freedom of movement by requiring people who arrive in Queensland from overseas to travel to and remain at nominated accommodation, primarily at hotels selected for them.

The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief either individually or as part of a community. The right to hold a belief is so important that it is considered to be an absolute right. However, limits on how a person manifests their belief can be justified. The Direction limits this right by restricting a person's movement to particular premises for 14 days. This limits the ability of returning travellers to publicly demonstrate and practice their religion or beliefs, as they are not permitted to attend a church, mosque, temple or other religious institution to perform their usual religious practice.

Section 21 of the Human Rights Act provides that the right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds. It protects almost all kinds of expression, providing it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. The Direction limits this right by restricting a person from leaving their place of quarantine and prohibiting them from receiving visitors, although they may continue to engage with others via other means including telephone and video conferencing.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both participants and organisers of peaceful assemblies. Restricting a person's movements and prohibiting a person from receiving visitors limits their ability to peacefully assemble, although they may continue to 'assemble' and engage with others via other means such as telephone and video conferencing.

The right to privacy in section 25 of the Human Rights Act is broadly construed. A person has the right to not have their privacy, family or home arbitrarily interfered with. The right encompasses an individual's rights to establish and develop meaningful social relations (*Kracke v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it temporarily interferes with people's ability to make and maintain social and family connections. Interference with privacy will occur by making a person provide personal details, on arrival to Queensland when the person is directed to self-quarantine. The Direction may also limit a person's right to work by requiring a person to self-quarantine for 14 days before they can return to work.

It is also arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine, or be subject to an additional 10 days of quarantine, or to provide a negative COVID-19 test result before being able to leave self-quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine and that they do not need to provide a negative test result if they are leaving self-quarantine in an emergency.

The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a

COVID-19 test, or be subjected to an additional 10 days of quarantine.<sup>1</sup> Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.

Queensland recognises families as the fundamental unit of society entitled to protection. The right to the protection of families encompasses more than non-interference; it is a guarantee of institutional protection of the family by society and the state. 'Family' is interpreted broadly, extending to different cultural understandings of family. The Direction imposes a temporary limit on a self-quarantined person's ability to meet with and engage with their family in person, but does recognise the unique position of unaccompanied minors who arrive in Australia, and provides that they must self-quarantine with a parent, guardian or other responsible adult. This also recognises the protection needed by children.

Section 27 of the Human Rights Act states that all people with particular cultural, religion, racial and linguistic backgrounds have a right to enjoy their culture, declare and practice their religion and use their language in community with other people of that background. This promotes the practise and maintenance of shared traditions and activities.

The Human Rights Act specifies that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people. Section 28 provides that Aboriginal and Torres Strait Islander peoples must not be denied this right, together with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practice their culture.

The direction may limit cultural rights under sections 27 and 28 of the Human Rights Act, for people who may ordinarily share their culture with their loved ones who visit are limited from doing so due to the restrictions on visitors in self-quarantine.

Every person in Queensland has the right to liberty and security and must not be subjected to arbitrary arrest or detention or deprived of their liberty except on grounds, and in accordance with procedures, established by law. The concept of detention includes not only detention in a prison, but all forms of detention, including for the purposes of medical treatment. The Direction restricting people to certain designated accommodation constitutes detention and, thus, limits the right to liberty and security.

Section 30 of the Human Rights Act states that everyone must be treated with respect when deprived of liberty. The underlying principle is that a person's rights should only be limited by the confinement itself, not additional hardships or constraints, noting that some rights are unavoidably restricted in a closed environment including freedom of movement and elements of freedom of expression. However, the Direction recognises that individuals with particular health needs should be able to self-quarantine in their residence with their carers because of the unique strain that detention in another setting may pose.

Additionally, the restriction against visitors to the nominated premises while self-quarantining may be a limit on the right to humane treatment when deprived of liberty. Like all rights in the Act, this right can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Section 36 of the Human Rights Act protects the right of every child to access primary and secondary education appropriate to their needs without discrimination. The scope of the right is tied to public education service delivery and does not extend to private and non-government schools or early childhood services.

### *Compatibility with Human Rights*

#### Proper purpose (section 13(2)(b))

---

The purpose of the Direction is to reduce the spread of COVID-19 within Queensland from those arriving from overseas who have a higher risk of having, and thus spreading, COVID-19. This is due to both the higher prevalence of COVID-19 in other countries, and the exposure potential associated with travel.

Requiring most people entering Queensland from overseas to quarantine in nominated premises is to confine potential outbreaks and enable appropriate support of quarantined individuals within available resources. It also enables monitoring and enforcement of the requirements under the Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is in effect for a temporary period, and the restrictions as applying to a person only last for 14-days, which is tied with the typical incubation period for COVID-19. Ultimately, the purpose of quarantine is to limit the opportunity for transmission of COVID-19 during the potential incubation period.

The aim of protecting public health is a proper purpose. Protecting people in the community from the risk of COVID-19 also promotes their human rights to life (section 16) and health (section 37). At international law, the right to health includes '[t]he prevention, treatment and control of epidemic, endemic, ... and other diseases': *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12(2)(c).

The purpose of protecting and promoting human rights is necessarily consistent with a society 'based on human dignity, equality and freedom' (section 13(2)(b) of the Human Rights Act).

#### Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose of protecting public health by limiting the opportunities for transmission of COVID-19 from persons arriving from overseas, during the potential incubation period.

The quarantine requirements have been tailored to the needs of different cohorts. For example, those who are unable to live independently without ongoing or regular support may have a carer or support person self-quarantine with them at the nominated premises, and unaccompanied minors arriving in Queensland from overseas can be met on arrival and accompanied in quarantine by a parent, guardian or other responsible adult.

People in quarantine are also permitted to leave their place of quarantine in certain circumstances, including to obtain essential medical care or supplies or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

#### Necessary (s 13(2)(d))

The limits on human rights are necessary to achieve the purpose. There is no other way to address the risk of COVID-19 spreading into Queensland from overseas which would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights.

In particular:

- Prohibiting entry of all people from overseas would be more restrictive of human rights
- Relying on other measures such as contact tracing and testing on arrival in Queensland (without quarantine restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from overseas may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a

single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.

- Permitting people to self-quarantine at a location of their choosing would not be practicable or as effective given the resourcing requirements of policing and providing assistance to the number of locations that would be involved.

#### Fair balance (section 13(2)(e), (f) and (g))

Given the risk posed by overseas arrivals, the purpose of the Direction can only be reasonably achieved by temporarily restricting the contact of new overseas arrivals with the broader community through quarantine arrangements.

Many of the limits on human rights are incidental. For example, although quarantine limits the right to demonstrate religion or belief as part of a community, people are not prevented from practising their religion or beliefs through private prayer or with others through video conferencing or other remote means. As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment

The extent of the limitation on human rights is further reduced in other ways. The Direction is in effect for a temporary period, and the restrictions that apply to a person only last for 14-days, unless a person refuses a COVID-19 test, which is based on public health advice about the typical incubation period for COVID-19. The Direction also recognises the hardship that certain persons would face in quarantine, including unaccompanied minors and persons with particular health needs, and allows them to quarantine with another person.

The requirements of the Direction are proportionate and necessary to the unprecedented threat to public health, including the pressing need for social distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in more remote ways.

The limits on human rights by requiring a person to, provide a negative COVID-19 test result before leaving self-quarantine, wear a mask when leaving self-quarantine, agree to a COVID-19 test or be subject to an additional 10 days quarantine is justifiable. Requiring a person to agree to undergo a COVID-19 test is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. For example, a person who is released from quarantine may potentially be asymptomatic and there will be no means of confirmation without a test. The person could potentially infect people in the wider community once they are released from quarantine. Tackling such a scenario would require resources for contact tracing (one person could have up to 200 contacts) and may divert resources from other critical areas. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights. A person also has the option of agreeing to the test or remaining in quarantine for a further 10 days. Additionally, section 362L of the *Public Health Act 2005* expressly authorises an emergency officer (public health) to take action to enforce a requirement or direction, using reasonable and necessary force. The provisions indicate that Parliament has considered liberty interests and decided to curtail those rights to address public health risks.

The Direction provides a broad exemption power enabling the Chief Health Officer to grant an exemption to any of its requirements based on exceptional circumstances. This broad power was included to protect against unintended consequences of the Direction, and to acknowledge that there may be circumstances where self-quarantine in a designated premises may not be reasonable or appropriate.

The impact on some human rights will be large, in particular, the right to equality for residents returning from overseas and the freedom of movement. However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) outweighs the impact on other human rights. Indeed, it is difficult to overstate the importance to society of addressing the risk posed by a pandemic. Ultimately, the Direction strikes a fair balance between the human rights it limits and the need to reduce the risk of COVID-19 spreading into Queensland.

RTI RELEASE

**Public Health Directions – Human Rights Assessment**  
Quarantine for International Arrivals Direction (No. 7)

<b>Title</b>	<i>Quarantine for International Arrivals Direction (No. 7)</i>
<b>Date effective</b>	20 March 2021

### *Background*

The *Quarantine for International Arrivals Direction (No. 7)* (the Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis should be read in conjunction with the Human Rights Statement of Compatibility prepared in accordance with section 38 of the *Human Rights Act 2019* with respect to the Public Health and Other Legislation (Public Health Emergency) Amendment Bill 2020. This Bill amended the *Public Health Act 2005* to enable the Chief Health Officer to issue directions that are reasonably necessary to assist in containing or responding to the spread of COVID-19.

### *Purpose of the Direction*

The purpose of the Direction is to limit the spread of COVID-19 into Queensland from travellers and Australian residents arriving from overseas.

In Queensland, a majority of cases to date have been overseas acquired. This indicates a significantly lower proportion of community transmission, likely as a result of Queensland's domestic border measures and effective monitoring of individuals in quarantine who enter from overseas. Travellers from New Zealand, who have travelled to Australia on a flight with other people who also have only been in New Zealand for the last 14 days ('quarantine-free flight'), are considered very low risk in terms of transmission of COVID-19 into Queensland.

The Direction revokes and replaces the *Quarantine for International Arrivals Direction (No. 6)*. The change from the previous Direction is to include New Zealand as a safe travel zone country as part of the Safe Travel Zone national agreement.

In preparing the Direction, risks to the health and safety of Queenslanders were identified and the current epidemiological situation, both in and beyond Queensland, were considered. The risks and epidemiological situation are more fully set out in the Policy Rationale that informed the direction, and form part of the purpose of the Direction. As the below human rights analysis draws on the information contained in the Policy Rationale, they should be read together.

### *How the Direction achieves the purpose*

The Direction requires persons who arrive in Queensland and have been overseas or in a safe travel zone country hotspot in the 14 days immediately before their arrival to quarantine for 14 days. A safe travel zone country hotspot means an area within a safe travel zone country that has been specified by the Chief Health Officer by a direction published on the Queensland Government website. This allows the Chief Health Officer to declare an area within a safe travel zone country a hotspot and require a person travelling from there to quarantine upon arrival in Queensland. The Chief Health Officer has not declared any areas within a safe travel zone country as hotspots.

Persons who have only been in a safe travel zone country in the 14 days immediately before their arrival, and travelled to Australia on a quarantine-free flight', will only need to quarantine for 14 days on arrival to Queensland if they have been in a safe travel zone country hotspot in the 14 days immediately before their arrival. New Zealand is the only country specified in the direction as a safe travel zone country.



The Direction allows persons who arrive in Queensland from overseas to transit through a Queensland airport in line with the Commonwealth Government's position on transit of overseas arrivals. A person can transit through a Queensland airport without having to complete 14 days of quarantine provided they remain in the confines of the airport or quarantine at a government-nominated hotel until their next international flight to leave Australia.

The Direction requires all persons arriving in Queensland who have been in a place outside of Australia in the last 14 days to complete a Queensland International Arrivals Registration (QIAR) except for those arrivals from a safe travel zone country who have arrived on a quarantine-free flight. The Direction requires that any international arrival to Queensland required to complete the QIAR must provide information about:

- their name, date of birth, primary residential address in Australia, phone number and email address
- whether they are unaccompanied minor and, if so, the details of the parent, guardian or responsible adult who will consent to quarantine with the minor
- their travel details including arrival date in Queensland

The completion of the QIAR allows for a streamlined process for issuing Quarantine Directions to overseas travellers on their arrival to Queensland.

After completing immigration and customs, persons arriving into Queensland are required to travel directly to their nominated quarantine premises, and may not leave during the 14-day period except for the purpose of obtaining essential medical care at a hospital, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority. Any travel to and from a nominated quarantine premises must be via ambulance service, emergency services vehicle or transport arranged by a government authority. If a person needs to leave quarantine for essential medical care at a hospital transport must be via ambulance service both to the hospital and when returning to the nominated premises, if applicable.

Those in quarantine are also prohibited from allowing others to enter the nominated premises unless the person also resides in the premises for the purpose of complying with the direction, enters to provide emergency, medical or other essential care to a person at the premises, or is otherwise required or permitted under a direction given by a relevant authority.

The Direction also restricts the reasons that a person quarantining at a nominated premises can open the door to their room and requires that surgical masks must be worn by all occupants of a room any time the door is open. Unless the quarantined person is leaving the nominated premises for a permitted purpose, they must only open the door to their allocated room when permitted to do so by a quarantine facility worker.

Most people required to quarantine need to do so in a hotel or other place nominated by the Chief Health Officer or a relevant authority. Some persons may quarantine in other suitable premises, such as their residence. This includes consular employees and a person unable to live independently without ongoing or regular support, including disability support, due to significant health needs. These people may also have a carer or support person quarantine at the nominated premises with them at their own expense.

A person must wear a mask when leaving quarantine or whenever directed to do so by an emergency officer (public health).

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test at any point. A person will be detained for a further period of 10 days if the person denies an emergency officer's (public health) request to be tested.

An emergency officer (public health) may also require a person in quarantine to answer questions or provide evidence about whether they have symptoms consistent with COVID-19, their possible exposure to COVID-19, their contact information, flight information and information about the places the person has been in the last 14 days. An emergency officer may also ask a person if they have undertaken quarantine at a government-nominated premises in a safe travel zone country in the 14 days prior to arrival in Queensland.

The Chief Health Officer may grant a person an exemption from all or part of the Direction on the basis of exceptional circumstances.

### *Human rights engaged*

The human rights engaged by the Direction are:

- Right to life (section 16)
- Protection from torture and cruel, inhuman or degrading treatment (section 17)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Freedom of expression (section 21)
- Peaceful assembly and freedom of association (section 22)
- Taking part in public life (section 23)
- Privacy (section 25)
- Protection of families (section 26)
- Cultural rights (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to liberty and security (section 29)
- Right to humane treatment when deprived of liberty (section 30)
- Right to education (section 36)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, by reducing the risk of the spread of COVID-19 into Queensland from overseas.

### *Limitations*

The right to protection from torture and cruel, inhuman or degrading treatment includes the right not to be subjected to medical treatment without consent. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 10 days of quarantine. The requirement may be considered to limit a person's ability to make an autonomous decision about medical treatment as a person's right to provide full, free and informed consent to the test is limited as their ability to leave quarantine after 14 days is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.

Every person has the right to move freely, enter or leave Queensland, and choose where they live. As such, public entities cannot act in a way that unduly restricts a person's freedom of movement, including by arbitrarily forcing a person to remain in, or move to or from, a particular place. The Direction limits the right to freedom of movement by requiring people who arrive in Queensland from overseas, to travel to and remain at nominated accommodation, primarily at hotels selected for them.

The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief either individually or as part of a community. The right to hold a belief

is so important that it is considered to be an absolute right. However, limits on how a person manifests their belief can be justified. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days. This limits the ability of returning travellers to publicly demonstrate and practice their religion or beliefs, as they are not permitted to attend a church, mosque, temple or other religious institution to perform their usual religious practice.

Section 21 of the Human Rights Act provides that the right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds. It protects almost all kinds of expression, providing it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. The Direction limits this right by restricting a person from leaving their place of quarantine and prohibiting them from receiving visitors, although they may continue to engage with others via other means including telephone and video conferencing.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both participants and organisers of peaceful assemblies. Restricting a person's movements and prohibiting a person from receiving visitors limits their ability to peacefully assemble, although they may continue to 'assemble' and engage with others via other means such as telephone and video conferencing.

The right to privacy in section 25 of the Human Rights Act is broadly construed. A person has the right to not have their privacy, family or home arbitrarily interfered with. The right encompasses an individual's rights to establish and develop meaningful social relations (*Kracke v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620])). The Direction limits this right as it temporarily interferes with people's ability to make and maintain social and family connections. Interference with privacy will occur by making a person provide personal details and answer questions about their health and possible exposure to COVID-19 when the person is directed to by an emergency officer (public health).

The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work.

The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test, or be subjected to an additional 10 days of quarantine.<sup>1</sup> Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.

Queensland recognises families as the fundamental unit of society entitled to protection. The right to the protection of families encompasses more than non-interference; it is a guarantee of institutional protection of the family by society and the state. 'Family' is interpreted broadly, extending to different cultural understandings of family. The Direction imposes a temporary limit on a quarantined person's ability to meet with and engage with their family in person, but does recognise the unique position of unaccompanied minors who arrive in Australia, and provides that they must quarantine with a parent, guardian or other responsible adult. This also recognises the protection needed by children.

Section 27 of the Human Rights Act states that all people with particular cultural, religion, racial and linguistic backgrounds have a right to enjoy their culture, declare and practice their religion and use

their language in community with other people of that background. This promotes the practise and maintenance of shared traditions and activities.

The Human Rights Act specifies that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people. Section 28 provides that Aboriginal and Torres Strait Islander peoples must not be denied this right, together with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practice their culture.

The direction may limit cultural rights under sections 27 and 28 of the Human Rights Act, for people who may ordinarily share their culture with their loved ones who visit are limited from doing so due to the restrictions on visitors in quarantine.

Every person in Queensland has the right to liberty and security and must not be subjected to arbitrary arrest or detention or deprived of their liberty except on grounds, and in accordance with procedures, established by law. The concept of detention includes not only detention in a prison, but all forms of detention, including for the purposes of medical treatment. The Direction restricting people to certain designated accommodation constitutes detention and, thus, limits the right to liberty and security.

Section 30 of the Human Rights Act states that everyone must be treated with respect when deprived of liberty. The underlying principle is that a person's rights should only be limited by the confinement itself, not additional hardships or constraints, noting that some rights are unavoidably restricted in a closed environment including freedom of movement and elements of freedom of expression. However, the Direction recognises that individuals with particular health needs should be able to quarantine in their residence with their carers because of the unique strain that detention in another setting may pose.

Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty. Like all rights in the Act, this right can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Section 36 of the Human Rights Act protects the right of every child to access primary and secondary education appropriate to their needs without discrimination. The scope of the right is tied to public education service delivery and does not extend to private and non-government schools or early childhood services.

### *Compatibility with Human Rights*

#### Proper purpose (section 13(2)(b))

The purpose of the Direction is to reduce the spread of COVID-19 within Queensland from those people arriving from overseas, who have a higher risk of having, and thus spreading, COVID-19. This is due to both the higher prevalence of COVID-19 in most other countries, and the exposure potential associated with travel.

Requiring most people entering Queensland from overseas to quarantine in nominated premises is to confine potential outbreaks and enable appropriate support of quarantined individuals within available resources. It also enables monitoring and enforcement of the requirements under the Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is in effect for a temporary period, and the restrictions as applying to a person only last for 14-days, which is tied with the typical incubation period for COVID-19. Ultimately, the purpose of quarantine is to limit the opportunity for transmission of COVID-19 during the potential incubation period.

The aim of protecting public health is a proper purpose. Protecting people in the community from the risk of COVID-19 also promotes their human rights to life (section 16) and health (section 37). At

international law, the right to health includes '[t]he prevention, treatment and control of epidemic, endemic, ... and other diseases': *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12(2)(c).

The purpose of protecting and promoting human rights is necessarily consistent with a society 'based on human dignity, equality and freedom' (section 13(2)(b) of the Human Rights Act).

#### Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose of protecting public health by limiting the opportunities for transmission of COVID-19 from persons arriving from overseas, during the potential incubation period.

The quarantine requirements have been tailored to the needs of different cohorts. For example, those who are unable to live independently without ongoing or regular support may have a carer or support person quarantine with them at the nominated premises, and unaccompanied minors arriving in Queensland from overseas can be met on arrival and accompanied in quarantine by a parent, guardian or other responsible adult.

People in quarantine are also permitted to leave their place of quarantine in certain circumstances, including to obtain essential medical care or supplies or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

#### Necessary (s 13(2)(d))

The limits on human rights are necessary to achieve the purpose. There is no other way to address the risk of COVID-19 spreading into Queensland from overseas which would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights.

In particular:

- Prohibiting entry of all people from overseas would be more restrictive of human rights.
- Relying on other measures such as contact tracing and testing on arrival in Queensland (without quarantine restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from overseas may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Permitting people to quarantine at a location of their choosing would not be practicable or as effective given the resourcing requirements of policing and providing assistance to the number of locations that would be involved.

#### Fair balance (section 13(2)(e), (f) and (g))

Given the risk posed by overseas arrivals, the purpose of the Direction can only be reasonably achieved by temporarily restricting the contact of new overseas arrivals with the broader community through quarantine arrangements.

Many of the limits on human rights are incidental. For example, although quarantine limits the right to demonstrate religion or belief as part of a community, people are not prevented from practising their religion or beliefs through private prayer or with others through video conferencing or other remote means. As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example,

by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment

The extent of the limitation on human rights is further reduced in other ways. The Direction is in effect for a temporary period, and the restrictions that apply to a person only last for 14-days, unless a person refuses a COVID-19 test, which is based on public health advice about the typical incubation period for COVID-19. The Direction also recognises the hardship that certain persons would face in quarantine, including unaccompanied minors and persons with particular health needs, and allows them to quarantine with another person.

The requirements of the Direction are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in more remote ways.

The limits on human rights by requiring a person to wear a mask when leaving quarantine or agree to a COVID-19 test or be subject to an additional 10 days quarantine are justifiable. Requiring a person to agree to undergo a COVID-19 test is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. For example, a person who is released from quarantine may potentially be asymptomatic and there will be no means of confirmation without a test. The person could potentially infect people in the wider community once they are released from quarantine. Tackling such a scenario would require resources for contact tracing (one person could have up to 200 contacts) and may divert resources from other critical areas. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights. A person also has the option of agreeing to the test or remaining in quarantine for a further 10 days. Additionally, section 362L of the *Public Health Act 2005* expressly authorises an emergency officer (public health) to take action to enforce a requirement or direction, using reasonable and necessary force. The provisions indicate that Parliament has considered liberty interests and decided to curtail those rights to address public health risks.

The Direction provides a broad exemption power enabling the Chief Health Officer to grant an exemption to any of its requirements based on exceptional circumstances. This broad power was included to protect against unintended consequences of the Direction, and to acknowledge that there may be circumstances where quarantine in a designated premises may not be reasonable or appropriate.

The impact on some human rights will be large, in particular, the right to equality for residents returning from overseas and the freedom of movement. However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) outweighs the impact on other human rights. Indeed, it is difficult to overstate the importance to society of addressing the risk posed by a pandemic. Ultimately, the Direction strikes a fair balance between the human rights it limits and the need to reduce the risk of COVID-19 spreading into Queensland.



**Public Health Directions – Human Rights Assessment**  
Quarantine for International Arrivals Direction (No. 8)

<b>Title</b>	<i>Quarantine for International Arrivals Direction (No. 8)</i>
<b>Date effective</b>	23 April 2021

### *Background*

The *Quarantine for International Arrivals Direction (No. 8)* (the Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis should be read in conjunction with the Human Rights Statement of Compatibility prepared in accordance with section 38 of the *Human Rights Act 2019* with respect to the Public Health and Other Legislation (Public Health Emergency) Amendment Bill 2020. This Bill amended the *Public Health Act 2005* to enable the Chief Health Officer to issue directions that are reasonably necessary to assist in containing or responding to the spread of COVID-19.

### *Purpose of the Direction*

The purpose of the Direction is to limit the spread of COVID-19 into Queensland from travellers and Australian residents arriving from overseas.

In Queensland, a majority of cases to date have been overseas acquired. This indicates a significantly lower proportion of community transmission, likely as a result of Queensland's domestic border measures and effective monitoring of individuals in quarantine who enter from overseas.

The Direction revokes and replaces the *Quarantine for International Arrivals Direction (No. 7)*. The changes from the previous Direction are to:

- give effect to new balcony guidelines which require people to wear masks on balconies at quarantine hotels and prohibit people in quarantine hotels from having physical contact with or exchanging items with other guests on their balcony
- remove the ability of a quarantined person to allow a person to enter a nominated premises to provide emergency, medical or other essential care
- provide that a quarantined person may only allow someone to enter a nominated premises where an exemption is granted in extreme exceptional circumstances
- provide that an emergency officer may, at their discretion, permit someone to allow another person to enter nominated premises in an emergency situation. Contact details must be kept for anyone who enters.
- provide that a person who leaves quarantine must get tested and isolate until they receive a negative result if they develop symptoms within 7 days while in Queensland
- provide that a quarantined person must be tested as soon as possible after arrival to a quarantine hotel and on day 12-13 of the person's quarantine period – noting that a passenger transiting in Queensland for a short period or air crew leaving quarantine for their next international flight would not need to be tested on day 12-13
- provide that a person who refuses day 12-13 testing to quarantine for an additional 14 days
- introduce new requirements for transport operators engaged to transport quarantined persons to and from quarantine hotels or other premises to be endorsed by a government authority and have a transport plan in place.

In preparing the Direction, risks to the health and safety of Queenslanders were identified and the current epidemiological situation, both in and beyond Queensland, were considered. The risks and epidemiological situation are more fully set out in the Policy Rationale that informed the direction,

and form part of the purpose of the Direction. As the below human rights analysis draws on the information contained in the Policy Rationale, they should be read together.

#### *How the Direction achieves the purpose*

The Direction requires persons who arrive in Queensland and have been overseas or in a 'Safe travel zone country hotspot' in the 14 days immediately before their arrival to quarantine for 14 days. A Safe travel zone country hotspot means an area within a 'Safe travel zone country' that has been specified by the Chief Health Officer by a direction published on the Queensland Government website. This allows the Chief Health Officer to declare an area within a 'Safe travel zone country' a hotspot and require a person travelling from there to quarantine upon arrival in Queensland.

Persons who have only been in a 'Safe travel zone country' in the 14 days immediately before their arrival, and travelled to Australia on a 'quarantine-free flight', will only need to quarantine for 14 days on arrival to Queensland if they have been in a 'Safe travel zone country hotspot' in the 14 days immediately before their arrival. No countries are specified in the direction as Safe travel zone country.

The Direction allows persons who arrive in Queensland from overseas to transit through a Queensland airport in line with the Commonwealth Government's position on transit of overseas arrivals. A person can transit through a Queensland airport without having to complete 14 days of quarantine provided they remain in the confines of the airport or quarantine at a government-nominated hotel until their next international flight to leave Australia.

The Direction requires all persons arriving in Queensland who have been in a place outside of Australia in the last 14 days to complete a Queensland International Arrivals Registration (QIAR) except for those arrivals from a safe travel zone country who have arrived on a quarantine-free flight. The Direction requires that any international arrival to Queensland required to complete the QIAR must provide information about:

- their name, date of birth, primary residential address in Australia, phone number and email address
- whether they are unaccompanied minor and, if so, the details of the parent, guardian or responsible adult who will consent to quarantine with the minor
- their travel details including arrival date in Queensland

The International Arrivals Registration The completion of the QIAR allows for a streamlined process for issuing Quarantine Directions to overseas travellers on their arrival to Queensland.

After completing immigration and customs, persons arriving into Queensland are required to travel directly to their nominated quarantine premises. Under the Direction, transport operators engaged to transport quarantined persons to and from quarantine hotels or other premises must be endorsed by a government authority and have a transport plan in place.

A person directed to quarantine must not leave their quarantine premises during the 14-day period except for the purpose of obtaining essential medical care at a hospital, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority. Any travel to and from a nominated quarantine premises must be via ambulance service, emergency services vehicle or endorsed transport operator with a transport plan in place. If a person needs to leave quarantine for essential medical care at a hospital transport must be via ambulance service both to the hospital and when returning to the nominated premises, if applicable.

Those in quarantine are also prohibited from allowing others to enter the nominated premises unless the person also resides in the premises for the purpose of complying with the direction, enters in an emergency or to undertake a COVID-19 test.

The Direction also restricts the reasons that a person quarantining at a nominated premises can open the door to their room and requires that surgical masks must be worn by all occupants of a room any time the door is open. Unless the quarantined person is leaving the nominated premises for a permitted purpose, they must only open the door to their allocated room when permitted to do so by a quarantine facility worker.

The Direction also imposes strict requirements for when a quarantined person is present on their balcony in a quarantine hotel. The Direction requires that a surgical mask must be worn whenever a person is present on their balcony. It also restricts a quarantined person from having physical contact or exchanging items with a person on another balcony.

Most people required to quarantine need to do so in a hotel or other place nominated by the Chief Health Officer or a relevant authority. Some persons may quarantine in other suitable premises, such as their residence. This includes consular employees and a person unable to live independently without ongoing or regular support, including disability support, due to significant health needs. These people may also have a carer or support person quarantine at the nominated premises with them at their own expense.

A person must wear a mask when leaving quarantine or whenever directed to do so by an emergency officer (public health).

A person required to quarantine will be quarantined for a further period of 14 days from the end of the quarantine period if the person is not tested for COVID-19 when requested to do so by an emergency officer (public health) on day 12 or 13 of the person's quarantine period.

An emergency officer (public health) may also require a person in quarantine to answer questions or provide evidence about whether they have symptoms consistent with COVID-19, their possible exposure to COVID-19, their contact information, flight information and information about the places the person has been in the last 14 days. An emergency officer may also ask a person if they have undertaken quarantine at a government-nominated premises in a Safe Travel Zone country in the 14 days prior to arrival in Queensland.

The Chief Health Officer may grant a person an exemption from all or part of the Direction on the basis of extreme exceptional circumstances.

#### *Human rights engaged*

The human rights engaged by the Direction are:

- Right to life (section 16)
- Protection from torture and cruel, inhuman or degrading treatment (section 17)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Freedom of expression (section 21)
- Peaceful assembly and freedom of association (section 22)
- Taking part in public life (section 23)
- Privacy (section 25)
- Protection of families (section 26)
- Cultural rights (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to liberty and security (section 29)
- Right to humane treatment when deprived of liberty (section 30)

- Right to education (section 36)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, by reducing the risk of the spread of COVID-19 into Queensland from overseas.

#### *Limitations*

The right to protection from torture and cruel, inhuman or degrading treatment includes the right not to be subjected to medical treatment without consent. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test on day 12 or 13 of their quarantine period or be subjected to an additional 14 days of quarantine. The requirement may be considered to limit a person's ability to make an autonomous decision about medical treatment as a person's right to provide full, free and informed consent to the test is limited as their ability to leave quarantine after 14 days is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.

Every person has the right to move freely, enter or leave Queensland, and choose where they live. As such, public entities cannot act in a way that unduly restricts a person's freedom of movement, including by arbitrarily forcing a person to remain in, or move to or from, a particular place. The Direction limits the right to freedom of movement by requiring people who arrive in Queensland from overseas, to travel to and remain at nominated accommodation, primarily at hotels selected for them.

The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief either individually or as part of a community. The right to hold a belief is so important that it is considered to be an absolute right. However, limits on how a person manifests their belief can be justified. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days. This limits the ability of returning travellers to publicly demonstrate and practice their religion or beliefs, as they are not permitted to attend a church, mosque, temple or other religious institution to perform their usual religious practice.

Section 21 of the Human Rights Act provides that the right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds. It protects almost all kinds of expression, providing it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. The Direction limits this right by restricting a person from leaving their place of quarantine and prohibiting them from receiving visitors, although they may continue to engage with others via other means including telephone and video conferencing.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both participants and organisers of peaceful assemblies. Restricting a person's movements and prohibiting a person from receiving visitors limits their ability to peacefully assemble, although they may continue to 'assemble' and engage with others via other means such as telephone and video conferencing.

The right to privacy in section 25 of the Human Rights Act is broadly construed. A person has the right to not have their privacy, family or home arbitrarily interfered with. The right encompasses an individual's rights to establish and develop meaningful social relations (*Kracke v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620])). The Direction limits this right as it temporarily interferes with people's ability to make and maintain social and family connections. Interference with privacy

will occur by making a person provide personal details and answer questions about their health and possible exposure to COVID-19 when the person is directed to by an emergency officer (public health).

The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work.

The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test on day 12 or 13 of their quarantine period or be subjected to an additional 14 days of quarantine.<sup>1</sup> Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 14 day quarantine.

Queensland recognises families as the fundamental unit of society entitled to protection. The right to the protection of families encompasses more than non-interference; it is a guarantee of institutional protection of the family by society and the state. 'Family' is interpreted broadly, extending to different cultural understandings of family. The Direction imposes a temporary limit on a quarantined person's ability to meet with and engage with their family in person, but does recognise the unique position of unaccompanied minors who arrive in Australia, and provides that they must quarantine with a parent, guardian or other responsible adult. This also recognises the protection needed by children.

Section 27 of the Human Rights Act states that all people with particular cultural, religion, racial and linguistic backgrounds have a right to enjoy their culture, declare and practice their religion and use their language in community with other people of that background. This promotes the practise and maintenance of shared traditions and activities.

The Human Rights Act specifies that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people. Section 28 provides that Aboriginal and Torres Strait Islander peoples must not be denied this right, together with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practice their culture.

The direction may limit cultural rights under sections 27 and 28 of the Human Rights Act, for people who may ordinarily share their culture with their loved ones who visit are limited from doing so due to the restrictions on visitors in quarantine.

Every person in Queensland has the right to liberty and security and must not be subjected to arbitrary arrest or detention or deprived of their liberty except on grounds, and in accordance with procedures, established by law. The concept of detention includes not only detention in a prison, but all forms of detention, including for the purposes of medical treatment. The Direction restricting people to certain designated accommodation constitutes detention and, thus, limits the right to liberty and security.

Section 30 of the Human Rights Act states that everyone must be treated with respect when deprived of liberty. The underlying principle is that a person's rights should only be limited by the confinement itself, not additional hardships or constraints, noting that some rights are unavoidably restricted in a closed environment including freedom of movement and elements of freedom of expression. However, the Direction recognises that individuals with particular health needs should be able to quarantine in their residence with their carers because of the unique strain that detention in another setting may pose.

Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty. Like all rights in the Act, this right

can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Section 36 of the Human Rights Act protects the right of every child to access primary and secondary education appropriate to their needs without discrimination. The scope of the right is tied to public education service delivery and does not extend to private and non-government schools or early childhood services.

#### *Compatibility with Human Rights*

##### Proper purpose (section 13(2)(b))

The purpose of the Direction is to reduce the spread of COVID-19 within Queensland from those people arriving from overseas, who have a higher risk of having, and thus spreading, COVID-19. This is due to both the higher prevalence of COVID-19 in most other countries, and the exposure potential associated with travel.

Requiring most people entering Queensland from overseas to quarantine in nominated premises is to confine potential outbreaks and enable appropriate support of quarantined individuals within available resources. It also enables monitoring and enforcement of the requirements under the Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is in effect for a temporary period, and the restrictions as applying to a person only last for 14-days, which is tied with the typical incubation period for COVID-19. Ultimately, the purpose of quarantine is to limit the opportunity for transmission of COVID-19 during the potential incubation period.

The aim of protecting public health is a proper purpose. Protecting people in the community from the risk of COVID-19 also promotes their human rights to life (section 16) and health (section 37). At international law, the right to health includes '[t]he prevention, treatment and control of epidemic, endemic, ... and other diseases': *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12(2)(c).

The purpose of protecting and promoting human rights is necessarily consistent with a society 'based on human dignity, equality and freedom' (section 13(2)(b) of the Human Rights Act).

##### Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose of protecting public health by limiting the opportunities for transmission of COVID-19 from persons arriving from overseas, during the potential incubation period.

The quarantine requirements have been tailored to the needs of different cohorts. For example, those who are unable to live independently without ongoing or regular support may have a carer or support person quarantine with them at the nominated premises, and unaccompanied minors arriving in Queensland from overseas can be met on arrival and accompanied in quarantine by a parent, guardian or other responsible adult.

People in quarantine are also permitted to leave their place of quarantine in certain circumstances, including to obtain essential medical care at a hospital or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

##### Necessary (s 13(2)(d))



The limits on human rights are necessary to achieve the purpose. There is no other way to address the risk of COVID-19 spreading into Queensland from overseas which would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights.

In particular:

- Prohibiting entry of all people from overseas would be more restrictive of human rights.
- Relying on other measures such as contact tracing and testing on arrival in Queensland (without quarantine restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from overseas may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Permitting people to quarantine at a location of their choosing would not be practicable or as effective given the resourcing requirements of policing and providing assistance to the number of locations that would be involved.

#### Fair balance (section 13(2)(e), (f) and (g))

Given the risk posed by overseas arrivals, the purpose of the Direction can only be reasonably achieved by temporarily restricting the contact of new overseas arrivals with the broader community through quarantine arrangements.

Many of the limits on human rights are incidental. For example, although quarantine limits the right to demonstrate religion or belief as part of a community, people are not prevented from practising their religion or beliefs through private prayer or with others through video conferencing or other remote means. As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment

The extent of the limitation on human rights is further reduced in other ways. The Direction is in effect for a temporary period, and the restrictions that apply to a person only last for 14-days, unless a person refuses a COVID-19 test, which is based on public health advice about the typical incubation period for COVID-19. The Direction also recognises the hardship that certain persons would face in quarantine, including unaccompanied minors and persons with particular health needs, and allows them to quarantine with another person.

The requirements of the Direction are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in more remote ways.

The limits on human rights by requiring a person to wear a mask when leaving quarantine or agree to a COVID-19 test or be subject to an additional 10 days quarantine are justifiable. Requiring a person to agree to undergo a COVID-19 test is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. For example, a person who is released from quarantine may potentially be asymptomatic and there will be no means of confirmation without a test. The person could potentially infect people in the wider community once they are released from quarantine. Tackling such a scenario would require resources for contact tracing (one person could have up to 200 contacts) and may divert resources from other critical areas. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights. A person also has the option of agreeing to the test or remaining in quarantine for a further 14 days.

Additionally, section 362L of the *Public Health Act 2005* expressly authorises an emergency officer (public health) to take action to enforce a requirement or direction, using reasonable and necessary force. The provisions indicate that Parliament has considered liberty interests and decided to curtail those rights to address public health risks.

The Direction provides an exemption power enabling the Chief Health Officer to grant an exemption to any of its requirements based on extreme exceptional circumstances. This power was included to protect against unintended consequences of the Direction, and to acknowledge that there may be circumstances where quarantine in a designated premises may not be reasonable or appropriate.

The impact on some human rights will be large, in particular, the right to equality for residents returning from overseas and the freedom of movement. However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) outweighs the impact on other human rights. Indeed, it is difficult to overstate the importance to society of addressing the risk posed by a pandemic. Ultimately, the Direction strikes a fair balance between the human rights it limits and the need to reduce the risk of COVID-19 spreading into Queensland.

RTI RELEASED

**Public Health Directions – Human Rights Assessment**  
Quarantine for International Arrivals Direction (No. 9)

<b>Title</b>	<i>Quarantine for International Arrivals Direction (No. 9)</i>
<b>Date effective</b>	6 May 2021

### *Background*

The *Quarantine for International Arrivals Direction (No. 9)* (the Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis should be read in conjunction with the Human Rights Statement of Compatibility prepared in accordance with section 38 of the *Human Rights Act 2019* with respect to the Public Health and Other Legislation (Public Health Emergency) Amendment Bill 2020. This Bill amended the *Public Health Act 2005* to enable the Chief Health Officer to issue directions that are reasonably necessary to assist in containing or responding to the spread of COVID-19.

### *Purpose of the Direction*

The purpose of the Direction is to limit the spread of COVID-19 into Queensland from travellers and Australian residents arriving from overseas.

In Queensland, a majority of cases to date have been overseas acquired. This indicates a significantly lower proportion of community transmission, likely as a result of Queensland's domestic border measures and effective monitoring of individuals in quarantine who enter from overseas.

The Direction revokes and replaces the *Quarantine for International Arrivals Direction (No. 8)*. The changes from the previous Direction are to:

- extend the commencement date for transport operators that transport quarantined persons to and from government-nominated accommodation to have a Transport Plan by 21 May 2021;
- clarify that a quarantined person must also be tested on day 5 of the person's quarantine period.

In preparing the Direction, risks to the health and safety of Queenslanders were identified and the current epidemiological situation, both in and beyond Queensland, were considered. The risks and epidemiological situation are more fully set out in the Policy Rationale that informed the direction, and form part of the purpose of the Direction. As the below human rights analysis draws on the information contained in the Policy Rationale, they should be read together.

### *How the Direction achieves the purpose*

The Direction requires persons who arrive in Queensland and have been overseas or in a 'Safe travel zone country hotspot' in the 14 days immediately before their arrival to quarantine for 14 days. A Safe travel zone country hotspot means an area within a 'Safe travel zone country' that has been specified by the Chief Health Officer by a direction published on the Queensland Government website. This allows the Chief Health Officer to declare an area within a 'Safe travel zone country' a hotspot and require a person travelling from there to quarantine upon arrival in Queensland.

Persons who have only been in a 'Safe travel zone country' in the 14 days immediately before their arrival, and travelled to Australia on a 'quarantine-free flight', will only need to quarantine for 14 days on arrival to Queensland if they have been in a 'Safe travel zone country hotspot' in the 14 days immediately before their arrival. No countries are specified in the direction as Safe travel zone country.

The Direction allows persons who arrive in Queensland from overseas to transit through a Queensland airport in line with the Commonwealth Government's position on transit of overseas arrivals. A person can transit through a Queensland airport without having to complete 14 days of quarantine provided they remain in the confines of the airport or quarantine at a government-nominated hotel until their next international flight to leave Australia.

The Direction requires all persons arriving in Queensland who have been in a place outside of Australia in the last 14 days to complete a Queensland International Arrivals Registration (QIAR) except for those arrivals from a safe travel zone country who have arrived on a quarantine-free flight. The Direction requires that any international arrival to Queensland required to complete the QIAR must provide information about:

- their name, date of birth, primary residential address in Australia, phone number and email address
- whether they are unaccompanied minor and, if so, the details of the parent, guardian or responsible adult who will consent to quarantine with the minor
- their travel details including arrival date in Queensland

The International Arrivals Registration The completion of the QIAR allows for a streamlined process for issuing Quarantine Directions to overseas travellers on their arrival to Queensland.

After completing immigration and customs, persons arriving into Queensland are required to travel directly to their nominated quarantine premises. Under the Direction, transport operators engaged to transport quarantined persons to and from quarantine hotels or other premises must be endorsed by a government authority and have a transport plan in place.

A person directed to quarantine must not leave their quarantine premises during the 14-day period except for the purpose of obtaining essential medical care at a hospital, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority. Any travel to and from a nominated quarantine premises must be via ambulance service, emergency services vehicle or endorsed transport operator with a transport plan in place. If a person needs to leave quarantine for essential medical care at a hospital transport must be via ambulance service both to the hospital and when returning to the nominated premises, if applicable.

Those in quarantine are also prohibited from allowing others to enter the nominated premises unless the person also resides in the premises for the purpose of complying with the direction, enters in an emergency or to undertake a COVID-19 test.

The Direction also restricts the reasons that a person quarantining at a nominated premises can open the door to their room and requires that surgical masks must be worn by all occupants of a room any time the door is open. Unless the quarantined person is leaving the nominated premises for a permitted purpose, they must only open the door to their allocated room when permitted to do so by a quarantine facility worker.

The Direction also imposes strict requirements for when a quarantined person is present on their balcony in a quarantine hotel. The Direction requires that a surgical mask must be worn whenever a person is present on their balcony. It also restricts a quarantined person from having physical contact or exchanging items with a person on another balcony.

Most people required to quarantine need to do so in a hotel or other place nominated by the Chief Health Officer or a relevant authority. Some persons may quarantine in other suitable premises, such as their residence. This includes consular employees and a person unable to live independently without ongoing or regular support, including disability support, due to significant health needs. These

people may also have a carer or support person quarantine at the nominated premises with them at their own expense.

A person must wear a mask when leaving quarantine or whenever directed to do so by an emergency officer (public health).

A person required to quarantine will be quarantined for a further period of 14 days from the end of the quarantine period if the person is not tested for COVID-19 when requested to do so by an emergency officer (public health) on day 12 or 13 of the person's quarantine period.

An emergency officer (public health) may also require a person in quarantine to answer questions or provide evidence about whether they have symptoms consistent with COVID-19, their possible exposure to COVID-19, their contact information, flight information and information about the places the person has been in the last 14 days. An emergency officer may also ask a person if they have undertaken quarantine at a government-nominated premises in a Safe Travel Zone country in the 14 days prior to arrival in Queensland.

The Chief Health Officer may grant a person an exemption from all or part of the Direction on the basis of extreme exceptional circumstances.

#### *Human rights engaged*

The human rights engaged by the Direction are:

- Right to life (section 16)
- Protection from torture and cruel, inhuman or degrading treatment (section 17)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Freedom of expression (section 21)
- Peaceful assembly and freedom of association (section 22)
- Taking part in public life (section 23)
- Privacy (section 25)
- Protection of families (section 26)
- Cultural rights (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to liberty and security (section 29)
- Right to humane treatment when deprived of liberty (section 30)
- Right to education (section 36)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, by reducing the risk of the spread of COVID-19 into Queensland from overseas.

#### *Limitations*

The right to protection from torture and cruel, inhuman or degrading treatment includes the right not to be subjected to medical treatment without consent. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test on day 12 or 13 of their quarantine period or be subjected to an additional 14 days of quarantine. The requirement may be considered to limit a person's ability to make an autonomous decision about medical treatment as a person's right to provide full, free and informed consent to the test is limited

as their ability to leave quarantine after 14 days is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.

Every person has the right to move freely, enter or leave Queensland, and choose where they live. As such, public entities cannot act in a way that unduly restricts a person's freedom of movement, including by arbitrarily forcing a person to remain in, or move to or from, a particular place. The Direction limits the right to freedom of movement by requiring people who arrive in Queensland from overseas, to travel to and remain at nominated accommodation, primarily at hotels selected for them.

The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief either individually or as part of a community. The right to hold a belief is so important that it is considered to be an absolute right. However, limits on how a person manifests their belief can be justified. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days. This limits the ability of returning travellers to publicly demonstrate and practice their religion or beliefs, as they are not permitted to attend a church, mosque, temple or other religious institution to perform their usual religious practice.

Section 21 of the Human Rights Act provides that the right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds. It protects almost all kinds of expression, providing it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. The Direction limits this right by restricting a person from leaving their place of quarantine and prohibiting them from receiving visitors, although they may continue to engage with others via other means including telephone and video conferencing.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both participants and organisers of peaceful assemblies. Restricting a person's movements and prohibiting a person from receiving visitors limits their ability to peacefully assemble, although they may continue to 'assemble' and engage with others via other means such as telephone and video conferencing.

The right to privacy in section 25 of the Human Rights Act is broadly construed. A person has the right to not have their privacy, family or home arbitrarily interfered with. The right encompasses an individual's rights to establish and develop meaningful social relations (*Kracke v Mental Health Review Board (General)* (2009) 29 VAR 1, [619]-[620]). The Direction limits this right as it temporarily interferes with people's ability to make and maintain social and family connections. Interference with privacy will occur by making a person provide personal details and answer questions about their health and possible exposure to COVID-19 when the person is directed to by an emergency officer (public health).

The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work.

The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599) and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018) 56 VAR 141, 180-1 [128]. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test on day 12 or 13 of their quarantine period or be subjected to an additional 14 days of quarantine.<sup>1</sup> Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 14 day quarantine.



Queensland recognises families as the fundamental unit of society entitled to protection. The right to the protection of families encompasses more than non-interference; it is a guarantee of institutional protection of the family by society and the state. ‘Family’ is interpreted broadly, extending to different cultural understandings of family. The Direction imposes a temporary limit on a quarantined person’s ability to meet with and engage with their family in person, but does recognise the unique position of unaccompanied minors who arrive in Australia, and provides that they must quarantine with a parent, guardian or other responsible adult. This also recognises the protection needed by children.

Section 27 of the Human Rights Act states that all people with particular cultural, religion, racial and linguistic backgrounds have a right to enjoy their culture, declare and practice their religion and use their language in community with other people of that background. This promotes the practise and maintenance of shared traditions and activities.

The Human Rights Act specifies that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights as Australia’s first people. Section 28 provides that Aboriginal and Torres Strait Islander peoples must not be denied this right, together with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practice their culture.

The direction may limit cultural rights under sections 27 and 28 of the Human Rights Act, for people who may ordinarily share their culture with their loved ones who visit are limited from doing so due to the restrictions on visitors in quarantine.

Every person in Queensland has the right to liberty and security and must not be subjected to arbitrary arrest or detention or deprived of their liberty except on grounds, and in accordance with procedures, established by law. The concept of detention includes not only detention in a prison, but all forms of detention, including for the purposes of medical treatment. The Direction restricting people to certain designated accommodation constitutes detention and, thus, limits the right to liberty and security.

Section 30 of the Human Rights Act states that everyone must be treated with respect when deprived of liberty. The underlying principle is that a person’s rights should only be limited by the confinement itself, not additional hardships or constraints, noting that some rights are unavoidably restricted in a closed environment including freedom of movement and elements of freedom of expression. However, the Direction recognises that individuals with particular health needs should be able to quarantine in their residence with their carers because of the unique strain that detention in another setting may pose.

Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty. Like all rights in the Act, this right can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Section 36 of the Human Rights Act protects the right of every child to access primary and secondary education appropriate to their needs without discrimination. The scope of the right is tied to public education service delivery and does not extend to private and non-government schools or early childhood services.

### *Compatibility with Human Rights*

#### Proper purpose (section 13(2)(b))

The purpose of the Direction is to reduce the spread of COVID-19 within Queensland from those people arriving from overseas, who have a higher risk of having, and thus spreading, COVID-19. This is due to both the higher prevalence of COVID-19 in most other countries, and the exposure potential associated with travel.

Requiring most people entering Queensland from overseas to quarantine in nominated premises is to confine potential outbreaks and enable appropriate support of quarantined individuals within available resources. It also enables monitoring and enforcement of the requirements under the Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is in effect for a temporary period, and the restrictions as applying to a person only last for 14-days, which is tied with the typical incubation period for COVID-19. Ultimately, the purpose of quarantine is to limit the opportunity for transmission of COVID-19 during the potential incubation period.

The aim of protecting public health is a proper purpose. Protecting people in the community from the risk of COVID-19 also promotes their human rights to life (section 16) and health (section 37). At international law, the right to health includes '[t]he prevention, treatment and control of epidemic, endemic, ... and other diseases': *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12(2)(c).

The purpose of protecting and promoting human rights is necessarily consistent with a society 'based on human dignity, equality and freedom' (section 13(2)(b) of the Human Rights Act).

#### Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose of protecting public health by limiting the opportunities for transmission of COVID-19 from persons arriving from overseas, during the potential incubation period.

The quarantine requirements have been tailored to the needs of different cohorts. For example, those who are unable to live independently without ongoing or regular support may have a carer or support person quarantine with them at the nominated premises, and unaccompanied minors arriving in Queensland from overseas can be met on arrival and accompanied in quarantine by a parent, guardian or other responsible adult.

People in quarantine are also permitted to leave their place of quarantine in certain circumstances, including to obtain essential medical care at a hospital or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

#### Necessary (s 13(2)(d))

The limits on human rights are necessary to achieve the purpose. There is no other way to address the risk of COVID-19 spreading into Queensland from overseas which would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights.

In particular:

- Prohibiting entry of all people from overseas would be more restrictive of human rights.
- Relying on other measures such as contact tracing and testing on arrival in Queensland (without quarantine restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from overseas may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Permitting people to quarantine at a location of their choosing would not be practicable or as effective given the resourcing requirements of policing and providing assistance to the number of locations that would be involved.

### Fair balance (section 13(2)(e), (f) and (g))

Given the risk posed by overseas arrivals, the purpose of the Direction can only be reasonably achieved by temporarily restricting the contact of new overseas arrivals with the broader community through quarantine arrangements.

Many of the limits on human rights are incidental. For example, although quarantine limits the right to demonstrate religion or belief as part of a community, people are not prevented from practising their religion or beliefs through private prayer or with others through video conferencing or other remote means. As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment

The extent of the limitation on human rights is further reduced in other ways. The Direction is in effect for a temporary period, and the restrictions that apply to a person only last for 14-days, unless a person refuses a COVID-19 test, which is based on public health advice about the typical incubation period for COVID-19. The Direction also recognises the hardship that certain persons would face in quarantine, including unaccompanied minors and persons with particular health needs, and allows them to quarantine with another person.

The requirements of the Direction are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in more remote ways.

The limits on human rights by requiring a person to wear a mask when leaving quarantine or agree to a COVID-19 test or be subject to an additional 10 days quarantine are justifiable. Requiring a person to agree to undergo a COVID-19 test is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. For example, a person who is released from quarantine may potentially be asymptomatic and there will be no means of confirmation without a test. The person could potentially infect people in the wider community once they are released from quarantine. Tackling such a scenario would require resources for contact tracing (one person could have up to 200 contacts) and may divert resources from other critical areas. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights. A person also has the option of agreeing to the test or remaining in quarantine for a further 14 days. Additionally, section 362L of the *Public Health Act 2005* expressly authorises an emergency officer (public health) to take action to enforce a requirement or direction, using reasonable and necessary force. The provisions indicate that Parliament has considered liberty interests and decided to curtail those rights to address public health risks.

The Direction provides an exemption power enabling the Chief Health Officer to grant an exemption to any of its requirements based on extreme exceptional circumstances. This power was included to protect against unintended consequences of the Direction, and to acknowledge that there may be circumstances where quarantine in a designated premises may not be reasonable or appropriate.

The impact on some human rights will be large, in particular, the right to equality for residents returning from overseas and the freedom of movement. However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) outweighs the impact on other human rights. Indeed, it is difficult to overstate the importance to society of addressing the risk posed by a pandemic. Ultimately, the Direction strikes a fair balance between the human rights it limits and the need to reduce the risk of COVID-19 spreading into Queensland.

**Public Health Directions – Human Rights Assessment**  
Quarantine for International Arrivals Direction (No. 10)

<b>Title</b>	<i>Quarantine for International Arrivals Direction (No. 10)</i>
<b>Date effective</b>	19 August 2021

### *Background*

The *Quarantine for International Arrivals Direction (No.109)* (the Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis should be read in conjunction with the Human Rights Statement of Compatibility prepared in accordance with section 38 of the *Human Rights Act 2019* with respect to the Public Health and Other Legislation (Public Health Emergency) Amendment Bill 2020. This Bill amended the *Public Health Act 2005* to enable the Chief Health Officer to issue directions that are reasonably necessary to assist in containing or responding to the spread of COVID-19.

### *Purpose of the Direction*

The purpose of the Direction is to limit the spread of COVID-19 into Queensland from travellers and Australian residents arriving from overseas.

In Queensland, a majority of COVID-19 cases to date have been overseas acquired. This indicates a significantly lower proportion of community transmission, likely as a result of Queensland's domestic border measures and effective monitoring of individuals in quarantine who enter from overseas.

The Direction revokes and replaces the *Quarantine for International Arrivals Direction (No. 9)*. The change from the previous Direction is to remove New Zealand as a safe travel zone country. This means that individuals entering Queensland from New Zealand must complete hotel quarantine, consistent with the requirement for individuals arriving from other places outside of Australia. In preparing the Direction, risks to the health and safety of Queenslanders were identified and the current epidemiological situation, both in and beyond Queensland, were considered. The risks and epidemiological situation are more fully set out in the Policy Rationale that informed the direction, and form part of the purpose of the Direction. As the below human rights analysis draws on the information contained in the Policy Rationale, they should be read together.

### *How the Direction achieves the purpose*

The Direction requires persons who arrive in Queensland and have been overseas or in a 'Safe travel zone country hotspot' in the 14 days immediately before their arrival to quarantine for 14 days. A Safe travel zone country hotspot means an area within a 'Safe travel zone country' that has been specified by the Chief Health Officer by a direction published on the Queensland Government website. This allows the Chief Health Officer to declare an area within a 'Safe travel zone country' a hotspot and require a person travelling from there to quarantine upon arrival in Queensland.

Persons who have only been in a 'Safe travel zone country' in the 14 days immediately before their arrival, and travelled to Australia on a 'quarantine-free flight', will only need to quarantine for 14 days on arrival to Queensland if they have been in a 'Safe travel zone country hotspot' in the 14 days immediately before their arrival. No countries are specified in the direction as Safe travel zone country. With the removal of New Zealand as a 'safe travel zone country' from this Direction, there are currently no safe travel zone countries.

The Direction allows persons who arrive in Queensland from overseas to transit through a Queensland airport in line with the Commonwealth Government's position on transit of overseas arrivals. A person

can transit through a Queensland airport without having to complete 14 days of quarantine provided they remain in the confines of the airport or quarantine at government nominated accommodation until their next international flight to leave Australia.

The Direction requires all persons arriving in Queensland who have been in a place outside of Australia in the last 14 days to complete a Queensland International Arrivals Registration (QIAR) except for those arrivals from a safe travel zone country who have arrived on a quarantine-free flight. The Direction requires that any international arrival to Queensland required to complete the QIAR must provide information about:

- their name, date of birth, primary residential address in Australia, phone number and email address
- whether they are unaccompanied minor and, if so, the details of the parent, guardian or responsible adult who will consent to quarantine with the minor
- their travel details including arrival date in Queensland

The completion of the QIAR allows for a streamlined process for issuing Quarantine Directions to overseas travellers on their arrival to Queensland.

After completing immigration and customs, persons arriving into Queensland are required to travel directly to their nominated quarantine premises. Under the Direction, transport operators engaged to transport quarantined persons to and from quarantine hotels or other premises must be endorsed by a government authority and have a transport plan in place.

A person directed to quarantine must not leave their quarantine premises during the 14-day period except for the purpose of obtaining essential medical care at a hospital, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority. Any travel to and from a nominated quarantine premises must be via ambulance service, emergency services vehicle or endorsed transport operator with a transport plan in place. If a person needs to leave quarantine for essential medical care at a hospital transport must be via ambulance service both to the hospital and when returning to the nominated premises, if applicable.

Those in quarantine are also prohibited from allowing others to enter the nominated premises unless the person also resides in the premises for the purpose of complying with the direction, enters in an emergency or to undertake a COVID-19 test.

The Direction also restricts the reasons that a person quarantining at a nominated premises can open the door to their room and requires that surgical masks must be worn by all occupants of a room any time the door is open. Unless the quarantined person is leaving the nominated premises for a permitted purpose, they must only open the door to their allocated room when permitted to do so by a quarantine facility worker.

The Direction also imposes strict requirements for when a quarantined person is present on their balcony in a quarantine hotel. The Direction requires that a surgical mask must be worn whenever a person is present on their balcony. It also restricts a quarantined person from having physical contact or exchanging items with a person on another balcony.

Most people required to quarantine need to do so in a hotel or other place nominated by the Chief Health Officer or a relevant authority. Some persons may quarantine in other suitable premises, such as their residence. This includes consular employees and a person unable to live independently without ongoing or regular support, including disability support, due to significant health needs. These people may also have a carer or support person quarantine at the nominated premises with them at their own expense.

A person must wear a mask when leaving quarantine or whenever directed to do so by an emergency officer (public health).

A person required to quarantine will be quarantined for a further period of 14 days from the end of the quarantine period if the person is not tested for COVID-19 when requested to do so by an emergency officer (public health) on day 12 or 13 of the person's quarantine period.

An emergency officer (public health) may also require a person in quarantine to answer questions or provide evidence about whether they have symptoms consistent with COVID-19, their possible exposure to COVID-19, their contact information, flight information and information about the places the person has been in the last 14 days. An emergency officer may also ask a person if they have undertaken quarantine at a government-nominated premises in a Safe Travel Zone country in the 14 days prior to arrival in Queensland.

The Chief Health Officer may grant a person an exemption from all or part of the Direction on the basis of extreme exceptional circumstances.

### *Human rights engaged*

The human rights engaged by the Direction are:

- Right to life (section 16)
- Protection from torture and cruel, inhuman or degrading treatment (section 17)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Freedom of expression (section 21)
- Peaceful assembly and freedom of association (section 22)
- Taking part in public life (section 23)
- Privacy (section 25)
- Protection of families (section 26)
- Cultural rights (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to liberty and security (section 29)
- Right to humane treatment when deprived of liberty (section 30)
- Right to education (section 36)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, by reducing the risk of the spread of COVID-19 into Queensland from overseas.

### *Limitations*

The right to protection from torture and cruel, inhuman or degrading treatment includes the right not to be subjected to medical treatment without consent. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test on day 12 or 13 of their quarantine period or be subjected to an additional 14 days of quarantine. The requirement may be considered to limit a person's ability to make an autonomous decision about medical treatment as a person's right to provide full, free and informed consent to the test is limited as their ability to leave quarantine after 14 days is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.



Every person has the right to move freely, enter or leave Queensland, and choose where they live. As such, public entities cannot act in a way that unduly restricts a person's freedom of movement, including by arbitrarily forcing a person to remain in, or move to or from, a particular place. The Direction limits the right to freedom of movement by requiring people who arrive in Queensland from overseas, to travel to and remain at nominated accommodation, primarily at hotels selected for them.

The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief either individually or as part of a community. The right to hold a belief is so important that it is considered to be an absolute right. However, limits on how a person manifests their belief can be justified. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days. This limits the ability of returning travellers to publicly demonstrate and practice their religion or beliefs, as they are not permitted to attend a church, mosque, temple or other religious institution to perform their usual religious practice.

Section 21 of the Human Rights Act provides that the right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds. It protects almost all kinds of expression, providing it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. The Direction limits this right by restricting a person from leaving their place of quarantine and prohibiting them from receiving visitors, although they may continue to engage with others via other means including telephone and video conferencing.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both participants and organisers of peaceful assemblies. Restricting a person's movements and prohibiting a person from receiving visitors limits their ability to peacefully assemble, although they may continue to 'assemble' and engage with others via other means such as telephone and video conferencing.

The right to privacy in section 25 of the Human Rights Act is broadly construed. A person has the right to not have their privacy, family or home arbitrarily interfered with. The right encompasses an individual's rights to establish and develop meaningful social relations (*Kracke v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The Direction limits this right as it temporarily interferes with people's ability to make and maintain social and family connections. Interference with privacy will occur by making a person provide personal details and answer questions about their health and possible exposure to COVID-19 when the person is directed to by an emergency officer (public health).

The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work.

The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test on day 12 or 13 of their quarantine period or be subjected to an additional 14 days of quarantine.<sup>1</sup> Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 14 day quarantine.

Queensland recognises families as the fundamental unit of society entitled to protection. The right to the protection of families encompasses more than non-interference; it is a guarantee of institutional protection of the family by society and the state. 'Family' is interpreted broadly, extending to different

cultural understandings of family. The Direction imposes a temporary limit on a quarantined person's ability to meet with and engage with their family in person, but does recognise the unique position of unaccompanied minors who arrive in Australia, and provides that they must quarantine with a parent, guardian or other responsible adult. This also recognises the protection needed by children.

Section 27 of the Human Rights Act states that all people with particular cultural, religion, racial and linguistic backgrounds have a right to enjoy their culture, declare and practice their religion and use their language in community with other people of that background. This promotes the practise and maintenance of shared traditions and activities.

The Human Rights Act specifies that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people. Section 28 provides that Aboriginal and Torres Strait Islander peoples must not be denied this right, together with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practice their culture.

The direction may limit cultural rights under sections 27 and 28 of the Human Rights Act, for people who may ordinarily share their culture with their loved ones who visit are limited from doing so due to the restrictions on visitors in quarantine.

Every person in Queensland has the right to liberty and security and must not be subjected to arbitrary arrest or detention or deprived of their liberty except on grounds, and in accordance with procedures, established by law. The concept of detention includes not only detention in a prison, but all forms of detention, including for the purposes of medical treatment. The Direction restricting people to certain designated accommodation constitutes detention and, thus, limits the right to liberty and security.

Section 30 of the Human Rights Act states that everyone must be treated with respect when deprived of liberty. The underlying principle is that a person's rights should only be limited by the confinement itself, not additional hardships or constraints, noting that some rights are unavoidably restricted in a closed environment including freedom of movement and elements of freedom of expression. However, the Direction recognises that individuals with particular health needs should be able to quarantine in their residence with their carers because of the unique strain that detention in another setting may pose.

Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty. Like all rights in the Act, this right can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Section 36 of the Human Rights Act protects the right of every child to access primary and secondary education appropriate to their needs without discrimination. The scope of the right is tied to public education service delivery and does not extend to private and non-government schools or early childhood services.

### *Compatibility with Human Rights*

#### Proper purpose (section 13(2)(b))

The purpose of the Direction is to reduce the spread of COVID-19 within Queensland from those people arriving from overseas, who have a higher risk of having, and thus spreading, COVID-19. This is due to both the higher prevalence of COVID-19 in most other countries, and the exposure potential associated with travel.

Requiring people entering Queensland from overseas to quarantine in nominated premises is to confine potential outbreaks and enable appropriate support of quarantined individuals within available resources. It also enables monitoring and enforcement of the requirements under the Direction, noting the increased strain on front-line emergency responders and police due to the

COVID-19 pandemic. The Direction is in effect for a temporary period, and the restrictions as applying to a person only last for 14-days, which is tied with the typical incubation period for COVID-19. Ultimately, the purpose of quarantine is to limit the opportunity for transmission of COVID-19 during the potential incubation period.

The aim of protecting public health is a proper purpose. Protecting people in the community from the risk of COVID-19 also promotes their human rights to life (section 16) and health (section 37). At international law, the right to health includes '[t]he prevention, treatment and control of epidemic, endemic, ... and other diseases': *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12(2)(c).

The purpose of protecting and promoting human rights is necessarily consistent with a society 'based on human dignity, equality and freedom' (section 13(2)(b) of the Human Rights Act).

#### Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose of protecting public health by limiting the opportunities for transmission of COVID-19 from persons arriving from overseas, during the potential incubation period.

The quarantine requirements have been tailored to the needs of different cohorts. For example, those who are unable to live independently without ongoing or regular support may have a carer or support person quarantine with them at the nominated premises, and unaccompanied minors arriving in Queensland from overseas can be met on arrival and accompanied in quarantine by a parent, guardian or other responsible adult.

People in quarantine are also permitted to leave their place of quarantine in certain circumstances, including to obtain essential medical care at a hospital or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

#### Necessary (s 13(2)(d))

The limits on human rights are necessary to achieve the purpose. There is no other way to address the risk of COVID-19 spreading into Queensland from overseas which would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights.

In particular:

- Prohibiting entry of all people from overseas would be more restrictive of human rights.
- Relying on other measures such as contact tracing and testing on arrival in Queensland (without quarantine restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from overseas may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Permitting people to quarantine at a location of their choosing would not be practicable or as effective given the resourcing requirements of policing and providing assistance to the number of locations that would be involved.

#### Fair balance (section 13(2)(e), (f) and (g))

Given the risk posed by overseas arrivals, the purpose of the Direction can only be reasonably achieved by temporarily restricting the contact of new overseas arrivals with the broader community through quarantine arrangements.

Many of the limits on human rights are incidental. For example, although quarantine limits the right to demonstrate religion or belief as part of a community, people are not prevented from practising their religion or beliefs through private prayer or with others through video conferencing or other remote means. As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment

The extent of the limitation on human rights is further reduced in other ways. The Direction is in effect for a temporary period, and the restrictions that apply to a person only last for 14-days, unless a person refuses a COVID-19 test, which is based on public health advice about the typical incubation period for COVID-19. The Direction also recognises the hardship that certain persons would face in quarantine, including unaccompanied minors and persons with particular health needs, and allows them to quarantine with another person.

The requirements of the Direction are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in more remote ways.

The limits on human rights by requiring a person to wear a mask when leaving quarantine or agree to a COVID-19 test or be subject to an additional 14 days quarantine are justifiable. Requiring a person to agree to undergo a COVID-19 test is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. For example, a person who is released from quarantine may potentially be asymptomatic and there will be no means of confirmation without a test. The person could potentially infect people in the wider community once they are released from quarantine. Tackling such a scenario would require resources for contact tracing (one person could have up to 200 contacts) and may divert resources from other critical areas. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights. A person also has the option of agreeing to the test or remaining in quarantine for a further 14 days. Additionally, section 362L of the *Public Health Act 2005* expressly authorises an emergency officer (public health) to take action to enforce a requirement or direction, using reasonable and necessary force. The provisions indicate that Parliament has considered liberty interests and decided to curtail those rights to address public health risks.

The Direction provides an exemption power enabling the Chief Health Officer to grant an exemption to any of its requirements based on extreme exceptional circumstances. This power was included to protect against unintended consequences of the Direction, and to acknowledge that there may be circumstances where quarantine in a designated premises may not be reasonable or appropriate.

The impact on some human rights will be large, in particular, the right to equality for residents returning from overseas and the freedom of movement. However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) outweighs the impact on other human rights. Indeed, it is difficult to overstate the importance to society of addressing the risk posed by a pandemic. Ultimately, the Direction strikes a fair balance between the human rights it limits and the need to reduce the risk of COVID-19 spreading into Queensland.