

Public Health Directions – Human Rights Assessment
Restrictions for Impacted Areas Direction

Title	<i>Restrictions for Impacted Areas Direction</i>
Date effective	8 January 2021

Background

The *Restrictions for Impacted Areas Direction* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis is prepared to consider the impacts of the Direction on the human rights identified in the *Human Rights Act 2019* and 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.

Purpose of the Direction

The purpose of the *Restrictions for Impacted Areas Direction* (Direction) is to slow the spread of COVID-19 by restricting the movement and gathering of people, implementing social distancing measures, mandating the wearing of masks in certain circumstances and requiring non-essential businesses to close.

In preparing the Direction, risks to the health and safety of Queenslanders have been identified and the current epidemiological situation, both in Queensland and internationally, 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.

Human rights engaged

The human rights engaged by the Direction are:

- Right to recognition and equity before the law (section 15)
- Right to life (section 16)
- 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)
- Property rights (section 24)
- Protection of families and children (section 26)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to education (section 36)
- Right to health services (section 37)

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 placing restrictions on how people may gather, move and interact. It also restricts how certain businesses, activities and undertakings may operate.

Right to recognition and equality under the law

Every person has the right to recognition as a person before the law and the right to enjoy their human rights without discrimination. Every person is equal before the law and is entitled to equal protection of the law without discrimination. Every person is entitled to equal and effective protection against discrimination.

Freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. The right means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place. The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers, like requiring permission before entering a public park or participating in a public demonstration in a public place. The right may be engaged where a public entity actively curtails a person's freedom of movement.

Freedom of thought, conscience, religion and belief; Freedom of expression; Peaceful assembly and freedom of association; Cultural rights – generally; Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

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, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is an absolute right, however limits on how a person manifests their belief can be justified.

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, if it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. While the concept of freedom of expression is broad, the way a person can exercise it can be limited. Restricting a person's movements and contact with others limits the ways in which they can express their opinions and ideas.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both the participants and organisers of peaceful assemblies. Restricting a person's movements and banning gatherings limits the ability for a person to peacefully assemble with others for a common purpose.

Cultural rights protects the rights of all people with particular cultural, religious, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and

activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. Limiting gatherings and restricting the movement of groups and individuals limits a person's ability to engage with others who share their cultural background.

In addition to the general cultural rights, the Human Rights Act recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first peoples. They have the right to enjoy, maintain, control, protect and develop their culture, language and kinship ties with other members of their community. The right also protects Aboriginal peoples and Torres Strait Islander people's right to maintain and strengthen their distinct spiritual relationship with the land, territories, waters, coastal seas and other resources, and to conserve and protect the environment. Directions to prohibit gatherings of people, to enforce self-isolate, or to otherwise restrict the movement of groups and individuals may limit the ability of Aboriginal peoples and Torres Strait Islander peoples to engage with community and their traditionally owned or otherwise occupied lands and waters.

Property Rights

Every person has the right to own property alone or in association with others and must not be arbitrarily deprived of their property. Requirements to quarantine or otherwise restricting a person's movement and entry into Queensland may also restrict a person's use of private property, albeit temporarily.

Taking part in public life

Every person in Queensland has the right to take part in public life. This includes the right to participate in the conduct of public affairs and the right to vote and be elected at periodic State and local government elections. Being part of community consultations with government, attending local council meetings, participating in public debate, and taking part in referendums or other electoral processes are important aspects of taking part in public life. The right to take part in public life does not mean the right to access a public space using public transport.

Right to protection of families and children

Queensland recognises families as the fundamental unit of society entitled to protection. This right 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. Internal limitations of lawfulness and arbitrariness apply to the right of the family.

Physical separation of families could occur because of requirements of the Direction. This limitation would be temporary and would not restrict other means of communication and engagement among family members, for example through phone calls, video conferencing or social media. The limitation on the right to protection of families would also not be arbitrary, as the actions would be taken in an effort to protect the health and safety of family members and the wider community.

Every child has the right, without discrimination, to the protection that is in their best interests as a child. The right recognises that special measures to protect children are necessary given their vulnerability due to age. The best interests of the child should be considered in all actions affecting a child, aimed at ensuring both the full and effective enjoyment of all the child's human rights and the holistic development of the child. Best interests depend on the individual

circumstances of the child. The requirements contained in the Direction also has the potential to impact children through, for example, temporarily restricting their movement, restricting the movement of family or other contacts, or restricting their access to certain facilities or events.

Right to liberty and security of person

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.

This right is subject to a number of internal limitations and qualifications. Relevantly, the detention must not be arbitrary in the sense that it must not be capricious, unpredictable or unjust or otherwise disproportionate to the legitimate aim that is sought.

The right to liberty and security also incorporates a number of procedural elements, including that a person who is detained must be informed at the time of detention of the reason for detention and that a detained person is able to apply to a court for a declaration or order regarding the lawfulness of the person's detention. These procedural aspects of the right will continue to be limited. The requirements for a person to be given notice of the direction or order for detention and the reason for the detention will be clear in the notice

Right to education

The right of every child to access primary and secondary education appropriate to their needs is protected in Queensland. The right to education also says that every person has the right to have access, based on their abilities, to equally accessible further vocational education and training. The right to education is intended to be interpreted in line with the *Education (General Provisions) Act 2006* and to provide rights in relation to aspects of Queensland's responsibilities for education service delivery.

Internationally, this right has been interpreted as requiring that education be accessible to all individuals without discrimination. Individuals may be temporarily restricted from attending schools or other educational institutions if they are subject to a direction to self-isolate in order to assist the containment of or arrest the spread of COVID-19 to the broader community. Certain educational activities, such as school assemblies or performances may also be temporarily restricted, however such restrictions would be without discrimination.

Right to health services

Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment. The Direction does not limit or place any impediments on a person's right to receive health services.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Protecting the health and safety of the public is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom. The purpose of the limitations on human rights is to protect the Queensland public from serious risks to health and safety, including the potential for widespread loss of life that could occur if public health officials are unable to coordinate an effective public health response to the COVID-19 pandemic.

Based on the best available evidence and the experience of public health officials and populations in other countries, there is a risk that COVID-19 may spread rapidly throughout Queensland and not remain contained unless extraordinary measures are put in place for a period of time. This presents a clear and present danger to the health and wellbeing of Queenslanders, particularly vulnerable persons including the elderly and immunocompromised. The uncontained spread of COVID-19 also has the potential to cause severe adverse economic and social consequences.

Against these indications, there is a need for the Direction to implement the various response measures, such as social distancing measures, to prevent COVID-19 spreading throughout the community and to mitigate potential adverse economic and social consequences associated with the disruption that will inevitably follow.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation of human rights is necessary to ensure that public health officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19 and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life sustaining treatment.

If these measures are not implemented and an outbreak of COVID-19 occurs in Queensland, demand for emergency and life-sustaining treatment could quickly exceed capacity and overwhelm the State's public health infrastructure. In addition to loss of life and serious adverse health impacts, this could potentially cause widespread economic disruption, social panic and civil unrest, further jeopardising the safety and wellbeing of the community.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The purpose of the Direction cannot be achieved through any other reasonably available and less restrictive means. Extensive campaigns by the Queensland and Commonwealth Governments are in place to educate members of the public about the risks of COVID-19 and how to minimise their potential exposure to infection. Experience abroad underscores that voluntary containment measures are inadequate to arrest the spread of COVID-19 and that governments must proactively pursue more prescriptive approaches to respond effectively to this unprecedented public health emergency.

The implementation of the Direction for an initial three-day period is considered to be the least restrictive and reasonably available way to achieve the purpose of the Direction. As the situation relating to COVID-19 in Queensland continues to evolve, it is difficult to determine with absolute certainty how long the Direction will be required to be implemented for. However, an initial three-day period will allow for further assessment of the spread of the virus in Queensland and allow for any positive COVID-19 to be placed into quarantine and receive appropriate treatment while avoiding any further spread of the virus.

Queensland Health will continue to monitor and assess the situation to determine whether the Direction continues to be required. Section 362E of the *Public Health Act 2005* requires the Chief Health Officer to revoke the Direction as soon as it is no longer considered necessary to limit, or respond to, the spread of COVID-19 in Queensland.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.

Failure to impose these measures may result in Queensland's health infrastructure becoming overwhelmed, with the result that decisions will need to be made as to who receives lifesaving treatment and otherwise preventable deaths occurring. This is not an abstract threat; there are several countries which have been unable to mount an effective public health response that are now experiencing deaths at a higher rate than in countries that have implemented stronger containment and social distancing measures.

Although the Direction may potentially limit many rights, in many instances the limitations are minor in nature and frequently consistent with internal limitations in the Human Rights Act. It should also be noted that many Queenslanders are already taking voluntary precautions, including self-isolation, to limit their potential exposure to COVID-19 and avoid spreading this disease to family members, friends and the broader community. Many individuals are already undertaking these measures voluntarily, which suggests they are unlikely to impose an unjustified burden on human rights.

Several safeguards exist in the Public Health Act and the Direction to ensure that any limitations on human rights are no more onerous than is required to slow the spread of COVID-19. On balance, any limitations on human rights are reasonable and justified to ensure the preservation of life and protection of the community from the worse impacts of a pandemic.

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

Title	<i>Quarantine for International Arrivals Direction (No. 2)</i>
Date effective	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.¹ 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
Restrictions for Impacted Areas Direction (No. 3)

Title	<i>Restrictions for Impacted Areas Direction (No. 3)</i>
Date effective	29 March 2021

Background

The *Restrictions for Impacted Areas Direction (No. 3)* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis is prepared to consider the impacts of the Direction on the human rights identified in the *Human Rights Act 2019* and 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.

Purpose of the Direction

The purpose of the *Restrictions for Impacted Areas Direction (No. 3)* (Direction) is to slow the spread of COVID-19 by restricting the movement and gathering of people, implementing physical distancing measures, mandating the wearing of masks in certain circumstances and requiring non-essential businesses to close.

In preparing the Direction, risks to the health and safety of Queenslanders have been identified and the current epidemiological situation, both in Queensland and internationally, 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.

This Direction will provide that from 5.00pm on 29 March 2021 to 5.00pm on 1 April 2021 the following restrictions will apply in Greater Brisbane (including the Local Government Areas of the City of Brisbane, City of Ipswich, Logan City, Moreton Bay Region and Redland City):

- people are permitted to be outside their homes for permitted purposes
- people may only enter or leave an impacted area for permitted purposes
- visitors to residences are limited maximum of two people
- requirement for people to wear a face mask covering their mouth and nose in indoor settings
- non-essential businesses, activities and undertakings must not operate or if permitted to operate, do so in accordance with the specified restrictions.

Human rights engaged

The human rights engaged by the Direction are:

- Right to recognition and equity before the law (section 15)
- Right to life (section 16)
- 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)
- Property rights (section 24)
- Protection of families and children (section 26)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to education (section 36)
- Right to health services (section 37)

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 placing restrictions on how people may gather, move and interact. It also restricts how certain businesses, activities and undertakings may operate.

Right to recognition and equality under the law

Every person has the right to recognition as a person before the law and the right to enjoy their human rights without discrimination. Every person is equal before the law and is entitled to equal protection of the law without discrimination. Every person is entitled to equal and effective protection against discrimination.

Freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. The right means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place. The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers, like requiring permission before entering a public park or participating in a public demonstration in a public place. The right may be engaged where a public entity actively curtails a person's freedom of movement.

Freedom of thought, conscience, religion and belief; Freedom of expression; Peaceful assembly and freedom of association; Cultural rights – generally; Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

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, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is an absolute right, however limits on how a person manifests their belief can be justified.

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, if it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. While the concept of freedom of expression is broad,

the way a person can exercise it can be limited. Restricting a person's movements and contact with others limits the ways in which they can express their opinions and ideas.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both the participants and organisers of peaceful assemblies. Restricting a person's movements and banning gatherings limits the ability for a person to peacefully assemble with others for a common purpose.

Cultural rights protects the rights of all people with particular cultural, religious, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. Limiting gatherings and restricting the movement of groups and individuals limits a person's ability to engage with others who share their cultural background.

In addition to the general cultural rights, the Human Rights Act recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first peoples. They have the right to enjoy, maintain, control, protect and develop their culture, language and kinship ties with other members of their community. The right also protects Aboriginal peoples and Torres Strait Islander people's right to maintain and strengthen their distinct spiritual relationship with the land, territories, waters, coastal seas and other resources, and to conserve and protect the environment. Directions to prohibit gatherings of people, to enforce self-isolate, or to otherwise restrict the movement of groups and individuals may limit the ability of Aboriginal peoples and Torres Strait Islander peoples to engage with community and their traditionally owned or otherwise occupied lands and waters.

Property Rights

Every person has the right to own property alone or in association with others and must not be arbitrarily deprived of their property. Requirements to quarantine or otherwise restricting a person's movement and entry into Queensland may also restrict a person's use of private property, albeit temporarily.

Taking part in public life

Every person in Queensland has the right to take part in public life. This includes the right to participate in the conduct of public affairs and the right to vote and be elected at periodic State and local government elections. Being part of community consultations with government, attending local council meetings, participating in public debate, and taking part in referendums or other electoral processes are important aspects of taking part in public life. The right to take part in public life does not mean the right to access a public space using public transport.

Right to protection of families and children

Queensland recognises families as the fundamental unit of society entitled to protection. This right 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. Internal limitations of lawfulness and arbitrariness apply to the right of the family.

Physical separation of families could occur because of requirements of the Direction. This limitation would be temporary and would not restrict other means of communication and engagement among family members, for example through phone calls, video conferencing or social media. The limitation on the right to protection of families would also not be arbitrary, as the actions would be taken in an effort to protect the health and safety of family members and the wider community.

Every child has the right, without discrimination, to the protection that is in their best interests as a child. The right recognises that special measures to protect children are necessary given their vulnerability due to age. The best interests of the child should be considered in all actions affecting a child, aimed at ensuring both the full and effective enjoyment of all the child's human rights and the holistic development of the child. Best interests depend on the individual circumstances of the child. The requirements contained in the Direction also has the potential to impact children through, for example, temporarily restricting their movement, restricting the movement of family or other contacts, or restricting their access to certain facilities or events.

Right to liberty and security of person

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.

This right is subject to a number of internal limitations and qualifications. Relevantly, the detention must not be arbitrary in the sense that it must not be capricious, unpredictable or unjust or otherwise disproportionate to the legitimate aim that is sought.

The right to liberty and security also incorporates a number of procedural elements, including that a person who is detained must be informed at the time of detention of the reason for detention and that a detained person is able to apply to a court for a declaration or order regarding the lawfulness of the person's detention. These procedural aspects of the right will continue to be limited. The requirements for a person to be given notice of the direction or order for detention and the reason for the detention will be clear in the notice

Right to education

The right of every child to access primary and secondary education appropriate to their needs is protected in Queensland. The right to education also says that every person has the right to have access, based on their abilities, to equally accessible further vocational education and training. The right to education is intended to be interpreted in line with the *Education (General Provisions) Act 2006* and to provide rights in relation to aspects of Queensland's responsibilities for education service delivery.

Internationally, this right has been interpreted as requiring that education be accessible to all individuals without discrimination. Individuals may be temporarily restricted from attending schools or other educational institutions if they are subject to a direction to self-isolate in order to assist the containment of or arrest the spread of COVID-19 to the broader community. Certain educational activities, such as school assemblies or performances may also be temporarily restricted, however such restrictions would be without discrimination.

Right to health services

Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment. The Direction does not limit or place any impediments on a person's right to receive health services, including allowing a person to receive a scheduled COVID-19 vaccination.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Protecting the health and safety of the public is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom. The purpose of the limitations on human rights is to protect the Queensland public from serious risks to health and safety, including the potential for widespread loss of life that could occur if public health officials are unable to coordinate an effective public health response to the COVID-19 pandemic.

Based on the best available evidence and the experience of public health officials and populations in other countries, there is a risk that COVID-19 may spread rapidly throughout Queensland and not remain contained unless extraordinary measures are put in place for a period of time. This presents a clear and present danger to the health and wellbeing of Queenslanders, particularly vulnerable persons including the elderly and immunocompromised. The uncontained spread of COVID-19 also has the potential to cause severe adverse economic and social consequences.

Against these indications, there is a need for the Direction to implement the various response measures, such as social distancing measures, to prevent COVID-19 spreading throughout the community and to mitigate potential adverse economic and social consequences associated with the disruption that will inevitably follow.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation of human rights is necessary to ensure that public health officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19 and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life sustaining treatment.

If these measures are not implemented and an outbreak of COVID-19 occurs in Queensland, demand for emergency and life-sustaining treatment could quickly exceed capacity and overwhelm the State's public health infrastructure. In addition to loss of life and serious adverse health impacts, this could potentially cause widespread economic disruption, social panic and civil unrest, further jeopardising the safety and wellbeing of the community.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The purpose of the Direction cannot be achieved through any other reasonably available and less restrictive means. Extensive campaigns by the Queensland and Commonwealth

Governments are in place to educate members of the public about the risks of COVID-19 and how to minimise their potential exposure to infection. Experience abroad underscores that voluntary containment measures are inadequate to arrest the spread of COVID-19 and that governments must proactively pursue more prescriptive approaches to respond effectively to this unprecedented public health emergency.

The implementation of the Direction for an initial 3-day period is considered to be the least restrictive and reasonably available way to achieve the purpose of the Direction. As the situation relating to COVID-19 in Queensland continues to evolve, it is difficult to determine with absolute certainty how long the Direction will be required to be implemented for. However, an initial 3-day period will allow for further assessment of the spread of the virus in Queensland and allow for any positive COVID-19 to be placed into quarantine and receive appropriate treatment while avoiding any further spread of the virus.

Queensland Health will continue to monitor and assess the situation to determine whether the Direction continues to be required. Section 362E of the *Public Health Act 2005* requires the Chief Health Officer to revoke the Direction as soon as it is no longer considered necessary to limit, or respond to, the spread of COVID-19 in Queensland.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.

Failure to impose these measures may result in Queensland's health infrastructure becoming overwhelmed, with the result that decisions will need to be made as to who receives lifesaving treatment and otherwise preventable deaths occurring. This is not an abstract threat; there are several countries which have been unable to mount an effective public health response that are now experiencing deaths at a higher rate than in countries that have implemented stronger containment and social distancing measures.

Although the Direction may potentially limit many rights, in many instances the limitations are minor in nature and frequently consistent with internal limitations in the Human Rights Act. It should also be noted that many Queenslanders are already taking voluntary precautions, including self-isolation, to limit their potential exposure to COVID-19 and avoid spreading this disease to family members, friends and the broader community. Many individuals are already undertaking these measures voluntarily, which suggests they are unlikely to impose an unjustified burden on human rights.

Several safeguards exist in the Public Health Act and the Direction to ensure that any limitations on human rights are no more onerous than is required to slow the spread of COVID-19. On balance, any limitations on human rights are reasonable and justified to ensure the preservation of life and protection of the community from the worse impacts of a pandemic.

Public Health Directions – Human Rights Assessment
Restrictions for Impacted Areas Direction (No. 4)

Title	<i>Restrictions for Impacted Areas Direction (No. 4)</i>
Date effective	29 June 2021

Background

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

This analysis is prepared to consider the impacts of the Direction on the human rights identified in the *Human Rights Act 2019* and 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.

Purpose of the Direction

The purpose of the *Restrictions for Impacted Areas Direction (No. 4)* (Direction) is to slow the spread of COVID-19 by restricting the movement and gathering of people, implementing social distancing measures, mandating the wearing of masks in certain circumstances and requiring restricted businesses to operate with certain limits such as occupant density.

In preparing the Direction, risks to the health and safety of Queenslanders have been identified and the current epidemiological situation, both in Queensland and internationally, 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.

This Direction introduces the following restrictions for the Local Government Areas of City of Brisbane, City of Ipswich Logan City, Moreton Bay Region, Redland City, Sunshine Coast, Gold Coast City, Noosa Shire, Somerset Region, Lockyer Valley Region and Scenic Rim Region from 1am on 29 June 2021:

- only 30 people are permitted to gather in a private residence or public spaces;
- people are required to wear masks outside of their homes in both indoor and outdoor spaces including in indoor workplaces where social distancing isn't possible;
- only up to 100 attendees are permitted at wedding ceremonies and funerals and only 20 people can dance
- indoor spaces are subject to an occupant density of:
 - for venues over 200 square metres - 1 person per 4 square metres for areas used by patrons or 100% of a venue's capacity where there is ticketed and allocated seating
 - for venues under 200 square metres - 1 person 2 square metres for areas used by patrons up to a maximum of 50 people.
- outdoor venues or spaces are subject to an occupant density of 1 person per 4 square metres
- venues that serve food and drinks must operate for seated patrons only

- restricted businesses, activities or undertakings in restricted areas must operate in accordance with the COVID Safe Checklist – Impacted Areas or the COVID Safe Event Checklist – Impacted Areas;
- wedding ceremonies and funerals are limited to a maximum attendance of 100 people
- dancing at a wedding reception is permitted to a maximum of 20 people

Human rights engaged

The human rights engaged by the Direction are:

- Right to recognition and equity before the law (section 15)
- Right to life (section 16)
- 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)
- Property rights (section 24)
- Privacy (section 25)
- Protection of families and children (section 26)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to education (section 36)
- Right to health services (section 37)

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 placing restrictions on how people may gather, move and interact. It also restricts how certain businesses, activities and undertakings may operate. By requiring people to wear masks in high risk environments in the 11 local government areas in South East Queensland, 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.

Right to recognition and equality under the law

Every person has the right to recognition as a person before the law and the right to enjoy their human rights without discrimination. Every person is equal before the law and is entitled to equal protection of the law without discrimination. Every person is entitled to equal and effective protection against discrimination. The requirements to wear face masks in high risk environments discriminates against people with a disability. For example, masks may make it harder for people with hearing loss to lip read and communicate. The definition of 'discrimination' under the Human Rights Act is inclusive. Discrimination may include discrimination on the basis certain attributes such as disability or race, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296.

Freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. The right means that a person cannot be arbitrarily forced to remain in, or move to or from, a place. The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers, like requiring permission before entering a public park or participating in a public demonstration in a public place. The right may be engaged where a public entity actively curtails a person's freedom of movement.

Freedom of thought, conscience, religion and belief; Freedom of expression; Peaceful assembly and freedom of association; Cultural rights – generally; Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

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, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is an absolute right, however limits on how a person manifests their belief can be justified.

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, if it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. While the concept of freedom of expression is broad, the way a person can exercise it can be limited. Restricting a person's contact with others limits the ways in which they can express their opinions and ideas. The Direction also limits this right by restricting how a person may express themselves orally or through the garments they wear by requiring them to wear a certain type of face mask in high risks environments in Queensland. A person may still make or purchase a cloth mask of their choosing and is permitted to remove the mask in certain circumstances such as when making announcements, teaching or live broadcasting.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both the participants and organisers of peaceful assemblies. Restricting a person's movements and banning gatherings limits the ability for a person to peacefully assemble with others for a common purpose.

Cultural rights protect the rights of all people with particular cultural, religious, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. Limiting gatherings may limit a person's ability to engage with others who share their cultural background.

In addition to the general cultural rights, the Human Rights Act recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first peoples. They have the right to enjoy, maintain, control, protect and develop their culture, language and kinship ties with other members of their community. The right also protects Aboriginal peoples and Torres Strait Islander people's right to maintain and strengthen their distinct spiritual relationship with the land, territories, waters, coastal seas and other resources, and to conserve and protect the environment. Directions to prohibit gatherings of

people, to enforce self-isolate, or to otherwise restrict the movement of groups and individuals may limit the ability of Aboriginal peoples and Torres Strait Islander peoples to engage with community and their traditionally owned or otherwise occupied lands and waters.

Property Rights

Every person has the right to own property alone or in association with others and must not be arbitrarily deprived of their property. Requirements to quarantine or otherwise restricting a person's movement and entry into Queensland may also restrict a person's use of private property, albeit temporarily.

Taking part in public life

Every person in Queensland has the right to take part in public life. This includes the right to participate in the conduct of public affairs and the right to vote and be elected at periodic State and local government elections. Being part of community consultations with government, attending local council meetings, participating in public debate, and taking part in referendums or other electoral processes are important aspects of taking part in public life. The right to take part in public life does not mean the right to access a public space using public transport.

Right to privacy

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 wear a face mask or potentially be fined. However, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask in certain situations such as to eat, drink, consume medicine or receive medical treatment.

Right to protection of families and children

Queensland recognises families as the fundamental unit of society entitled to protection. This right 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. Internal limitations of lawfulness and arbitrariness apply to the right of the family.

Every child has the right, without discrimination, to the protection that is in their best interests as a child. The right recognises that special measures to protect children are necessary given their vulnerability due to age. The best interests of the child should be considered in all actions affecting a child, aimed at ensuring both the full and effective enjoyment of all the child's human rights and the holistic development of the child. Best interests depend on the individual circumstances of the child. The requirements contained in the Direction also has the potential to impact children through, for example, temporarily restricting their access to certain facilities or events.

Right to liberty and security of person

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.

This right is subject to a number of internal limitations and qualifications. Relevantly, the detention must not be arbitrary in the sense that it must not be capricious, unpredictable or unjust or otherwise disproportionate to the legitimate aim that is sought.

The right to liberty and security also incorporates a number of procedural elements, including that a person who is detained must be informed at the time of detention of the reason for detention and that a detained person is able to apply to a court for a declaration or order regarding the lawfulness of the person's detention. These procedural aspects of the right will continue to be limited. The requirements for a person to be given notice of the direction or order for detention and the reason for the detention will be clear in the notice

Right to education

The right of every child to access primary and secondary education appropriate to their needs is protected in Queensland. The right to education also says that every person has the right to have access, based on their abilities, to equally accessible further vocational education and training. The right to education is intended to be interpreted in line with the *Education (General Provisions) Act 2006* and to provide rights in relation to aspects of Queensland's responsibilities for education service delivery.

Internationally, this right has been interpreted as requiring that education be accessible to all individuals without discrimination. Certain educational activities, such as school assemblies or performances may be temporarily restricted if the restrictions continue when the school holidays end in July 2021.

Right to health services

Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment. The Direction does not limit or place any impediments on a person's right to receive health services.

Protecting the health and safety of the public is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom. The purpose of the limitations on human rights is to protect the Queensland public from serious risks to health and safety, including the potential for widespread loss of life that could occur if public health officials are unable to coordinate an effective public health response to the COVID-19 pandemic.

Based on the best available evidence and the experience of public health officials and populations in other countries, there is a risk that COVID-19 may spread rapidly throughout Queensland and not remain contained unless extraordinary measures are put in place for a period of time. This presents a clear and present danger to the health and wellbeing of Queenslanders, particularly vulnerable persons including the elderly and immunocompromised. The uncontained spread of COVID-19 also has the potential to cause severe adverse economic and social consequences.

Against these indications, there is a need for the Direction to implement the various response measures, such as physical distancing measures, to prevent COVID-19 spreading throughout

the community and to mitigate potential adverse economic and social consequences associated with the disruption that will inevitably follow.

Justification

The purpose of the public health direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by restricting movement in public places in order to contain and prevent the spread of the virus.

Requiring certain people in high risk environments to wear a mask is to confine potential outbreaks. The Direction is in effect for a temporary period, and the restrictions as applying to a person only apply in particular environments. A person can remove their mask when in an indoor space that is a residence, temporary accommodation premises or workplace, unless the person cannot observe physical distancing. Ultimately, the purpose of wearing masks is to limit the opportunity for transmission of COVID-19 from high risk environments to the Queensland community

To the extent that the Direction limits the right to freedom of movement, this is considered justified to minimise the spread of COVID-19 to other members of the community.

To the extent the Direction limits the right to equality and non-discrimination, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask such as to communicate with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication. A person is not required to wear a mask in high risk environments if they have a physical or mental health illness or condition, or disability, which makes wearing a face mask unsuitable.

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as, through private prayer.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community. Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. This internal limitation may apply where the Direction authorises restrictions on movement pursuant to a lawful direction based on a reasonable belief that the restriction is necessary to assist in containing or responding to the spread of COVID-19 within the community. 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 or from seeking alternative employment. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements 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 other ways. For example, through private prayer, online tools, or meetings at places of worship, with no more than one person per 4 square metres. The limitations on religious and cultural rights are considered justified.

Overall, the limitations on human rights are justified, as the Direction is only in force for a temporary period and will help contain the spread of COVID-19, thereby protecting the health and safety of the community.

The Direction eases restrictions after the three-day lockdown period following a review to ensure the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act.

From a public health perspective, the approach is to gradually increase the number of places where people may go, and the number of people that might gather. This reduces the likelihood of sudden outbreaks of the virus across the State, therefore reducing the risk to individuals and ensuring that the health system can mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts.

The limitation of human rights is necessary to ensure that public health officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19 and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life sustaining treatment.

If these measures are not implemented and an outbreak of COVID-19 occurs in Queensland, demand for emergency and life-sustaining treatment could quickly exceed capacity and overwhelm the State's public health infrastructure. In addition to loss of life and serious adverse health impacts, this could potentially cause widespread economic disruption, social panic and civil unrest, further jeopardising the safety and wellbeing of the community.

The purpose of the Direction cannot be achieved through any other reasonably available and less restrictive means. Extensive campaigns by the Queensland and Commonwealth Governments are in place to educate members of the public about the risks of COVID-19 and how to minimise their potential exposure to infection. Experience abroad underscores that voluntary containment measures are inadequate to arrest the spread of COVID-19, particularly of the more contagious variant of COVID-19, and that governments must proactively pursue more prescriptive approaches to respond effectively to this unprecedented public health emergency.

Queensland Health will continue to monitor and assess the situation to determine whether further restrictions are required or if restrictions may be eased. Accordingly, the Direction is only in force for a limited period of time (till 13 July 2021) and enables the Government and Queensland Health to further assess the current situation. The limitations under the Direction is reasonable as stricter restrictions are applied only to the affected 11 local government areas

in South East Queensland. The rest of Queensland is not subject to the stricter restrictions and can operate under the current level of eased requirements.

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.

Failure to impose these measures may result in Queensland's health infrastructure becoming overwhelmed, with the result that decisions will need to be made as to who receives lifesaving treatment and otherwise preventable deaths occurring. This is not an abstract threat; there are several countries which have been unable to mount an effective public health response that are now experiencing deaths at a higher rate than in countries that have implemented stronger containment and social distancing measures.

Although the Direction may potentially limit many rights, in many instances the limitations are minor in nature and frequently consistent with internal limitations in the Human Rights Act. It should also be noted that many Queenslanders are already taking voluntary precautions, to limit their potential exposure to COVID-19 and avoid spreading this disease to family members, friends and the broader community. Many individuals are already undertaking these measures voluntarily, which suggests they are unlikely to impose an unjustified burden on human rights.

Several safeguards exist in the Public Health Act and the Direction to ensure that any limitations on human rights are no more onerous than is required to slow the spread of COVID-19. On balance, any limitations on human rights are reasonable and justified to ensure the preservation of life and protection of the community from the worse impacts of a pandemic.

Public Health Directions – Human Rights Assessment
Restrictions for Impacted Areas Direction (No. 45)

Title	<i>Restrictions for Impacted Areas Direction (No. 45)</i>
Date effective	29 June 2021

Background

The *Restrictions for Impacted Areas Direction (No. 45)* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis is prepared to consider the impacts of the Direction on the human rights identified in the *Human Rights Act 2019* and 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.

Purpose of the Direction

The purpose of the *Restrictions for Impacted Areas Direction (No. 45)* (Direction) is to slow the spread of COVID-19 by restricting the movement and gathering of people, implementing social distancing measures, mandating the wearing of masks in certain circumstances and requiring restricted businesses to operate with certain limits such as occupant density.

In preparing the Direction, risks to the health and safety of Queenslanders have been identified and the current epidemiological situation, both in Queensland and internationally, 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.

This Direction introduces the following restrictions for the Local Government Areas of City of Brisbane, City of Ipswich Logan City, Moreton Bay Region, Redland City, Sunshine Coast, Gold Coast City, Noosa Shire, Somerset Region, Lockyer Valley Region, ~~and Scenic Rim Region, Townsville City and Palm Island Aboriginal Shire~~ from ~~4am-6pm~~ on 29 June 2021 to ~~6pm~~ 2 July 2021:

- ~~people are permitted to be outside their homes for permitted purposes~~
- ~~people may only enter or leave an impacted area for permitted purposes~~
- ~~visitors to residences are limited maximum of two people~~
- ~~requirement for people to wear a face mask covering their mouth and nose in indoor and outdoor spaces~~
- ~~non-essential businesses, activities and undertakings must not operate or if permitted to operate, do so in accordance with the specified restrictions~~
- ~~only 30 people are permitted to gather in a private residence or public spaces;~~
- ~~people are required to wear masks outside of their homes in both indoor and outdoor spaces including in indoor workplaces where social distancing isn't possible;~~
- ~~only up to 400-10 attendees are permitted at wedding ceremonies and funerals and only 20 people can dance~~
- ~~indoor spaces are subject to an occupant density of:~~

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- ~~• for venues over 200 square metres 1 person per 4 square metres for areas used by patrons or 100% of a venue's capacity where there is ticketed and allocated seating~~
- ~~• for venues under 200 square metres 1 person 2 square metres for areas used by patrons up to a maximum of 50 people.~~
- ~~• outdoor venues or spaces are subject to an occupant density of 1 person per 4 square metres~~
- ~~• venues that serve food and drinks must operate for seated patrons only~~
- ~~• restricted businesses, activities or undertakings in restricted areas must operate in accordance with the COVID Safe Checklist – Impacted Areas or the COVID Safe Event Checklist – Impacted Areas;~~
 - ~~• wedding ceremonies and funerals are limited to a maximum attendance of 100 people~~
 - ~~• dancing at a wedding reception is permitted to a maximum of 20 people~~

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Human rights engaged

The human rights engaged by the Direction are:

- Right to recognition and equity before the law (section 15)
- Right to life (section 16)
- 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)
- Property rights (section 24)
- Privacy (section 25)
- Protection of families and children (section 26)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to education (section 36)
- Right to health services (section 37)

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 placing restrictions on how people may gather, move and interact. It also restricts how certain businesses, activities and undertakings may operate. By requiring people to wear masks in high risk environments in the [44-11](#) local government areas in South East Queensland [and Townsville City and Palm Island](#), 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.

Right to recognition and equality under the law

Every person has the right to recognition as a person before the law and the right to enjoy their human rights without discrimination. Every person is equal before the law and is entitled to equal protection of the law without discrimination. Every person is entitled to equal and

effective protection against discrimination. The requirements to wear face masks in high risk environments discriminates against people with a disability. For example, masks may make it harder for people with hearing loss to lip read and communicate. The definition of 'discrimination' under the Human Rights Act is inclusive. Discrimination may include discrimination on the basis certain attributes such as disability or race, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296.

Freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. The right means that a person cannot be arbitrarily forced to remain in, or move to or from, a place. The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers, like requiring permission before entering a public park or participating in a public demonstration in a public place. The right may be engaged where a public entity actively curtails a person's freedom of movement.

Freedom of thought, conscience, religion and belief; Freedom of expression; Peaceful assembly and freedom of association; Cultural rights – generally; Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

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, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is an absolute right, however limits on how a person manifests their belief can be justified.

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, if it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. While the concept of freedom of expression is broad, the way a person can exercise it can be limited. Restricting a person's contact with others limits the ways in which they can express their opinions and ideas. The Direction also limits this right by restricting how a person may express themselves orally or through the garments they wear by requiring them to wear a certain type of face mask in high risks environments in Queensland. A person may still make or purchase a cloth mask of their choosing and is permitted to remove the mask in certain circumstances such as when making announcements, teaching or live broadcasting.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both the participants and organisers of peaceful assemblies. Restricting a person's movements and banning gatherings limits the ability for a person to peacefully assemble with others for a common purpose.

Cultural rights protect the rights of all people with particular cultural, religious, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. Limiting gatherings may limit a person's ability to engage with others who share their cultural background.

In addition to the general cultural rights, the Human Rights Act recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first peoples. They have the right to enjoy, maintain, control, protect and develop their culture, language and kinship ties with other members of their community. The right also protects Aboriginal peoples and Torres Strait Islander people's right to maintain and strengthen their distinct spiritual relationship with the land, territories, waters, coastal seas and other resources, and to conserve and protect the environment. Directions to prohibit gatherings of people, to enforce self-isolate, or to otherwise restrict the movement of groups and individuals may limit the ability of Aboriginal peoples and Torres Strait Islander peoples to engage with community and their traditionally owned or otherwise occupied lands and waters.

Property Rights

Every person has the right to own property alone or in association with others and must not be arbitrarily deprived of their property. Requirements to quarantine or otherwise restricting a person's movement and entry into Queensland may also restrict a person's use of private property, albeit temporarily.

Taking part in public life

Every person in Queensland has the right to take part in public life. This includes the right to participate in the conduct of public affairs and the right to vote and be elected at periodic State and local government elections. Being part of community consultations with government, attending local council meetings, participating in public debate, and taking part in referendums or other electoral processes are important aspects of taking part in public life. The right to take part in public life does not mean the right to access a public space using public transport.

Right to privacy

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 wear a face mask or potentially be fined. However, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask in certain situations such as to eat, drink, consume medicine or receive medical treatment.

Right to protection of families and children

Queensland recognises families as the fundamental unit of society entitled to protection. This right 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. Internal limitations of lawfulness and arbitrariness apply to the right of the family.

Every child has the right, without discrimination, to the protection that is in their best interests as a child. The right recognises that special measures to protect children are necessary given their vulnerability due to age. The best interests of the child should be considered in all actions affecting a child, aimed at ensuring both the full and effective enjoyment of all the child's human rights and the holistic development of the child. Best interests depend on the individual

circumstances of the child. The requirements contained in the Direction also has the potential to impact children through, for example, temporarily restricting their access to certain facilities or events.

Right to liberty and security of person

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.

This right is subject to a number of internal limitations and qualifications. Relevantly, the detention must not be arbitrary in the sense that it must not be capricious, unpredictable or unjust or otherwise disproportionate to the legitimate aim that is sought.

The right to liberty and security also incorporates a number of procedural elements, including that a person who is detained must be informed at the time of detention of the reason for detention and that a detained person is able to apply to a court for a declaration or order regarding the lawfulness of the person's detention. These procedural aspects of the right will continue to be limited. The requirements for a person to be given notice of the direction or order for detention and the reason for the detention will be clear in the notice

Right to education

The right of every child to access primary and secondary education appropriate to their needs is protected in Queensland. The right to education also says that every person has the right to have access, based on their abilities, to equally accessible further vocational education and training. The right to education is intended to be interpreted in line with the *Education (General Provisions) Act 2006* and to provide rights in relation to aspects of Queensland's responsibilities for education service delivery.

Internationally, this right has been interpreted as requiring that education be accessible to all individuals without discrimination. Certain educational activities, such as school assemblies or performances may be temporarily restricted if the restrictions continue when the school holidays end in July 2021.

Right to health services

Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment. The Direction does not limit or place any impediments on a person's right to receive health services.

Protecting the health and safety of the public is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom. The purpose of the limitations on human rights is to protect the Queensland public from serious risks to health and safety, including the potential for widespread loss of life that could occur if public health officials are unable to coordinate an effective public health response to the COVID-19 pandemic.

Based on the best available evidence and the experience of public health officials and populations in other countries, there is a risk that COVID-19 may spread rapidly throughout Queensland and not remain contained unless extraordinary measures are put in place for a period of time. This presents a clear and present danger to the health and wellbeing of

Queenslanders, particularly vulnerable persons including the elderly and immunocompromised. The uncontained spread of COVID-19 also has the potential to cause severe adverse economic and social consequences.

Against these indications, there is a need for the Direction to implement the various response measures, such as physical distancing measures, to prevent COVID-19 spreading throughout the community and to mitigate potential adverse economic and social consequences associated with the disruption that will inevitably follow.

Justification

The purpose of the public health direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by restricting movement in public places in order to contain and prevent the spread of the virus.

Requiring certain people in high risk environments to wear a mask is to confine potential outbreaks. The Direction is in effect for a temporary period, and the restrictions as applying to a person only apply in particular environments. A person can remove their mask when in an indoor space that is a residence, temporary accommodation premises or workplace, unless the person cannot observe physical distancing. Ultimately, the purpose of wearing masks is to limit the opportunity for transmission of COVID-19 from high risk environments to the Queensland community

To the extent that the Direction limits the right to freedom of movement, this is considered justified to minimise the spread of COVID-19 to other members of the community.

To the extent the Direction limits the right to equality and non-discrimination, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask such as to communicate with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication. A person is not required to wear a mask in high risk environments if they have a physical or mental health illness or condition, or disability, which makes wearing a face mask unsuitable.

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as, through private prayer.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community. Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. This internal limitation may apply where the Direction authorises restrictions on movement pursuant to a lawful direction based on a

reasonable belief that the restriction is necessary to assist in containing or responding to the spread of COVID-19 within the community. 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 or from seeking alternative employment. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements 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 other ways. For example, through private prayer ~~or, online tools, or meetings at places of worship, with no more than one person per 4 square metres.~~ The limitations on religious and cultural rights are considered justified.

Overall, the limitations on human rights are justified, as the Direction is only in force for a temporary period and will help contain the spread of COVID-19, thereby protecting the health and safety of the community.

The Direction ~~eases~~ will ease restrictions after the three-day lockdown period following a review to ensure the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act.

From a public health perspective, the approach is to gradually increase the number of places where people may go, and the number of people that might gather. This reduces the likelihood of sudden outbreaks of the virus across the State, therefore reducing the risk to individuals and ensuring that the health system can mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts.

The limitation of human rights is necessary to ensure that public health officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19 and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life sustaining treatment.

If these measures are not implemented and an outbreak of COVID-19 occurs in Queensland, demand for emergency and life-sustaining treatment could quickly exceed capacity and overwhelm the State's public health infrastructure. In addition to loss of life and serious adverse health impacts, this could potentially cause widespread economic disruption, social panic and civil unrest, further jeopardising the safety and wellbeing of the community.

The purpose of the Direction cannot be achieved through any other reasonably available and less restrictive means. Extensive campaigns by the Queensland and Commonwealth Governments are in place to educate members of the public about the risks of COVID-19 and how to minimise their potential exposure to infection. Experience abroad underscores that voluntary containment measures are inadequate to arrest the spread of COVID-19, particularly of the more contagious variant of COVID-19, and that governments must proactively pursue more prescriptive approaches to respond effectively to this unprecedented public health emergency.

The implementation of the Direction for an initial 3-day period is considered to be the least restrictive and reasonably available way to achieve the purpose of the Direction. As the situation relating to COVID-19 in Queensland continues to evolve, it is difficult to determine with absolute certainty how long the Direction will be required to be implemented for. However, an initial 3-day period will allow for further assessment of the spread of the virus in Queensland and allow for any positive COVID-19 to be placed into quarantine and receive appropriate treatment while avoiding any further spread of the virus.

Queensland Health will continue to monitor and assess the situation to determine whether further restrictions are required or if restrictions may be eased. Accordingly, the Direction is only in force for a limited period of time (till ~~43-2~~ July 2021) and enables the Government and Queensland Health to further assess the current situation. The limitations under the Direction is reasonable as stricter restrictions are applied only to the affected ~~44-11~~ local government areas in South East Queensland and Townsville City and Palm Island. The rest of Queensland is not subject to the stricter restrictions and can operate under the current level of eased requirements.

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.

Failure to impose these measures may result in Queensland's health infrastructure becoming overwhelmed, with the result that decisions will need to be made as to who receives lifesaving treatment and otherwise preventable deaths occurring. This is not an abstract threat; there are several countries which have been unable to mount an effective public health response that are now experiencing deaths at a higher rate than in countries that have implemented stronger containment and social distancing measures.

Although the Direction may potentially limit many rights, in many instances the limitations are minor in nature and frequently consistent with internal limitations in the Human Rights Act. It should also be noted that many Queenslanders are already taking voluntary precautions, to limit their potential exposure to COVID-19 and avoid spreading this disease to family members, friends and the broader community. Many individuals are already undertaking these measures voluntarily, which suggests they are unlikely to impose an unjustified burden on human rights.

Several safeguards exist in the Public Health Act and the Direction to ensure that any limitations on human rights are no more onerous than is required to slow the spread of COVID-19. On balance, any limitations on human rights are reasonable and justified to ensure the preservation of life and protection of the community from the worse impacts of a pandemic.

Public Health Directions – Human Rights Assessment
Restrictions for Impacted Areas Direction (No. 6)

Title	<i>Restrictions for Impacted Areas Direction (No. 6)</i>
Date effective	30 June 2021

Background

The *Restrictions for Impacted Areas Direction (No. 6)* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis is prepared to consider the impacts of the Direction on the human rights identified in the *Human Rights Act 2019* and 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.

Purpose of the Direction

The purpose of the *Restrictions for Impacted Areas Direction (No. 6)* (Direction) is to slow the spread of COVID-19 by restricting the movement and gathering of people, implementing social distancing measures, mandating the wearing of masks in certain circumstances and requiring restricted businesses to operate with certain limits such as occupant density.

In preparing the Direction, risks to the health and safety of Queenslanders have been identified and the current epidemiological situation, both in Queensland and internationally, 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.

This Direction introduces the following restrictions for the Local Government Areas of City of Brisbane, City of Ipswich Logan City, Moreton Bay Region, Redland City, Sunshine Coast, Gold Coast City, Noosa Shire, Somerset Region, Lockyer Valley Region, Scenic Rim Region, Townsville City and Palm Island Aboriginal Shire from 6pm on 29 June 2021 to 6pm 2 July 2021:

- people are permitted to be outside their homes for permitted purposes
- people may only enter or leave an impacted area for permitted purposes, **which does include attending a wedding or funeral, or for volunteering purposes**
- visitors to residences are limited maximum of two people
- requirement for people to wear a face mask covering their mouth and nose in indoor and outdoor spaces
- non-essential businesses, activities and undertakings must not operate or if permitted to operate, do so in accordance with the specified restrictions
- **only up to 10 attendees are permitted at wedding ceremonies**
- **only up to 20 attendees are permitted at funerals**

Human rights engaged

The human rights engaged by the Direction are:

- Right to recognition and equity before the law (section 15)
- Right to life (section 16)
- 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)
- Property rights (section 24)
- Privacy (section 25)
- Protection of families and children (section 26)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to education (section 36)
- Right to health services (section 37)

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 placing restrictions on how people may gather, move and interact. It also restricts how certain businesses, activities and undertakings may operate. By requiring people to wear masks in high risk environments in the 13 local government areas in South East Queensland and Townsville City and Palm Island, 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.

Right to recognition and equality under the law

Every person has the right to recognition as a person before the law and the right to enjoy their human rights without discrimination. Every person is equal before the law and is entitled to equal protection of the law without discrimination. Every person is entitled to equal and effective protection against discrimination. The requirements to wear face masks in high risk environments discriminates against people with a disability. For example, masks may make it harder for people with hearing loss to lip read and communicate. The definition of 'discrimination' under the Human Rights Act is inclusive. Discrimination may include discrimination on the basis certain attributes such as disability or race, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296.

Freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. The right means that a person cannot be arbitrarily forced to remain in, or move to or from, a place. The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers, like requiring permission before entering a public park or participating in a public demonstration in a public

place. The right may be engaged where a public entity actively curtails a person's freedom of movement.

Freedom of thought, conscience, religion and belief; Freedom of expression; Peaceful assembly and freedom of association; Cultural rights – generally; Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

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, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is an absolute right, however limits on how a person manifests their belief can be justified.

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, if it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. While the concept of freedom of expression is broad, the way a person can exercise it can be limited. Restricting a person's contact with others limits the ways in which they can express their opinions and ideas. The Direction also limits this right by restricting how a person may express themselves orally or through the garments they wear by requiring them to wear a certain type of face mask in high risks environments in Queensland. A person may still make or purchase a cloth mask of their choosing and is permitted to remove the mask in certain circumstances such as when making announcements, teaching or live broadcasting.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both the participants and organisers of peaceful assemblies. Restricting a person's movements and banning gatherings limits the ability for a person to peacefully assemble with others for a common purpose.

Cultural rights protect the rights of all people with particular cultural, religious, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. Limiting gatherings may limit a person's ability to engage with others who share their cultural background.

In addition to the general cultural rights, the Human Rights Act recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first peoples. They have the right to enjoy, maintain, control, protect and develop their culture, language and kinship ties with other members of their community. The right also protects Aboriginal peoples and Torres Strait Islander people's right to maintain and strengthen their distinct spiritual relationship with the land, territories, waters, coastal seas and other resources, and to conserve and protect the environment. Directions to prohibit gatherings of people, to enforce self-isolate, or to otherwise restrict the movement of groups and individuals may limit the ability of Aboriginal peoples and Torres Strait Islander peoples to engage with community and their traditionally owned or otherwise occupied lands and waters.

Property Rights

Every person has the right to own property alone or in association with others and must not be arbitrarily deprived of their property. Requirements to quarantine or otherwise restricting a person's movement and entry into Queensland may also restrict a person's use of private property, albeit temporarily.

Taking part in public life

Every person in Queensland has the right to take part in public life. This includes the right to participate in the conduct of public affairs and the right to vote and be elected at periodic State and local government elections. Being part of community consultations with government, attending local council meetings, participating in public debate, and taking part in referendums or other electoral processes are important aspects of taking part in public life. The right to take part in public life does not mean the right to access a public space using public transport.

Right to privacy

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 wear a face mask or potentially be fined. However, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask in certain situations such as to eat, drink, consume medicine or receive medical treatment.

Right to protection of families and children

Queensland recognises families as the fundamental unit of society entitled to protection. This right 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. Internal limitations of lawfulness and arbitrariness apply to the right of the family.

Every child has the right, without discrimination, to the protection that is in their best interests as a child. The right recognises that special measures to protect children are necessary given their vulnerability due to age. The best interests of the child should be considered in all actions affecting a child, aimed at ensuring both the full and effective enjoyment of all the child's human rights and the holistic development of the child. Best interests depend on the individual circumstances of the child. The requirements contained in the Direction also has the potential to impact children through, for example, temporarily restricting their access to certain facilities or events.

Right to liberty and security of person

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.

This right is subject to a number of internal limitations and qualifications. Relevantly, the detention must not be arbitrary in the sense that it must not be capricious, unpredictable or unjust or otherwise disproportionate to the legitimate aim that is sought.

The right to liberty and security also incorporates a number of procedural elements, including that a person who is detained must be informed at the time of detention of the reason for detention and that a detained person is able to apply to a court for a declaration or order regarding the lawfulness of the person's detention. These procedural aspects of the right will continue to be limited. The requirements for a person to be given notice of the direction or order for detention and the reason for the detention will be clear in the notice

Right to education

The right of every child to access primary and secondary education appropriate to their needs is protected in Queensland. The right to education also says that every person has the right to have access, based on their abilities, to equally accessible further vocational education and training. The right to education is intended to be interpreted in line with the *Education (General Provisions) Act 2006* and to provide rights in relation to aspects of Queensland's responsibilities for education service delivery.

Internationally, this right has been interpreted as requiring that education be accessible to all individuals without discrimination. Certain educational activities, such as school assemblies or performances may be temporarily restricted if the restrictions continue when the school holidays end in July 2021.

Right to health services

Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment. The Direction does not limit or place any impediments on a person's right to receive health services.

Protecting the health and safety of the public is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom. The purpose of the limitations on human rights is to protect the Queensland public from serious risks to health and safety, including the potential for widespread loss of life that could occur if public health officials are unable to coordinate an effective public health response to the COVID-19 pandemic.

Based on the best available evidence and the experience of public health officials and populations in other countries, there is a risk that COVID-19 may spread rapidly throughout Queensland and not remain contained unless extraordinary measures are put in place for a period of time. This presents a clear and present danger to the health and wellbeing of Queenslanders, particularly vulnerable persons including the elderly and immunocompromised. The uncontained spread of COVID-19 also has the potential to cause severe adverse economic and social consequences.

Against these indications, there is a need for the Direction to implement the various response measures, such as physical distancing measures, to prevent COVID-19 spreading throughout the community and to mitigate potential adverse economic and social consequences associated with the disruption that will inevitably follow.

Justification

The purpose of the public health direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by restricting movement in public places in order to contain and prevent the spread of the virus.

Requiring certain people in high risk environments to wear a mask is to confine potential outbreaks. The Direction is in effect for a temporary period, and the restrictions as applying to a person only apply in particular environments. A person can remove their mask when in an indoor space that is a residence, temporary accommodation premises or workplace, unless the person cannot observe physical distancing. Ultimately, the purpose of wearing masks is to limit the opportunity for transmission of COVID-19 from high risk environments to the Queensland community

To the extent that the Direction limits the right to freedom of movement, this is considered justified to minimise the spread of COVID-19 to other members of the community. **The limitation on people being permitted to leave or enter the affected 13 local government areas for a wedding or funeral is justified on the basis that during previous lockdowns there were density and attendance restrictions on those events. Given the current risk of COVID-19 it is appropriate to prevent people from leaving or entering those areas for weddings and funerals to reduce the risk of people from different areas of Queensland mingling in these settings. For similar reasons, people will not be permitted to leave or enter the affected 13 local government areas for volunteering purposes.**

To the extent the Direction limits the right to equality and non-discrimination, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask such as to communicate with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication. A person is not required to wear a mask in high risk environments if they have a physical or mental health illness or condition, or disability, which makes wearing a face mask unsuitable.

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as, through private prayer.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community. Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (Poiss v Austria (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. This internal limitation may apply where the Direction authorises restrictions on movement pursuant to a lawful direction based on a reasonable belief that the restriction is necessary to assist in containing or responding to the spread of COVID-19 within the community. 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 or from seeking alternative employment. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements 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 other ways. For example, through private prayer or online tools. The limitations on religious and cultural rights are considered justified.

Overall, the limitations on human rights are justified, as the Direction is only in force for a temporary period and will help contain the spread of COVID-19, thereby protecting the health and safety of the community.

The Direction will ease restrictions after the three-day lockdown period following a review to ensure the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act.

From a public health perspective, the approach is to gradually increase the number of places where people may go, and the number of people that might gather. This reduces the likelihood of sudden outbreaks of the virus across the State, therefore reducing the risk to individuals and ensuring that the health system can mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts.

The limitation of human rights is necessary to ensure that public health officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19 and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life sustaining treatment.

If these measures are not implemented and an outbreak of COVID-19 occurs in Queensland, demand for emergency and life-sustaining treatment could quickly exceed capacity and overwhelm the State's public health infrastructure. In addition to loss of life and serious adverse health impacts, this could potentially cause widespread economic disruption, social panic and civil unrest, further jeopardising the safety and wellbeing of the community.

The purpose of the Direction cannot be achieved through any other reasonably available and less restrictive means. Extensive campaigns by the Queensland and Commonwealth Governments are in place to educate members of the public about the risks of COVID-19 and how to minimise their potential exposure to infection. Experience abroad underscores that voluntary containment measures are inadequate to arrest the spread of COVID-19, particularly of the more contagious variant of COVID-19, and that governments must proactively pursue more prescriptive approaches to respond effectively to this unprecedented public health emergency.

The implementation of the Direction for an initial 3-day period is considered to be the least restrictive and reasonably available way to achieve the purpose of the Direction. As the situation relating to COVID-19 in Queensland continues to evolve, it is difficult to determine

with absolute certainty how long the Direction will be required to be implemented for. However, an initial 3-day period will allow for further assessment of the spread of the virus in Queensland and allow for any positive COVID-19 to be placed into quarantine and receive appropriate treatment while avoiding any further spread of the virus.

Queensland Health will continue to monitor and assess the situation to determine whether further restrictions are required or if restrictions may be eased. Accordingly, the Direction is only in force for a limited period of time (till 2 July 2021) and enables the Government and Queensland Health to further assess the current situation. The limitations under the Direction is reasonable as stricter restrictions are applied only to the affected 13 local government areas in South East Queensland and Townsville City and Palm Island. The rest of Queensland is not subject to the stricter restrictions and can operate under the current level of eased requirements.

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.

Failure to impose these measures may result in Queensland's health infrastructure becoming overwhelmed, with the result that decisions will need to be made as to who receives lifesaving treatment and otherwise preventable deaths occurring. This is not an abstract threat; there are several countries which have been unable to mount an effective public health response that are now experiencing deaths at a higher rate than in countries that have implemented stronger containment and social distancing measures.

Although the Direction may potentially limit many rights, in many instances the limitations are minor in nature and frequently consistent with internal limitations in the Human Rights Act. It should also be noted that many Queenslanders are already taking voluntary precautions, to limit their potential exposure to COVID-19 and avoid spreading this disease to family members, friends and the broader community. Many individuals are already undertaking these measures voluntarily, which suggests they are unlikely to impose an unjustified burden on human rights.

Several safeguards exist in the Public Health Act and the Direction to ensure that any limitations on human rights are no more onerous than is required to slow the spread of COVID-19. On balance, any limitations on human rights are reasonable and justified to ensure the preservation of life and protection of the community from the worse impacts of a pandemic.

Public Health Directions – Human Rights Assessment
Restrictions for Impacted Areas Direction (No. 7)

Title	<i>Restrictions for Impacted Areas Direction (No. 7)</i>
Date effective	2 July 2021

Background

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

This analysis is prepared to consider the impacts of the Direction on the human rights identified in the *Human Rights Act 2019* and 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.

Purpose of the Direction

The purpose of the *Restrictions for Impacted Areas Direction (No. 7)* (Direction) is to slow the spread of COVID-19 by restricting the movement and gathering of people, implementing social distancing measures, mandating the wearing of masks in certain circumstances and requiring restricted businesses to operate with certain limits such as occupant density.

In preparing the Direction, risks to the health and safety of Queenslanders have been identified and the current epidemiological situation, both in Queensland and internationally, 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.

This Direction introduces the following restrictions for the Local Government Areas of City of Ipswich, Logan City, Redland City, Sunshine Coast, Gold Coast City, Noosa Shire, Somerset Region, Lockyer Valley Region, Scenic Rim Region, Townsville City Council and Palm Island Aboriginal Shire Council from 6pm on 2 July until 6pm on 16 July 2021:

- only 30 people are permitted to gather in a private residence or public spaces;
- people are required to wear masks outside of their homes in both indoor and outdoor spaces including in indoor workplaces where physical distancing isn't possible;
- indoor spaces are subject to an occupant density of:
 - for venues over 200 square metres - 1 person per 4 square metres for areas used by patrons or 100% of a venue's capacity where there is ticketed and allocated seating
 - for venues under 200 square metres - 1 person 2 square metres for areas used by patrons up to a maximum of 50 people;
- outdoor venues or spaces are subject to an occupant density of 1 person per 2 square metres or 100% of a venue's capacity where there is ticketed and allocated seating (whichever is greater);
- venues that serve food and drinks must operate for seated patrons only;

- restricted businesses, activities or undertakings in impacted areas must operate in accordance with the COVID Safe Checklist – Impacted Areas or the COVID Safe Event Checklist – Impacted Areas;
- wedding ceremonies and funerals are limited to a maximum attendance of 100 people;
- dancing at a wedding reception is permitted to a maximum of 20 people.

Human rights engaged

The human rights engaged by the Direction are:

- Right to recognition and equity before the law (section 15)
- Right to life (section 16)
- 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) Privacy (section 25)
- Protection of families and children (section 26)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to education (section 36)
- Right to health services (section 37)

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 placing restrictions on how people may gather, move and interact. It also restricts how certain businesses, activities and undertakings may operate. By requiring people to wear masks in high risk environments in the 11 local government areas in South East Queensland, and Townsville and Palm Island, 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.

Right to recognition and equality under the law

Every person has the right to recognition as a person before the law and the right to enjoy their human rights without discrimination. Every person is equal before the law and is entitled to equal protection of the law without discrimination. Every person is entitled to equal and effective protection against discrimination. The requirements to wear face masks in high risk environments discriminates against people with particular medical conditions, history of trauma or a disability for whom wearing a face mask is unsuitable. For example, masks may make it harder for people with hearing loss to lip read and communicate. The definition of 'discrimination' under the Human Rights Act is inclusive. Discrimination may include discrimination on the basis certain attributes such as disability or race, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296.

Freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. The right means that a person cannot be arbitrarily forced to remain in, or move to or from, a place. The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers, like requiring permission before entering a public park or participating in a public demonstration in a public place. The right may be engaged where a public entity actively curtails a person's freedom of movement.

Freedom of thought, conscience, religion and belief; Freedom of expression; Peaceful assembly and freedom of association; Cultural rights – generally; Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

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, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is an absolute right, however limits on how a person manifests their belief can be justified.

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, if it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. While the concept of freedom of expression is broad, the way a person can exercise it can be limited. Restricting a person's contact with others limits the ways in which they can express their opinions and ideas. The Direction also limits this right by restricting how a person may express themselves orally or through the garments they wear by requiring them to wear a certain type of face mask in high risks environments in Queensland. A person may still make or purchase a cloth mask of their choosing and is permitted to remove the mask in certain circumstances such as when making announcements, teaching or live broadcasting.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both the participants and organisers of peaceful assemblies. Restricting a person's movements and banning gatherings of more than 30 persons limits the ability for a person to peacefully assemble with others for a common purpose.

Cultural rights protect the rights of all people with particular cultural, religious, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. Limiting gatherings to 30 persons and reduced occupant density in places of worship may limit a person's ability to engage with others who share their cultural or religious background.

In addition to the general cultural rights, the Human Rights Act recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first peoples. They have the right to enjoy, maintain, control, protect and develop their culture, language and kinship ties with other members of their community. The right also protects Aboriginal peoples and Torres Strait Islander people's right to maintain and strengthen their distinct spiritual relationship with the land, territories, waters, coastal seas and other resources, and to conserve and protect the environment. Directions to prohibit gatherings of

more than 30 people, may limit the ability of Aboriginal peoples and Torres Strait Islander peoples to engage with community and their traditionally owned or otherwise occupied lands and waters.

Right to privacy

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 wear a face mask or potentially be fined. However, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask in certain situations such as to eat, drink, consume medicine or receive medical treatment. The right also encompasses an individual's rights to establish and develop meaningful social relations (*Krake 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 may limit this right as it may interfere with people's right to make and maintain social connections at homes, such as at parties and celebrations.

Right to protection of families and children

Queensland recognises families as the fundamental unit of society entitled to protection. This right 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. Internal limitations of lawfulness and arbitrariness apply to the right of the family.

Every child has the right, without discrimination, to the protection that is in their best interests as a child. The right recognises that special measures to protect children are necessary given their vulnerability due to age. The best interests of the child should be considered in all actions affecting a child, aimed at ensuring both the full and effective enjoyment of all the child's human rights and the holistic development of the child. Best interests depend on the individual circumstances of the child. The requirements contained in the Direction also has the potential to impact children through, for example, temporarily reducing their access to certain facilities or events. The Direction also may limit this right as it places limits on family members, children and other personal visitors from gathering in private places by restricting gatherings to no more than 30 people.

Right to liberty and security of person

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.

This right is subject to a number of internal limitations and qualifications. Relevantly, the detention must not be arbitrary in the sense that it must not be capricious, unpredictable or unjust or otherwise disproportionate to the legitimate aim that is sought.

The right to liberty and security also incorporates a number of procedural elements, including that a person who is detained must be informed at the time of detention of the reason for detention and that a detained person is able to apply to a court for a declaration or order regarding the lawfulness of the person's detention. These procedural aspects of the right will continue to be limited. The requirements for a person to be given notice of the direction or order for detention and the reason for the detention will be clear in the notice

Right to education

The right of every child to access primary and secondary education appropriate to their needs is protected in Queensland. The right to education also says that every person has the right to have access, based on their abilities, to equally accessible further vocational education and training. The right to education is intended to be interpreted in line with the *Education (General Provisions) Act 2006* and to provide rights in relation to aspects of Queensland's responsibilities for education service delivery.

Internationally, this right has been interpreted as requiring that education be accessible to all individuals without discrimination.

Right to health services

Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment. The Direction does not limit or place any impediments on a person's right to receive health services.

Protecting the health and safety of the public is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom. The purpose of the limitations on human rights is to protect the Queensland public from serious risks to health and safety, including the potential for widespread loss of life that could occur if public health officials are unable to coordinate an effective public health response to the COVID-19 pandemic.

Based on the best available evidence and the experience of public health officials and populations in other countries, there is a risk that COVID-19 may spread rapidly throughout Queensland and not remain contained unless extraordinary measures are put in place for a period of time. This presents a clear and present danger to the health and wellbeing of Queenslanders, particularly vulnerable persons including the elderly and immunocompromised. The uncontained spread of COVID-19 also has the potential to cause severe adverse economic and social consequences.

Against these indications, there is a need for the Direction to implement the various response measures, such as physical distancing measures, to prevent COVID-19 spreading throughout the community and to mitigate potential adverse economic and social consequences associated with the disruption that will inevitably follow.

Justification

The purpose of the public health direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by restricting movement in public places in order to contain and prevent the spread of the virus.

Requiring people to wear a mask in most indoor and outdoor settings is to confine potential outbreaks. The Direction is in effect for a temporary period, and the face mask restrictions do not apply in particular environments. For example, a person can remove their mask when in an indoor space that is a residence, temporary accommodation premises or workplace, unless the person cannot observe physical distancing. Face masks are also not required to be worn when a person is outdoors alone, or outdoors and only with members of their household. Ultimately, the purpose of wearing masks is to limit the opportunity for transmission of COVID-19 from high risk environments to the Queensland community.

To the extent that the Direction limits the right to freedom of movement, this is considered justified to minimise the spread of COVID-19 to other members of the community.

To the extent the Direction limits the right to equality and non-discrimination, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask such as to communicate with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication. A person is not required to wear a mask in high risk environments if they have a physical or mental health illness or condition, or disability, which makes wearing a face mask unsuitable.

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as, through private prayer.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community. Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. This internal limitation may apply where the Direction authorises restrictions on movement pursuant to a lawful direction based on a reasonable belief that the restriction is necessary to assist in containing or responding to the spread of COVID-19 within the community. 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 or from seeking alternative employment. Gatherings in private residences and non-residences are also permitted for up to 30 people. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements 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 other ways. For example, through private gatherings of up to 30 people, private prayer, online tools, or meetings at places of worship,

with no more than one person per 4 square metres. The limitations on religious and cultural rights are considered justified.

Overall, the limitations on human rights are justified, as the Direction is only in force for a temporary period and will help contain the spread of COVID-19, thereby protecting the health and safety of the community. The Chief Health Officer, Deputy Chief Health Officer or delegate may also grant a person an exemption from the requirements under the Direction due to extreme exceptional circumstances. However, restricted businesses are not able to request an exemption under the Direction.

The Direction eases restrictions after the three-day lockdown period following a review to ensure the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act.

From a public health perspective, the approach is to gradually increase the number of places where people may go, and the number of people that might gather. This reduces the likelihood of sudden outbreaks of the virus across the State, therefore reducing the risk to individuals and ensuring that the health system can mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts.

The limitation of human rights is necessary to ensure that public health officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19, including to the more transmissible variants, and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life sustaining treatment.

If these measures are not implemented and an outbreak of COVID-19 occurs in Queensland, demand for emergency and life-sustaining treatment could quickly exceed capacity and overwhelm the State's public health infrastructure. In addition to loss of life and serious adverse health impacts, this could potentially cause widespread economic disruption, social panic and civil unrest, further jeopardising the safety and wellbeing of the community.

The purpose of the Direction cannot be achieved through any other reasonably available and less restrictive means. Extensive campaigns by the Queensland and Commonwealth Governments are in place to educate members of the public about the risks of COVID-19 and how to minimise their potential exposure to infection. Experience abroad underscores that voluntary containment measures are inadequate to arrest the spread of COVID-19, particularly of the more contagious variant of COVID-19, and that governments must proactively pursue more prescriptive approaches to respond effectively to this unprecedented public health emergency.

Queensland Health will continue to monitor and assess the situation to determine whether further restrictions are required or if restrictions may be eased. Accordingly, the Direction is only in force for a limited period of time (until 16 July 2021) and enables the Government and Queensland Health to further assess the current situation. The limitations under the Direction is reasonable as stricter restrictions are applied only to the affected 11 local government areas in South East Queensland and Townsville and Palm Island. The rest of Queensland (other than Brisbane and Moreton) is not subject to the stricter restrictions and can operate under the current level of eased requirements.

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.

Failure to impose these measures may result in Queensland's health infrastructure becoming overwhelmed, with the result that decisions will need to be made as to who receives lifesaving treatment and otherwise preventable deaths occurring. This is not an abstract threat; there are several countries which have been unable to mount an effective public health response that are now experiencing deaths at a higher rate than in countries that have implemented stronger containment and social distancing measures.

Although the Direction may potentially limit many rights, in many instances the limitations are minor in nature and frequently consistent with internal limitations in the Human Rights Act. It should also be noted that many Queenslanders are already taking voluntary precautions, to limit their potential exposure to COVID-19 and avoid spreading this disease to family members, friends and the broader community. Many individuals are already undertaking these measures voluntarily, which suggests they are unlikely to impose an unjustified burden on human rights.

Several safeguards exist in the Public Health Act and the Direction to ensure that any limitations on human rights are no more onerous than is required to slow the spread of COVID-19. On balance, any limitations on human rights are reasonable and justified to ensure the preservation of life and protection of the community from the worse impacts of a pandemic.

Public Health Directions – Human Rights Assessment
Restrictions for Impacted Areas Direction (No. 8)

Title	<i>Restrictions for Impacted Areas Direction (No. 8)</i>
Date effective	3 July 2021

Background

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

This analysis is prepared to consider the impacts of the Direction on the human rights identified in the *Human Rights Act 2019* and 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.

Purpose of the Direction

The purpose of the *Restrictions for Impacted Areas Direction (No. 8)* (Direction) is to slow the spread of COVID-19 by restricting the movement and gathering of people, implementing social distancing measures, mandating the wearing of masks in certain circumstances and requiring restricted businesses to operate with certain limits such as occupant density.

In preparing the Direction, risks to the health and safety of Queenslanders have been identified and the current epidemiological situation, both in Queensland and internationally, 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.

This Direction introduces the following restrictions for the Local Government Areas of Brisbane City Council and Moreton Bay Regional Council from 6pm on 3 July until 6pm on 16 July 2021:

- only 30 people are permitted to gather in a private residence or public spaces;
- people are required to wear masks outside of their homes in both indoor and outdoor spaces including in indoor workplaces where physical distancing isn't possible;
- indoor spaces are subject to an occupant density of:
 - for venues over 200 square metres - 1 person per 4 square metres for areas used by patrons or 100% of a venue's capacity where there is ticketed and allocated seating
 - for venues under 200 square metres - 1 person 2 square metres for areas used by patrons up to a maximum of 50 people;
- outdoor venues or spaces are subject to an occupant density of 1 person per 2 square metres or 100% of a venue's capacity where there is ticketed and allocated seating (whichever is greater);
- venues that serve food and drinks must operate for seated patrons only;

- restricted businesses, activities or undertakings in impacted areas must operate in accordance with the COVID Safe Checklist – Impacted Areas or the COVID Safe Event Checklist – Impacted Areas;
- wedding ceremonies and funerals are limited to a maximum attendance of 100 people;
- dancing at a wedding reception is permitted to a maximum of 20 people.

The above restrictions also apply to the Local Government Areas of City of Ipswich, Logan City, Redland City, Sunshine Coast, Gold Coast City, Noosa Shire, Somerset Region, Lockyer Valley Region, Scenic Rim Region, Townsville City Council and Palm Island Aboriginal Shire Council since 6pm on 2 July until 6pm on 16 July 2021. These were imposed under the preceding Direction (No. 7).

Human rights engaged

The human rights engaged by the Direction are:

- Right to recognition and equity before the law (section 15)
- Right to life (section 16)
- 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) Privacy (section 25)
- Protection of families and children (section 26)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to education (section 36)
- Right to health services (section 37)

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 placing restrictions on how people may gather, move and interact. It also restricts how certain businesses, activities and undertakings may operate. By requiring people to wear masks in high risk environments in the 13 local government areas (South East Queensland, Townsville, including Magnetic Island, and Palm Island), 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.

Right to recognition and equality under the law

Every person has the right to recognition as a person before the law and the right to enjoy their human rights without discrimination. Every person is equal before the law and is entitled to equal protection of the law without discrimination. Every person is entitled to equal and effective protection against discrimination. The requirements to wear face masks in high risk environments discriminates against people with particular medical conditions, history of trauma or a disability for whom wearing a face mask is unsuitable. For example, masks may make it harder for people with hearing loss to lip read and communicate. The definition of

'discrimination' under the Human Rights Act is inclusive. Discrimination may include discrimination on the basis certain attributes such as disability or race, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296.

Freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. The right means that a person cannot be arbitrarily forced to remain in, or move to or from, a place. The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers, like requiring permission before entering a public park or participating in a public demonstration in a public place. The right may be engaged where a public entity actively curtails a person's freedom of movement.

Freedom of thought, conscience, religion and belief; Freedom of expression; Peaceful assembly and freedom of association; Cultural rights – generally; Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

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, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is an absolute right, however limits on how a person manifests their belief can be justified.

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, if it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. While the concept of freedom of expression is broad, the way a person can exercise it can be limited. Restricting a person's contact with others limits the ways in which they can express their opinions and ideas. The Direction limits this right by restricting how a person may express themselves orally or through the garments they wear by requiring them to wear a certain type of face mask in high risks environments in Queensland. A person may still make or purchase a cloth mask of their choosing and is permitted to remove the mask in certain circumstances such as when making announcements, teaching or live broadcasting.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both the participants and organisers of peaceful assemblies. Restricting a person's movements and banning gatherings of more than 30 persons limits the ability for a person to peacefully assemble with others for a common purpose.

Cultural rights protect the rights of all people with particular cultural, religious, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. Limiting gatherings to 30 persons and reduced occupant density in places of worship may limit a person's ability to engage with others who share their cultural or religious background.

In addition to the general cultural rights, the Human Rights Act recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first peoples. They have the right to enjoy, maintain, control, protect and develop their culture, language and kinship ties with other members of their community. The right also protects Aboriginal peoples and Torres Strait Islander people's right to maintain and strengthen their distinct spiritual relationship with the land, territories, waters, coastal seas and other resources, and to conserve and protect the environment. Directions to prohibit gatherings of more than 30 people, may limit the ability of Aboriginal peoples and Torres Strait Islander peoples to engage with community and their traditionally owned or otherwise occupied lands and waters.

Right to privacy

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 wear a face mask or potentially be fined. However, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask in certain situations such as to eat, drink, consume medicine or receive medical treatment. The right also encompasses an individual's rights to establish and develop meaningful social relations (*Krake 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 may limit this right as it may interfere with people's right to make and maintain social connections at homes, such as at parties and celebrations.

Right to protection of families and children

Queensland recognises families as the fundamental unit of society entitled to protection. This right 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. Internal limitations of lawfulness and arbitrariness apply to the right of the family.

Every child has the right, without discrimination, to the protection that is in their best interests as a child. The right recognises that special measures to protect children are necessary given their vulnerability due to age. The best interests of the child should be considered in all actions affecting a child, aimed at ensuring both the full and effective enjoyment of all the child's human rights and the holistic development of the child. Best interests depend on the individual circumstances of the child. The requirements contained in the Direction also has the potential to impact children through, for example, temporarily reducing their access to certain facilities or events. The Direction also may limit this right as it places limits on family members, children and other personal visitors from gathering in private places by restricting gatherings to no more than 30 people.

Right to liberty and security of person

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.

This right is subject to a number of internal limitations and qualifications. Relevantly, the detention must not be arbitrary in the sense that it must not be capricious, unpredictable or unjust or otherwise disproportionate to the legitimate aim that is sought.

The right to liberty and security also incorporates a number of procedural elements, including that a person who is detained must be informed at the time of detention of the reason for detention and that a detained person is able to apply to a court for a declaration or order regarding the lawfulness of the person's detention. These procedural aspects of the right will continue to be limited. The requirements for a person to be given notice of the direction or order for detention and the reason for the detention will be clear in the notice

Right to education

The right of every child to access primary and secondary education appropriate to their needs is protected in Queensland. The right to education also says that every person has the right to have access, based on their abilities, to equally accessible further vocational education and training. The right to education is intended to be interpreted in line with the *Education (General Provisions) Act 2006* and to provide rights in relation to aspects of Queensland's responsibilities for education service delivery.

Internationally, this right has been interpreted as requiring that education be accessible to all individuals without discrimination.

Right to health services

Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment. The Direction does not limit or place any impediments on a person's right to receive health services.

Protecting the health and safety of the public is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom. The purpose of the limitations on human rights is to protect the Queensland public from serious risks to health and safety, including the potential for widespread loss of life that could occur if public health officials are unable to coordinate an effective public health response to the COVID-19 pandemic.

Based on the best available evidence and the experience of public health officials and populations in other countries, there is a risk that COVID-19 may spread rapidly throughout Queensland and not remain contained unless extraordinary measures are put in place for a period of time. This presents a clear and present danger to the health and wellbeing of Queenslanders, particularly vulnerable persons including the elderly and immunocompromised. The uncontained spread of COVID-19 also has the potential to cause severe adverse economic and social consequences.

Against these indications, there is a need for the Direction to implement the various response measures, such as physical distancing measures, to prevent COVID-19 spreading throughout the community and to mitigate potential adverse economic and social consequences associated with the disruption that will inevitably follow.

Justification

The purpose of the public health direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by restricting movement in public places in order to contain and prevent the spread of the virus.

Requiring people to wear a mask in most indoor and outdoor settings is to confine potential outbreaks. The Direction is in effect for a temporary period, and the face mask restrictions do not apply in particular environments. For example, a person can remove their mask when in an indoor space that is a residence, temporary accommodation premises or workplace, unless the person cannot observe physical distancing. Face masks are also not required to be worn when a person is outdoors alone, or outdoors and only with members of their household. Ultimately, the purpose of wearing masks is to limit the opportunity for transmission of COVID-19 from high risk environments to the Queensland community.

To the extent that the Direction limits the right to freedom of movement, this is considered justified to minimise the spread of COVID-19 to other members of the community.

To the extent the Direction limits the right to equality and non-discrimination, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask such as to communicate with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication. A person is not required to wear a mask in high risk environments if they have a physical or mental health illness or condition, or disability, which makes wearing a face mask unsuitable.

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as, through private prayer.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community. Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. This internal limitation may apply where the Direction authorises restrictions on movement pursuant to a lawful direction based on a reasonable belief that the restriction is necessary to assist in containing or responding to the spread of COVID-19 within the community. 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 or from seeking alternative employment. Gatherings in private residences and non-residences are also permitted for up to 30 people. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements 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 other ways. For example, through private gatherings of up to 30 people, private prayer, online tools, or meetings at places of worship, with no more than one person per 4 square metres. The limitations on religious and cultural rights are considered justified.

Overall, the limitations on human rights are justified, as the Direction is only in force for a temporary period and will help contain the spread of COVID-19, thereby protecting the health and safety of the community. The Chief Health Officer, Deputy Chief Health Officer or delegate may also grant a person an exemption from the requirements under the Direction due to extreme exceptional circumstances. However, restricted businesses are not able to request an exemption under the Direction.

The Direction eases restrictions after the three-day lockdown period following a review to ensure the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act.

From a public health perspective, the approach is to gradually increase the number of places where people may go, and the number of people that might gather. This reduces the likelihood of sudden outbreaks of the virus across the State, therefore reducing the risk to individuals and ensuring that the health system can mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts.

The limitation of human rights is necessary to ensure that public health officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19, including to the more transmissible variants, and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life sustaining treatment.

If these measures are not implemented and an outbreak of COVID-19 occurs in Queensland, demand for emergency and life-sustaining treatment could quickly exceed capacity and overwhelm the State's public health infrastructure. In addition to loss of life and serious adverse health impacts, this could potentially cause widespread economic disruption, social panic and civil unrest, further jeopardising the safety and wellbeing of the community.

The purpose of the Direction cannot be achieved through any other reasonably available and less restrictive means. Extensive campaigns by the Queensland and Commonwealth Governments are in place to educate members of the public about the risks of COVID-19 and how to minimise their potential exposure to infection. Experience abroad underscores that voluntary containment measures are inadequate to arrest the spread of COVID-19, particularly of the more contagious variant of COVID-19, and that governments must proactively pursue more prescriptive approaches to respond effectively to this unprecedented public health emergency.

Queensland Health will continue to monitor and assess the situation to determine whether further restrictions are required or if restrictions may be eased. Accordingly, the Direction is only in force for a limited period of time (until 16 July 2021) and enables the Government and Queensland Health to further assess the current situation. The limitations under the Direction

is reasonable as stricter restrictions are applied only to the affected 13 local government areas (South East Queensland, Townsville, including Magnetic Island, and Palm Island). The rest of Queensland is not subject to the stricter restrictions and can operate under the current level of eased requirements.

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.

Failure to impose these measures may result in Queensland's health infrastructure becoming overwhelmed, with the result that decisions will need to be made as to who receives lifesaving treatment and otherwise preventable deaths occurring. This is not an abstract threat; there are several countries which have been unable to mount an effective public health response that are now experiencing deaths at a higher rate than in countries that have implemented stronger containment and social distancing measures.

Although the Direction may potentially limit many rights, in many instances the limitations are minor in nature and frequently consistent with internal limitations in the Human Rights Act. It should also be noted that many Queenslanders are already taking voluntary precautions, to limit their potential exposure to COVID-19 and avoid spreading this disease to family members, friends and the broader community. Many individuals are already undertaking these measures voluntarily, which suggests they are unlikely to impose an unjustified burden on human rights.

Several safeguards exist in the Public Health Act and the Direction to ensure that any limitations on human rights are no more onerous than is required to slow the spread of COVID-19. On balance, any limitations on human rights are reasonable and justified to ensure the preservation of life and protection of the community from the worse impacts of a pandemic.

Public Health Directions – Human Rights Assessment
Restrictions for Impacted Areas Direction (No. 9)

Title	<i>Restrictions for Impacted Areas Direction (No. 9)</i>
Date effective	16 July 2021

Background

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

This analysis is prepared to consider the impacts of the Direction on the human rights identified in the *Human Rights Act 2019* and 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.

Purpose of the Direction

The purpose of the *Restrictions for Impacted Areas Direction (No. 9)* (Direction) is to slow the spread of COVID-19 by restricting the movement and gathering of people, implementing social distancing measures, mandating the wearing of masks in certain circumstances and requiring restricted businesses to operate with certain limits such as occupant density.

In preparing the Direction, risks to the health and safety of Queenslanders have been identified and the current epidemiological situation, both in Queensland and internationally, 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.

This Direction extends the following restrictions for 11 Local Government Areas in South East Queensland from 6am on 16 July until 6am on 23 July 2021:

- only 30 people are permitted to gather in a private residence or public spaces;
- people are required to wear masks outside of their homes in both indoor and outdoor spaces including in indoor workplaces where physical distancing isn't possible;
- indoor spaces are subject to an occupant density of:
 - for venues over 200 square metres - 1 person per 4 square metres for areas used by patrons or 100% of a venue's capacity where there is ticketed and allocated seating
 - for venues under 200 square metres - 1 person 2 square metres for areas used by patrons up to a maximum of 50 people;
- outdoor venues or spaces are subject to an occupant density of 1 person per 2 square metres or 100% of a venue's capacity where there is ticketed and allocated seating (whichever is greater);
- venues that serve food and drinks must operate for seated patrons only;
- restricted businesses, activities or undertakings in impacted areas must operate in accordance with the COVID Safe Checklist – Impacted Areas or the COVID Safe Event Checklist – Impacted Areas;

- wedding ceremonies and funerals are limited to a maximum attendance of 100 people;
- dancing at a wedding reception is permitted to a maximum of 20 people.

The above restrictions will no longer apply to the Local Government Areas of Townsville City Council and Palm Island Aboriginal Shire Council from 6am on 16 July 2021.

Human rights engaged

The human rights engaged by the Direction are:

- Right to recognition and equity before the law (section 15)
- Right to life (section 16)
- 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)
- Privacy (section 25)
- Protection of families and children (section 26)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to education (section 36)
- Right to health services (section 37)

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 placing restrictions on how people may gather, move and interact. It also restricts how certain businesses, activities and undertakings may operate. By requiring people to wear masks in high risk environments in the 11 local government areas, 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.

Right to recognition and equality under the law

Every person has the right to recognition as a person before the law and the right to enjoy their human rights without discrimination. Every person is equal before the law and is entitled to equal protection of the law without discrimination. Every person is entitled to equal and effective protection against discrimination. The requirements to wear face masks in high risk environments discriminates against people with particular medical conditions, history of trauma or a disability for whom wearing a face mask is unsuitable. For example, masks may make it harder for people with hearing loss to lip read and communicate. The definition of 'discrimination' under the Human Rights Act is inclusive. Discrimination may include discrimination on the basis certain attributes such as disability or race, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296.

Freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. The right means that a person cannot be arbitrarily forced to remain in, or move to or from, a place. The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers, like requiring permission before entering a public park or participating in a public demonstration in a public place. The right may be engaged where a public entity actively curtails a person's freedom of movement.

Freedom of thought, conscience, religion and belief; Freedom of expression; Peaceful assembly and freedom of association; Cultural rights – generally; Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

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, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is an absolute right, however limits on how a person manifests their belief can be justified.

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, if it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. While the concept of freedom of expression is broad, the way a person can exercise it can be limited. Restricting a person's contact with others limits the ways in which they can express their opinions and ideas. The Direction limits this right by restricting how a person may express themselves orally or through the garments they wear by requiring them to wear a certain type of face mask in high risks environments in Queensland. A person may still make or purchase a cloth mask of their choosing and is permitted to remove the mask in certain circumstances such as when making announcements, teaching or live broadcasting.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both the participants and organisers of peaceful assemblies. Restricting a person's movements and banning gatherings of more than 30 persons limits the ability for a person to peacefully assemble with others for a common purpose.

Cultural rights protect the rights of all people with particular cultural, religious, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. Limiting gatherings to 30 persons and reduced occupant density in places of worship may limit a person's ability to engage with others who share their cultural or religious background.

In addition to the general cultural rights, the Human Rights Act recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first peoples. They have the right to enjoy, maintain, control, protect and develop their culture, language and kinship ties with other members of their community. The right also protects Aboriginal peoples and Torres Strait Islander people's right to maintain and strengthen their distinct spiritual relationship with the land, territories, waters, coastal seas and other resources, and to conserve and protect the environment. Directions to prohibit gatherings of

more than 30 people, may limit the ability of Aboriginal peoples and Torres Strait Islander peoples to engage with community and their traditionally owned or otherwise occupied lands and waters.

Right to privacy

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 wear a face mask or potentially be fined. However, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask in certain situations such as to eat, drink, consume medicine or receive medical treatment. The right also encompasses an individual's rights to establish and develop meaningful social relations (*Krake 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 may limit this right as it may interfere with people's right to make and maintain social connections at homes, such as at parties and celebrations.

Right to protection of families and children

Queensland recognises families as the fundamental unit of society entitled to protection. This right 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. Internal limitations of lawfulness and arbitrariness apply to the right of the family.

Every child has the right, without discrimination, to the protection that is in their best interests as a child. The right recognises that special measures to protect children are necessary given their vulnerability due to age. The best interests of the child should be considered in all actions affecting a child, aimed at ensuring both the full and effective enjoyment of all the child's human rights and the holistic development of the child. Best interests depend on the individual circumstances of the child. The requirements contained in the Direction also has the potential to impact children through, for example, temporarily reducing their access to certain facilities or events. The Direction also may limit this right as it places limits on family members, children and other personal visitors from gathering in private places by restricting gatherings to no more than 30 people.

Right to liberty and security of person

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.

This right is subject to a number of internal limitations and qualifications. Relevantly, the detention must not be arbitrary in the sense that it must not be capricious, unpredictable or unjust or otherwise disproportionate to the legitimate aim that is sought.

The right to liberty and security also incorporates a number of procedural elements, including that a person who is detained must be informed at the time of detention of the reason for detention and that a detained person is able to apply to a court for a declaration or order regarding the lawfulness of the person's detention. These procedural aspects of the right will continue to be limited. The requirements for a person to be given notice of the direction or order for detention and the reason for the detention will be clear in the notice

Right to education

The right of every child to access primary and secondary education appropriate to their needs is protected in Queensland. The right to education also says that every person has the right to have access, based on their abilities, to equally accessible further vocational education and training. The right to education is intended to be interpreted in line with the *Education (General Provisions) Act 2006* and to provide rights in relation to aspects of Queensland's responsibilities for education service delivery.

Internationally, this right has been interpreted as requiring that education be accessible to all individuals without discrimination.

Right to health services

Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment. The Direction does not limit or place any impediments on a person's right to receive health services.

Protecting the health and safety of the public is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom. The purpose of the limitations on human rights is to protect the Queensland public from serious risks to health and safety, including the potential for widespread loss of life that could occur if public health officials are unable to coordinate an effective public health response to the COVID-19 pandemic.

Based on the best available evidence and the experience of public health officials and populations in other countries, there is a risk that COVID-19 may spread rapidly throughout Queensland and not remain contained unless extraordinary measures are put in place for a period of time. This presents a clear and present danger to the health and wellbeing of Queenslanders, particularly vulnerable persons including the elderly and immunocompromised. The uncontained spread of COVID-19 also has the potential to cause severe adverse economic and social consequences.

Against these indications, there is a need for the Direction to implement the various response measures, such as physical distancing measures, to prevent COVID-19 spreading throughout the community and to mitigate potential adverse economic and social consequences associated with the disruption that will inevitably follow.

Justification

The purpose of the public health direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by restricting movement in public places in order to contain and prevent the spread of the virus.

Requiring people to wear a mask in most indoor and outdoor settings is to confine potential outbreaks. The Direction is in effect for a temporary period, and the face mask restrictions do not apply in particular environments. For example, a person can remove their mask when in an indoor space that is a residence, temporary accommodation premises or workplace, unless the person cannot observe physical distancing. Face masks are also not required to be worn when a person is outdoors alone, or outdoors and only with members of their household. Ultimately, the purpose of wearing masks is to limit the opportunity for transmission of COVID-19 from high risk environments to the Queensland community.

To the extent that the Direction limits the right to freedom of movement, this is considered justified to minimise the spread of COVID-19 to other members of the community.

To the extent the Direction limits the right to equality and non-discrimination, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask such as to communicate with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication. A person is not required to wear a mask in high risk environments if they have a physical or mental health illness or condition, or disability, which makes wearing a face mask unsuitable.

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as, through private prayer.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community. Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. This internal limitation may apply where the Direction authorises restrictions on movement pursuant to a lawful direction based on a reasonable belief that the restriction is necessary to assist in containing or responding to the spread of COVID-19 within the community. 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 or from seeking alternative employment. Gatherings in private residences and non-residences are also permitted for up to 30 people. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements 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 other ways. For example, through private gatherings of up to 30 people, private prayer, online tools, or meetings at places of worship,

with no more than one person per 4 square metres. The limitations on religious and cultural rights are considered justified.

Overall, the limitations on human rights are justified, as the Direction is only in force for a temporary period and will help contain the spread of COVID-19, thereby protecting the health and safety of the community. The Chief Health Officer, Deputy Chief Health Officer or delegate may also grant a person an exemption from the requirements under the Direction due to extreme exceptional circumstances. However, restricted businesses are not able to request an exemption under the Direction.

The Direction eases restrictions after the three-day lockdown period following a review to ensure the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act.

From a public health perspective, the approach is to gradually increase the number of places where people may go, and the number of people that might gather. This reduces the likelihood of sudden outbreaks of the virus across the State, therefore reducing the risk to individuals and ensuring that the health system can mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts.

The limitation of human rights is necessary to ensure that public health officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19, including to the more transmissible variants, and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life sustaining treatment.

If these measures are not implemented and an outbreak of COVID-19 occurs in Queensland, demand for emergency and life-sustaining treatment could quickly exceed capacity and overwhelm the State's public health infrastructure. In addition to loss of life and serious adverse health impacts, this could potentially cause widespread economic disruption, social panic and civil unrest, further jeopardising the safety and wellbeing of the community.

The purpose of the Direction cannot be achieved through any other reasonably available and less restrictive means. Extensive campaigns by the Queensland and Commonwealth Governments are in place to educate members of the public about the risks of COVID-19 and how to minimise their potential exposure to infection. Experience abroad underscores that voluntary containment measures are inadequate to arrest the spread of COVID-19, particularly of the more contagious variant of COVID-19, and that governments must proactively pursue more prescriptive approaches to respond effectively to this unprecedented public health emergency.

Queensland Health will continue to monitor and assess the situation to determine whether further restrictions are required or if restrictions may be eased. Accordingly, the Direction is only in force for a limited period of time (until 23 July 2021) and enables the Government and Queensland Health to further assess the current situation. The limitations under the Direction is reasonable as stricter restrictions are applied only to the affected 11 local government areas. The rest of Queensland is not subject to the stricter restrictions and can operate under the current level of eased requirements.

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.

Failure to impose these measures may result in Queensland's health infrastructure becoming overwhelmed, with the result that decisions will need to be made as to who receives lifesaving treatment and otherwise preventable deaths occurring. This is not an abstract threat; there are several countries which have been unable to mount an effective public health response that are now experiencing deaths at a higher rate than in countries that have implemented stronger containment and social distancing measures.

Although the Direction may potentially limit many rights, in many instances the limitations are minor in nature and frequently consistent with internal limitations in the Human Rights Act. It should also be noted that many Queenslanders are already taking voluntary precautions, to limit their potential exposure to COVID-19 and avoid spreading this disease to family members, friends and the broader community. Many individuals are already undertaking these measures voluntarily, which suggests they are unlikely to impose an unjustified burden on human rights.

Several safeguards exist in the Public Health Act and the Direction to ensure that any limitations on human rights are no more onerous than is required to slow the spread of COVID-19. On balance, any limitations on human rights are reasonable and justified to ensure the preservation of life and protection of the community from the worse impacts of a pandemic.

Public Health Directions – Human Rights Assessment
Restrictions for Impacted Areas Direction (No. 910)

Title	<i>Restrictions for Impacted Areas Direction (No. <u>910</u>)</i>
Date effective	16-23 July 2021

Background

The *Restrictions for Impacted Areas Direction (No. 910)* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis is prepared to consider the impacts of the Direction on the human rights identified in the *Human Rights Act 2019* and 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.

Purpose of the Direction

The purpose of the *Restrictions for Impacted Areas Direction (No. 910)* (Direction) is to slow the spread of COVID-19 by restricting the movement and gathering of people, implementing social distancing measures, mandating the wearing of masks in certain circumstances and requiring restricted businesses to operate with certain limits such as occupant density.

In preparing the Direction, risks to the health and safety of Queenslanders have been identified and the current epidemiological situation, both in Queensland and internationally, 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.

~~This~~ The Direction only extends the following face mask wearing restrictions for 11 Local Government Areas in South East Queensland from 6am on ~~16-23~~ 23 July 2021 until 6am on ~~23~~ 30 July 2021. ~~People are~~ will continue to be required to wear masks outside of their homes in both indoor and outdoor spaces including in indoor workplaces where physical distancing isn't possible.

The Direction eases restrictions by removing the following requirements for the 11 SEQ LGAs:

- only 30 people are permitted to gather in a private residence or public spaces;
- ~~• people are required to wear masks outside of their homes in both indoor and outdoor spaces including in indoor workplaces where physical distancing isn't possible;~~
- indoor spaces are subject to an occupant density of:
 - for venues over 200 square metres - 1 person per 4 square metres for areas used by patrons or 100% of a venue's capacity where there is ticketed and allocated seating
 - for venues under 200 square metres - 1 person 2 square metres for areas used by patrons up to a maximum of 50 people;

- outdoor venues or spaces are subject to an occupant density of 1 person per 2 square metres or 100% of a venue's capacity where there is ticketed and allocated seating (whichever is greater);
- venues that serve food and drinks must operate for seated patrons only;
- restricted businesses, activities or undertakings in impacted areas must operate in accordance with the COVID Safe Checklist – Impacted Areas or the COVID Safe Event Checklist – Impacted Areas;
- wedding ceremonies and funerals are limited to a maximum attendance of 100 people;
- dancing at a wedding reception is permitted to a maximum of 20 people.

~~The above restrictions will no longer apply to the Local Government Areas of Townsville City Council and Palm Island Aboriginal Shire Council from 6am on 16 July 2021.~~

Human rights engaged

The human rights engaged by the Direction are:

- Right to recognition and equity before the law (section 15)
- Right to life (section 16)
- 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)
- Privacy (section 25)
- Protection of families and children (section 26)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to education (section 36)
- Right to health services (section 37)

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 placing restrictions on how people may gather, move and interact. It also restricts how certain businesses, activities and undertakings may operate. By requiring people to wear masks in high risk environments in the 11 local government areas, 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.

Right to recognition and equality under the law

Every person has the right to recognition as a person before the law and the right to enjoy their human rights without discrimination. Every person is equal before the law and is entitled to equal protection of the law without discrimination. Every person is entitled to equal and effective protection against discrimination. The requirements to wear face masks in high risk environments discriminates against people with particular medical conditions, history of trauma or a disability for whom wearing a face mask is unsuitable. For example, masks may

make it harder for people with hearing loss to lip read and communicate. The definition of 'discrimination' under the Human Rights Act is inclusive. Discrimination may include discrimination on the basis certain attributes such as disability or race, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296.

Freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. The right means that a person cannot be arbitrarily forced to remain in, or move to or from, a place. The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers, like requiring permission before entering a public park or participating in a public demonstration in a public place. The right may be engaged where a public entity actively curtails a person's freedom of movement.

Freedom of thought, conscience, religion and belief; Freedom of expression; Peaceful assembly and freedom of association; Cultural rights – generally; Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

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, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is an absolute right, however limits on how a person manifests their belief can be justified.

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, if it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. While the concept of freedom of expression is broad, the way a person can exercise it can be limited. Restricting a person's contact with others limits the ways in which they can express their opinions and ideas. The Direction limits this right by restricting how a person may express themselves orally or through the garments they wear by requiring them to wear a certain type of face mask in high risks environments in Queensland. A person may still make or purchase a cloth mask of their choosing and is permitted to remove the mask in certain circumstances such as when making announcements, teaching or live broadcasting.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both the participants and organisers of peaceful assemblies. ~~Restricting a person's movements and banning gatherings of more than 30 persons limits the ability for a person to peacefully assemble with others for a common purpose.~~

Cultural rights protect the rights of all people with particular cultural, religious, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. ~~Limiting gatherings to 30 persons and reduced occupant density~~ Requiring people to wear face masks in places of worship may limit a person's ability to express their cultural preferences ~~engage~~ with others who share their cultural or religious background.

In addition to the general cultural rights, the Human Rights Act recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first peoples. They have the right to enjoy, maintain, control, protect and develop their culture, language and kinship ties with other members of their community. The right also protects Aboriginal peoples and Torres Strait Islander people's right to maintain and strengthen their distinct spiritual relationship with the land, territories, waters, coastal seas and other resources, and to conserve and protect the environment. Directions to require people to wear face masks prohibit gatherings of more than 30 people, may limit the ability of Aboriginal peoples and Torres Strait Islander peoples to engage-express their cultural preferences with community and their traditionally owned or otherwise occupied lands and waters.

Right to privacy

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 wear a face mask or potentially be fined. However, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask in certain situations such as to eat, drink, consume medicine or receive medical treatment. The right also encompasses an individual's rights to establish and develop meaningful social relations (*Krake 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 may limit this right as it may interfere with people's right to make and maintain social connections at homes, such as at parties and celebrations.

Right to protection of families and children

Queensland recognises families as the fundamental unit of society entitled to protection. This right 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. Internal limitations of lawfulness and arbitrariness apply to the right of the family.

Every child has the right, without discrimination, to the protection that is in their best interests as a child. The right recognises that special measures to protect children are necessary given their vulnerability due to age. The best interests of the child should be considered in all actions affecting a child, aimed at ensuring both the full and effective enjoyment of all the child's human rights and the holistic development of the child. Best interests depend on the individual circumstances of the child. The requirements contained in the Direction also has the potential to impact children through, for example, temporarily reducing their access to certain facilities or events. The Direction also may limit this right as it places limits on family members, children and other personal visitors from gathering in private places by restricting gatherings to no more than 30 people requires children over the age of 12 to wear a face mask when they leave home, subject to any exceptions.

Right to liberty and security of person

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.

This right is subject to a number of internal limitations and qualifications. Relevantly, the detention must not be arbitrary in the sense that it must not be capricious, unpredictable or unjust or otherwise disproportionate to the legitimate aim that is sought.

The right to liberty and security also incorporates a number of procedural elements, including that a person who is detained must be informed at the time of detention of the reason for detention and that a detained person is able to apply to a court for a declaration or order regarding the lawfulness of the person's detention. These procedural aspects of the right will continue to be limited. The requirements for a person to be given notice of the direction or order for detention and the reason for the detention will be clear in the notice

Right to education

The right of every child to access primary and secondary education appropriate to their needs is protected in Queensland. The right to education also says that every person has the right to have access, based on their abilities, to equally accessible further vocational education and training. The right to education is intended to be interpreted in line with the *Education (General Provisions) Act 2006* and to provide rights in relation to aspects of Queensland's responsibilities for education service delivery.

Internationally, this right has been interpreted as requiring that education be accessible to all individuals without discrimination.

Right to health services

Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment. The Direction does not limit or place any impediments on a person's right to receive health services.

Protecting the health and safety of the public is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom. The purpose of the limitations on human rights is to protect the Queensland public from serious risks to health and safety, including the potential for widespread loss of life that could occur if public health officials are unable to coordinate an effective public health response to the COVID-19 pandemic.

Based on the best available evidence and the experience of public health officials and populations in other countries, there is a risk that COVID-19 may spread rapidly throughout Queensland and not remain contained unless extraordinary measures are put in place for a period of time. This presents a clear and present danger to the health and wellbeing of Queenslanders, particularly vulnerable persons including the elderly and immunocompromised. The uncontained spread of COVID-19 also has the potential to cause severe adverse economic and social consequences.

Against these indications, there is a need for the Direction to implement the ~~various~~ response measures, ~~such as physical distancing measures~~ of wearing a face mask, to prevent COVID-

19 spreading throughout the community and to mitigate potential adverse economic and social consequences associated with the disruption that will inevitably follow.

Justification

The purpose of the public health direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by restricting movement in public places in order to contain and prevent the spread of the virus.

Requiring people to wear a mask in most indoor and outdoor settings is to confine potential outbreaks. The Direction is in effect for a temporary period, and the face mask restrictions do not apply in particular environments. For example, a person can remove their mask when in an indoor space that is a residence, temporary accommodation premises or workplace, unless the person cannot observe physical distancing. Face masks are also not required to be worn when a person is outdoors alone, or outdoors and only with members of their household. Ultimately, the purpose of wearing masks is to limit the opportunity for transmission of COVID-19 from high risk environments to the Queensland community.

To the extent that the Direction limits the right to freedom of movement by wearing a face mask, this is considered justified to minimise the spread of COVID-19 to other members of the community.

To the extent the Direction limits the right to equality and non-discrimination, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask such as to communicate with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication. A person is not required to wear a mask in high risk environments if they have a physical or mental health illness or condition, or disability, which makes wearing a face mask unsuitable.

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as, through private prayer, or at a place of worship or in the community providing a person is wearing a face mask, unless they have a valid reason not to wear a mask.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community. Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. This internal limitation may apply where the Direction authorises restrictions on movement pursuant to a lawful direction based on a reasonable belief that the restriction is necessary to assist in containing or responding to the spread of COVID-19 within the community. 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 or from seeking alternative employment. ~~Gatherings in private residences and non-residences are also permitted for up to 30 people~~Reasonable exceptions from wearing a face mask when a person leave home are permitted. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements are proportionate and necessary to the unprecedented threat to public health, including the pressing need for ~~social distancing~~face mask 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 other ways. For example, by wearing a face mask in while settings, such as, private and public gatherings, private prayer at a public place or meetings at places of worship through private gatherings of up to 30 people, private prayer, online tools, or meetings at places of worship, with no more than one person per 4 square metres. The limitations on religious and cultural rights are considered justified.

Overall, the limitations on human rights are justified, as the Direction is only in force for a temporary period and will help contain the spread of COVID-19, thereby protecting the health and safety of the community. The Chief Health Officer, Deputy Chief Health Officer or delegate may also grant a person an exemption from the requirements under the Direction due to extreme exceptional circumstances. ~~However, restricted businesses are not able to request an exemption under the Direction.~~

The Direction eases restrictions after ~~the a further threeseven-day lockdown~~period of increased restrictions in South East Queensland following a review to ensure the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act.

The Direction eases restrictions by removing all requirements except for the face mask restrictions, which will remain in place for a further 7 days. The easing of restrictions allows the 11 Local Government Areas in South East Queensland to return to the requirements that are in place for the rest of Queensland under the *Restrictions on Businesses, Activities and Undertakings Direction (No. 23)* and *Movement and Gathering Direction (No. 11)* or their successors and any other relevant public health directions.

From a public health perspective, the approach is to gradually increase the number of places where people may go, and the number of people that might gather. This reduces the likelihood of sudden outbreaks of the virus across the State, therefore reducing the risk to individuals and ensuring that the health system can mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts.

The limitation of human rights is necessary to ensure that public health officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19, including to the more transmissible variants, and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life sustaining treatment.

If these measures are not implemented and an outbreak of COVID-19 occurs in Queensland, demand for emergency and life-sustaining treatment could quickly exceed capacity and

overwhelm the State's public health infrastructure. In addition to loss of life and serious adverse health impacts, this could potentially cause widespread economic disruption, social panic and civil unrest, further jeopardising the safety and wellbeing of the community.

The purpose of the Direction cannot be achieved through any other reasonably available and less restrictive means. Extensive campaigns by the Queensland and Commonwealth Governments are in place to educate members of the public about the risks of COVID-19 and how to minimise their potential exposure to infection. Experience abroad underscores that voluntary containment measures are inadequate to arrest the spread of COVID-19, particularly of the more contagious variant of COVID-19, and that governments must proactively pursue more prescriptive approaches to respond effectively to this unprecedented public health emergency.

Queensland Health will continue to monitor and assess the situation to determine whether further restrictions are required or if restrictions may be eased. Accordingly, the Direction is only in force for a limited period of time (until 23-30 July 2021) and enables the Government and Queensland Health to further assess the current situation. The limitations under the Direction is-are reasonable as stricter restrictions are applied only to the affected 11 local government areas. The rest of Queensland is not subject to the stricter restrictions and can operate under the current level of eased requirements.

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.

Failure to impose these measures may result in Queensland's health infrastructure becoming overwhelmed, with the result that decisions will need to be made as to who receives lifesaving treatment and otherwise preventable deaths occurring. This is not an abstract threat; there are several countries which have been unable to mount an effective public health response that are now experiencing deaths at a higher rate than in countries that have implemented stronger containment and social distancing measures.

Although the Direction may potentially limit many rights, in many instances the limitations are minor in nature and frequently consistent with internal limitations in the Human Rights Act. It should also be noted that many Queenslanders are already taking voluntary precautions, to limit their potential exposure to COVID-19 and avoid spreading this disease to family members, friends and the broader community. Many individuals are already undertaking these measures voluntarily, which suggests they are unlikely to impose an unjustified burden on human rights.

Several safeguards exist in the Public Health Act and the Direction to ensure that any limitations on human rights are no more onerous than is required to slow the spread of COVID-19. On balance, any limitations on human rights are reasonable and justified to ensure the preservation of life and protection of the community from the worse impacts of a pandemic.

Public Health Directions – Human Rights Assessment
Restrictions for Impacted Areas Direction (No. 11)

Title	<i>Restrictions for Impacted Areas Direction (No. 11)</i>
Date effective	30 July 2021

Background

The *Restrictions for Impacted Areas Direction (No. 11)* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis is prepared to consider the impacts of the Direction on the human rights identified in the *Human Rights Act 2019* and 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.

Purpose of the Direction

The purpose of the *Restrictions for Impacted Areas Direction (No. 11)* (Direction) is to slow the spread of COVID-19 by restricting the movement and gathering of people, implementing social distancing measures, mandating the wearing of masks in certain circumstances and requiring restricted businesses to operate with certain limits such as occupant density.

In preparing the Direction, risks to the health and safety of Queenslanders have been identified and the current epidemiological situation, both in Queensland and internationally, 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.

The Direction extends the face mask wearing restrictions for 11 Local Government Areas in South East Queensland from 6am on 30 July 2021 until it is revoked or replaced. People will continue to be required to wear masks outside of their homes in both indoor and outdoor spaces including in indoor workplaces where physical distancing isn't possible.

Human rights engaged

The human rights engaged by the Direction are:

- Right to recognition and equity before the law (section 15)
- Right to life (section 16)
- 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)
- Privacy (section 25)
- Protection of families and children (section 26)
- Cultural rights – generally (section 27)

- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to education (section 36)
- Right to health services (section 37)

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 placing restrictions on how people may gather, move and interact. It also restricts how certain businesses, activities and undertakings may operate. By requiring people to wear masks in high risk environments in the 11 local government areas, 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.

Right to recognition and equality under the law

Every person has the right to recognition as a person before the law and the right to enjoy their human rights without discrimination. Every person is equal before the law and is entitled to equal protection of the law without discrimination. Every person is entitled to equal and effective protection against discrimination. The requirements to wear face masks in high risk environments discriminates against people with particular medical conditions, history of trauma or a disability for whom wearing a face mask is unsuitable. For example, masks may make it harder for people with hearing loss to lip read and communicate. The definition of 'discrimination' under the Human Rights Act is inclusive. Discrimination may include discrimination on the basis certain attributes such as disability or race, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296.

Freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. The right means that a person cannot be arbitrarily forced to remain in, or move to or from, a place. The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers, like requiring permission before entering a public park or participating in a public demonstration in a public place. The right may be engaged where a public entity actively curtails a person's freedom of movement.

Freedom of thought, conscience, religion and belief; Freedom of expression; Peaceful assembly and freedom of association; Cultural rights – generally; Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

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, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is an absolute right, however limits on how a person manifests their belief can be justified.

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, if it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. While the concept of freedom of expression is broad, the way a person can exercise it can be limited. Restricting a person's contact with others limits the ways in which they can express their opinions and ideas. The Direction limits this right by restricting how a person may express themselves orally or through the garments they wear by requiring them to wear a certain type of face mask in high risks environments in Queensland. A person may still make or purchase a cloth mask of their choosing and is permitted to remove the mask in certain circumstances such as when making announcements, teaching or live broadcasting.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both the participants and organisers of peaceful assemblies.

Cultural rights protect the rights of all people with particular cultural, religious, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. Requiring people to wear face masks in places of worship may limit a person's ability to express their cultural preferences with others who share their cultural or religious background.

In addition to the general cultural rights, the Human Rights Act recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first peoples. They have the right to enjoy, maintain, control, protect and develop their culture, language and kinship ties with other members of their community. The right also protects Aboriginal peoples and Torres Strait Islander people's right to maintain and strengthen their distinct spiritual relationship with the land, territories, waters, coastal seas and other resources, and to conserve and protect the environment. Directions to require people to wear face masks may limit the ability of Aboriginal peoples and Torres Strait Islander peoples to express their cultural preferences with community and their traditionally owned or otherwise occupied lands and waters.

Right to privacy

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 wear a face mask or potentially be fined. However, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask in certain situations such as to eat, drink, consume medicine or receive medical treatment. The right also encompasses an individual's rights to establish and develop meaningful social relations (*Krake 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 may limit this right as it may interfere with people's right to make and maintain social connections at homes, such as at parties and celebrations.

Right to protection of families and children

Queensland recognises families as the fundamental unit of society entitled to protection. This right 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. Internal limitations of lawfulness and arbitrariness apply to the right of the family.

Every child has the right, without discrimination, to the protection that is in their best interests as a child. The right recognises that special measures to protect children are necessary given their vulnerability due to age. The best interests of the child should be considered in all actions affecting a child, aimed at ensuring both the full and effective enjoyment of all the child's human rights and the holistic development of the child. Best interests depend on the individual circumstances of the child. The requirements contained in the Direction also has the potential to impact children through, for example, temporarily reducing their access to certain facilities or events. The Direction also may limit this right as it requires children over the age of 12 to wear a face mask when they leave home, subject to any exceptions.

Right to liberty and security of person

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.

This right is subject to a number of internal limitations and qualifications. Relevantly, the detention must not be arbitrary in the sense that it must not be capricious, unpredictable or unjust or otherwise disproportionate to the legitimate aim that is sought.

The right to liberty and security also incorporates a number of procedural elements, including that a person who is detained must be informed at the time of detention of the reason for detention and that a detained person is able to apply to a court for a declaration or order regarding the lawfulness of the person's detention. These procedural aspects of the right will continue to be limited. The requirements for a person to be given notice of the direction or order for detention and the reason for the detention will be clear in the notice

Right to education

The right of every child to access primary and secondary education appropriate to their needs is protected in Queensland. The right to education also says that every person has the right to have access, based on their abilities, to equally accessible further vocational education and training. The right to education is intended to be interpreted in line with the *Education (General Provisions) Act 2006* and to provide rights in relation to aspects of Queensland's responsibilities for education service delivery.

Internationally, this right has been interpreted as requiring that education be accessible to all individuals without discrimination.

Right to health services

Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment. The Direction does not limit or place any impediments on a person's right to receive health services.

Protecting the health and safety of the public is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom. The purpose of the limitations on human rights is to protect the Queensland public from serious risks to health and safety, including the potential for widespread loss of life that could occur if public health officials are unable to coordinate an effective public health response to the COVID-19 pandemic.

Based on the best available evidence and the experience of public health officials and populations in other countries, there is a risk that COVID-19 may spread rapidly throughout Queensland and not remain contained unless extraordinary measures are put in place for a period of time. This presents a clear and present danger to the health and wellbeing of Queenslanders, particularly vulnerable persons including the elderly and immunocompromised. The uncontained spread of COVID-19 also has the potential to cause severe adverse economic and social consequences.

Against these indications, there is a need for the Direction to implement the response measure, of wearing a face mask, to prevent COVID-19 spreading throughout the community and to mitigate potential adverse economic and social consequences associated with the disruption that will inevitably follow.

Justification

The purpose of the public health direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by restricting movement in public places in order to contain and prevent the spread of the virus.

Requiring people to wear a mask in most indoor and outdoor settings is to confine potential outbreaks. The Direction is in effect for a temporary period, and the face mask restrictions do not apply in particular environments. For example, a person can remove their mask when in an indoor space that is a residence, temporary accommodation premises or workplace, unless the person cannot observe physical distancing. Face masks are also not required to be worn when a person is outdoors alone, or outdoors and only with members of their household. Ultimately, the purpose of wearing masks is to limit the opportunity for transmission of COVID-19 from high risk environments to the Queensland community.

To the extent that the Direction limits the right to freedom of movement by wearing a face mask, this is considered justified to minimise the spread of COVID-19 to other members of the community.

To the extent the Direction limits the right to equality and non-discrimination, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask such as to communicate with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication. A person is not required to wear a mask in high risk environments if they have a physical or mental health illness or condition, or disability, which makes wearing a face mask unsuitable.

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as, through private prayer, or

at a place of worship or in the community providing a person is wearing a face mask, unless they have a valid reason not to wear a mask.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community. Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. This internal limitation may apply where the Direction authorises restrictions on movement pursuant to a lawful direction based on a reasonable belief that the restriction is necessary to assist in containing or responding to the spread of COVID-19 within the community. 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 or from seeking alternative employment. Reasonable exceptions from wearing a face mask when a person leave home are permitted. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements are proportionate and necessary to the unprecedented threat to public health, including the pressing need for face mask 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 other ways. For example, by wearing a face mask in while settings, such as, private and public gatherings, private prayer at a public place or meetings at places of worship. The limitations on religious and cultural rights are considered justified.

Overall, the limitations on human rights are justified, as the Direction is only in force for a temporary period and will help contain the spread of COVID-19, thereby protecting the health and safety of the community. The Chief Health Officer, Deputy Chief Health Officer or delegate may also grant a person an exemption from the requirements under the Direction due to extreme exceptional circumstances.

The Direction extends the face mask restrictions after a further seven-day period of face mask restrictions in South East Queensland following a review to ensure the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of the community being exposed to further COVID-19 cases within the community. The extension of the face mask restrictions will remain in place for the 11 Local Government Areas in South East Queensland and will be reviewed by the Chief Health Officer in the next 7 days. This is compatible with the objective of the Human Rights Act.

From a public health perspective, the approach is to gradually increase the number of places where people may go, and the number of people that might gather. This reduces the likelihood of sudden outbreaks of the virus across the State, therefore reducing the risk to individuals

and ensuring that the health system can mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts.

The limitation of human rights is necessary to ensure that public health officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19, including to the more transmissible variants, and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life sustaining treatment.

If these measures are not implemented and an outbreak of COVID-19 occurs in Queensland, demand for emergency and life-sustaining treatment could quickly exceed capacity and overwhelm the State's public health infrastructure. In addition to loss of life and serious adverse health impacts, this could potentially cause widespread economic disruption, social panic and civil unrest, further jeopardising the safety and wellbeing of the community.

The purpose of the Direction cannot be achieved through any other reasonably available and less restrictive means. Extensive campaigns by the Queensland and Commonwealth Governments are in place to educate members of the public about the risks of COVID-19 and how to minimise their potential exposure to infection. Experience abroad underscores that voluntary containment measures are inadequate to arrest the spread of COVID-19, particularly of the more contagious variant of COVID-19, and that governments must proactively pursue more prescriptive approaches to respond effectively to this unprecedented public health emergency.

Queensland Health will continue to monitor and assess the situation to determine whether further restrictions are required or if restrictions may be eased. Accordingly, the Direction is only in force for a limited period of time and enables the Government and Queensland Health to further assess the current situation. The limitations under the Direction are reasonable as stricter restrictions are applied only to the affected 11 local government areas. The rest of Queensland is not subject to the stricter restrictions and can operate under the current level of eased requirements.

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.

Failure to impose these measures may result in Queensland's health infrastructure becoming overwhelmed, with the result that decisions will need to be made as to who receives lifesaving treatment and otherwise preventable deaths occurring. This is not an abstract threat; there are several countries which have been unable to mount an effective public health response that are now experiencing deaths at a higher rate than in countries that have implemented stronger containment and social distancing measures.

Although the Direction may potentially limit many rights, in many instances the limitations are minor in nature and frequently consistent with internal limitations in the Human Rights Act. It should also be noted that many Queenslanders are already taking voluntary precautions, to limit their potential exposure to COVID-19 and avoid spreading this disease to family members, friends and the broader community. Many individuals are already undertaking these

measures voluntarily, which suggests they are unlikely to impose an unjustified burden on human rights.

Several safeguards exist in the Public Health Act and the Direction to ensure that any limitations on human rights are no more onerous than is required to slow the spread of COVID-19. On balance, any limitations on human rights are reasonable and justified to ensure the preservation of life and protection of the community from the worse impacts of a pandemic.

RTI RELEASE

DRAFTING NOTE – REMOVE BEFORE FINALISING – this assessment is based on No. 9 because Impacted Areas No 10 and No 11 only had face mask requirements. This assessment includes movement and gathering and business restrictions.

Public Health Directions – Human Rights Assessment

Restrictions for Impacted Areas (No. 12) (SEQ eased restrictions Stage 1) Direction

Title	<i>Restrictions for Impacted Areas (No. 12) (SEQ eased restrictions Stage 1) Direction</i>
Date effective	8 August 2021

Background

The *Restrictions for Impacted Areas (No. 12) (SEQ eased restrictions Stage 1) Direction* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis is prepared to consider the impacts of the Direction on the human rights identified in the *Human Rights Act 2019* and 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.

Purpose of the Direction

The purpose of the *Restrictions for Impacted Areas (No. 12) (SEQ eased restrictions Stage 1) Direction* (Direction) is to revoke the 'lockdown' for South-East Queensland, but at the same time slow the spread of COVID-19 by restricting the movement and gathering of people, implementing social distancing measures, mandating the wearing of masks in certain circumstances and requiring restricted businesses to operate with certain limits such as occupant density.

In preparing the Direction, risks to the health and safety of Queenslanders have been identified and the current epidemiological situation, both in Queensland and internationally, 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.

This Direction removes the lockdown (i.e. people can leave their home for any reason), but extends or eases the following restrictions for 11 Local Government Areas in South East Queensland from 4pm on 8 August 2021:

- only 10 people are permitted to gather in a private residence or public spaces;
- people, including high school students, are required to wear masks outside of their homes in both indoor and outdoor spaces including in indoor workplaces (unless alone in a closed office);
- indoor spaces are subject to an occupant density of:

- for venues over 200 square metres - 1 person per 4 square metres for areas used by patrons or 50% of a venue's capacity where there is ticketed and allocated seating
- for venues under 200 square metres - 1 person 2 square metres for areas used by patrons up to a maximum of 50 people;
- outdoor venues or spaces are subject to an occupant density of 1 person per 2 square metres or 50% of a venue's capacity where there is ticketed and allocated seating (whichever is greater);
- venues that serve food and drinks must operate for seated patrons only;
- restricted businesses, activities or undertakings in impacted areas must operate in accordance with the COVID Safe Checklist – Impacted Areas or the COVID Safe Event Checklist – Impacted Areas;
- wedding ceremonies and funerals are limited to a maximum attendance of 100 people;
- dancing is only permitted:
 - at a wedding for a maximum of 20 people
 - at a dance studio or dance class, or
 - by performers as part of a performance.

Human rights engaged

The human rights engaged by the Direction are:

- Right to recognition and equity before the law (section 15)
- Right to life (section 16)
- 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)
- Privacy (section 25)
- Protection of families and children (section 26)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to education (section 36)
- Right to health services (section 37)

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 placing restrictions on how people may gather, move and interact. It also restricts how certain businesses, activities and undertakings may operate. By requiring people to wear masks in high risk environments in the 11 local government areas, 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.

Right to recognition and equality under the law

Every person has the right to recognition as a person before the law and the right to enjoy their human rights without discrimination. Every person is equal before the law and is entitled

to equal protection of the law without discrimination. Every person is entitled to equal and effective protection against discrimination. The requirements to wear face masks in high risk environments discriminates against people with particular medical conditions, history of trauma or a disability for whom wearing a face mask is unsuitable. For example, masks may make it harder for people with hearing loss to lip read and communicate, and there is a requirement for teachers of hearing impaired children to wear a protective face shield rather than no mask. The definition of 'discrimination' under the Human Rights Act is inclusive. Discrimination may include discrimination on the basis of certain attributes such as disability or race, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296.

Freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. The right means that a person cannot be arbitrarily forced to remain in, or move to or from, a place. The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers, like requiring permission before entering a public park or participating in a public demonstration in a public place. The right may be engaged where a public entity actively curtails a person's freedom of movement.

Freedom of thought, conscience, religion and belief; Freedom of expression; Peaceful assembly and freedom of association; Cultural rights – generally; Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

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, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is an absolute right, however limits on how a person manifests their belief can be justified.

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, if it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. While the concept of freedom of expression is broad, the way a person can exercise it can be limited. Restricting a person's contact with others limits the ways in which they can express their opinions and ideas. The Direction limits this right by restricting how a person may express themselves orally or through the garments they wear by requiring them to wear a certain type of face mask in high risks environments in Queensland. A person may still make or purchase a cloth mask of their choosing and is permitted to remove the mask in certain circumstances such as when making announcements, teaching or live broadcasting.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both the participants and organisers of peaceful assemblies. Restricting a person's movements and banning gatherings of more than 10 persons limits the ability for a person to peacefully assemble with others for a common purpose. Density limits on gatherings for religious ceremonies may limit religious practices, however the holding and expression of religious beliefs in other ways are not limited by the Direction. Weddings and funerals, which may be an expression of religious and cultural beliefs, may be held provided

restrictions on numbers (20) and face masks are met. This supports the right to peaceful assembly and expression of beliefs while protecting community health and safety.

Cultural rights protect the rights of all people with particular cultural, religious, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. Limiting gatherings to 30 persons and reduced occupant density in places of worship may limit a person's ability to engage with others who share their cultural or religious background.

In addition to the general cultural rights, the Human Rights Act recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first peoples. They have the right to enjoy, maintain, control, protect and develop their culture, language and kinship ties with other members of their community. The right also protects Aboriginal peoples and Torres Strait Islander people's right to maintain and strengthen their distinct spiritual relationship with the land, territories, waters, coastal seas and other resources, and to conserve and protect the environment. Directions to prohibit gatherings of more than 30 people, may limit the ability of Aboriginal peoples and Torres Strait Islander peoples to engage with community and their traditionally owned or otherwise occupied lands and waters.

Right to privacy

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 wear a face mask or potentially be fined. However, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask in certain situations such as to eat, drink, consume medicine or receive medical treatment. The right also encompasses an individual's rights to establish and develop meaningful social relations (*Krake 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 may limit this right as it may interfere with people's right to make and maintain social connections at homes, such as at parties and celebrations.

Right to protection of families and children

Queensland recognises families as the fundamental unit of society entitled to protection. This right 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. Internal limitations of lawfulness and arbitrariness apply to the right of the family.

Every child has the right, without discrimination, to the protection that is in their best interests as a child. The right recognises that special measures to protect children are necessary given their vulnerability due to age. The best interests of the child should be considered in all actions affecting a child, aimed at ensuring both the full and effective enjoyment of all the child's

human rights and the holistic development of the child. Best interests depend on the individual circumstances of the child. The requirements contained in the Direction also has the potential to impact children through, for example, temporarily reducing their access to certain facilities or events. The Direction also may limit this right as it places limits on family members, children and other personal visitors from gathering in private places by restricting gatherings to no more than 10 people.

Right to liberty and security of person

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.

This right is subject to a number of internal limitations and qualifications. Relevantly, the detention must not be arbitrary in the sense that it must not be capricious, unpredictable or unjust or otherwise disproportionate to the legitimate aim that is sought.

The right to liberty and security also incorporates a number of procedural elements, including that a person who is detained must be informed at the time of detention of the reason for detention and that a detained person is able to apply to a court for a declaration or order regarding the lawfulness of the person's detention. These procedural aspects of the right will continue to be limited. The requirements for a person to be given notice of the direction or order for detention and the reason for the detention will be clear in the notice

Right to education

The right of every child to access primary and secondary education appropriate to their needs is protected in Queensland. The right to education also says that every person has the right to have access, based on their abilities, to equally accessible further vocational education and training. The right to education is intended to be interpreted in line with the *Education (General Provisions) Act 2006* and to provide rights in relation to aspects of Queensland's responsibilities for education service delivery.

Internationally, this right has been interpreted as requiring that education be accessible to all individuals without discrimination.

Right to health services

Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment. The Direction does not limit or place any impediments on a person's right to receive health services.

Protecting the health and safety of the public is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom. The purpose of the limitations on human rights is to protect the Queensland public from serious risks to health and safety, including the potential for widespread loss of life that could occur if public health officials are unable to coordinate an effective public health response to the COVID-19 pandemic.

Based on the best available evidence and the experience of public health officials and populations in other countries, there is a risk that COVID-19 may spread rapidly throughout Queensland and not remain contained unless extraordinary measures are put in place for a

period of time. This presents a clear and present danger to the health and wellbeing of Queenslanders, particularly vulnerable persons including the elderly and immunocompromised. The uncontained spread of COVID-19 also has the potential to cause severe adverse economic and social consequences.

Against these indications, there is a need for the Direction to implement the various response measures, such as physical distancing measures, and requiring face masks to be worn to prevent COVID-19 spreading throughout the community and to mitigate potential adverse economic and social consequences associated with the disruption that will inevitably follow.

Justification

The purpose of the public health direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by restricting movement in public places in order to contain and prevent the spread of the virus.

Requiring people to wear a mask in most indoor and outdoor settings is to confine potential outbreaks. The Direction is in effect for a temporary period, and the face mask restrictions do not apply in particular environments. For example, a person can remove their mask when in an indoor space that is a residence, temporary accommodation premises or alone in a closed office. Face masks are also not required to be worn when a person is outdoors alone, or outdoors and only with members of their household. Ultimately, the purpose of wearing masks is to limit the opportunity for transmission of COVID-19 from high risk environments to the Queensland community.

To the extent that the Direction limits the right to freedom of movement, this is considered justified to minimise the spread of COVID-19 to other members of the community.

To the extent the Direction limits the right to equality and non-discrimination, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask such as to communicate with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication. A person is not required to wear a mask in high risk environments if they have a physical or mental health illness or condition, or disability, which makes wearing a face mask unsuitable.

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as, through private prayer.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community. Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (Poiss v Austria (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. This internal limitation may apply where the Direction authorises restrictions on movement pursuant to a lawful direction based on a reasonable belief that the restriction is necessary to assist in containing or responding to the spread of COVID-19 within the community. 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 or from seeking alternative employment. Gatherings in private residences and non-residences are also permitted for up to 10 people. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements 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 other ways. For example, through private gatherings of up to 10 people, private prayer, online tools, or meetings at places of worship, with no more than one person per 4 square metres indoors. The limitations on religious and cultural rights are considered justified.

Overall, the limitations on human rights are justified, as the Direction is only in force for a temporary period and will help contain the spread of COVID-19, thereby protecting the health and safety of the community. Given the particularly infectious Delta strain and the rapid progression of the current outbreak, any limitations are considered justified to prevent the spread of COVID-19 and protect the right to life of the community. The Chief Health Officer, Deputy Chief Health Officer or delegate may also grant a person an exemption from the requirements under the Direction due to extreme exceptional circumstances. However, restricted businesses are not able to request an exemption under the Direction.

The Direction eases restrictions after the eight-day lockdown period following a review to ensure the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act.

From a public health perspective, the approach is to gradually increase the number of places where people may go, and the number of people that might gather. This reduces the likelihood of sudden outbreaks of the virus across the State, therefore reducing the risk to individuals and ensuring that the health system can mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts.

The limitation of human rights is necessary to ensure that public health officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19, including to the more transmissible variants, and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life sustaining treatment.

If these measures are not implemented and an outbreak of COVID-19 occurs in Queensland, demand for emergency and life-sustaining treatment could quickly exceed capacity and overwhelm the State's public health infrastructure. In addition to loss of life and serious

adverse health impacts, this could potentially cause widespread economic disruption, social panic and civil unrest, further jeopardising the safety and wellbeing of the community.

The purpose of the Direction cannot be achieved through any other reasonably available and less restrictive means. Extensive campaigns by the Queensland and Commonwealth Governments are in place to educate members of the public about the risks of COVID-19 and how to minimise their potential exposure to infection. Experience abroad underscores that voluntary containment measures are inadequate to arrest the spread of COVID-19, particularly of the more contagious Delta variant of COVID-19, and that governments must proactively pursue more prescriptive approaches to respond effectively to this unprecedented public health emergency.

Queensland Health will continue to monitor and assess the situation to determine whether further restrictions are required or if restrictions may be eased. Accordingly, the Direction will only be in force for the time necessary the Government and Queensland Health to further assess the current situation. The limitations under the Direction is reasonable as stricter restrictions are applied only to the affected 11 local government areas. With the exception of Cairns and Yarrabah local government areas, the rest of Queensland is not subject to the stricter restrictions and can operate under the current level of eased requirements.

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.

Failure to impose these measures may result in Queensland's health infrastructure becoming overwhelmed, with the result that decisions will need to be made as to who receives lifesaving treatment and otherwise preventable deaths occurring. This is not an abstract threat; there are several countries which have been unable to mount an effective public health response that are now experiencing deaths at a higher rate than in countries that have implemented stronger containment and social distancing measures.

Although the Direction may potentially limit many rights, in many instances the limitations are minor in nature and frequently consistent with internal limitations in the Human Rights Act. It should also be noted that many Queenslanders are already taking voluntary precautions, to limit their potential exposure to COVID-19 and avoid spreading this disease to family members, friends and the broader community. Many individuals are already undertaking these measures voluntarily, which suggests they are unlikely to impose an unjustified burden on human rights.

Several safeguards exist in the Public Health Act and the Direction to ensure that any limitations on human rights are no more onerous than is required to slow the spread of COVID-19. On balance, any limitations on human rights are reasonable and justified to ensure the preservation of life and protection of the community from the worse impacts of a pandemic.

Public Health Directions – Human Rights Assessment

Restrictions for Impacted Areas (No. 13) (SEQ, Cairns and Yarrabah eased restrictions Stage 1) Direction

Title	<i>Restrictions for Impacted Areas (No. 13) (SEQ, Cairns and Yarrabah eased restrictions Stage 1) Direction</i>
Date effective	11 August 2021

Background

The *Restrictions for Impacted Areas (No. 13) (SEQ, Cairns and Yarrabah eased restrictions Stage 1) Direction* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis is prepared to consider the impacts of the Direction on the human rights identified in the *Human Rights Act 2019* and 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.

Purpose of the Direction

The purpose of the *Restrictions for Impacted Areas (No. 13) (SEQ, Cairns and Yarrabah eased restrictions Stage 1) Direction* (Direction) is to revoke the 'lockdown' for the Cairns and Yarrabah local government areas and place them under the same restrictions as the 11 impacted areas in South-East Queensland. The Direction will also slow the spread of COVID-19 by restricting the movement and gathering of people, implementing social distancing measures, mandating the wearing of masks in certain circumstances and requiring restricted businesses to operate with certain limits such as occupant density.

In preparing the Direction, risks to the health and safety of Queenslanders have been identified and the current epidemiological situation, both in Queensland and internationally, 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.

This Direction removes the lockdown (i.e. people can leave their home for any reason) for the Cairns and Yarrabah local government areas, but extends or eases the following restrictions in those areas from 4pm on 11 August 2021:

- only 10 people are permitted to gather in a private residence or public spaces;
- people, including high school students, are required to wear masks outside of their homes in both indoor and outdoor spaces including in indoor workplaces (unless alone in a closed office);
- indoor spaces are subject to an occupant density of:
 - for venues over 200 square metres - 1 person per 4 square metres for areas used by patrons or 50% of a venue's capacity where there is ticketed and allocated seating

- for venues under 200 square metres - 1 person 2 square metres for areas used by patrons up to a maximum of 50 people;
- outdoor venues or spaces are subject to an occupant density of 1 person per 2 square metres or 50% of a venue's capacity where there is ticketed and allocated seating (whichever is greater);
- venues that serve food and drinks must operate for seated patrons only;
- restricted businesses, activities or undertakings in impacted areas must operate in accordance with the COVID Safe Checklist – Impacted Areas or the COVID Safe Event Checklist – Impacted Areas;
- wedding ceremonies and funerals are limited to a maximum attendance of 100 people;
- dancing is only permitted:
 - at a wedding for a maximum of 20 people
 - at a dance studio or dance class, or
 - by performers as part of a performance.

Human rights engaged

The human rights engaged by the Direction are:

- Right to recognition and equity before the law (section 15)
- Right to life (section 16)
- 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)
- Privacy (section 25)
- Protection of families and children (section 26)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to education (section 36)
- Right to health services (section 37)

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 placing restrictions on how people may gather, move and interact. It also restricts how certain businesses, activities and undertakings may operate. By requiring people to wear masks and restricting movements and gathering in high risk environments in the 13 local government areas, 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.

Right to recognition and equality under the law

Every person has the right to recognition as a person before the law and the right to enjoy their human rights without discrimination. Every person is equal before the law and is entitled to equal protection of the law without discrimination. Every person is entitled to equal and effective protection against discrimination. The requirements to wear face masks in high risk environments discriminates against people with particular medical conditions, history of

trauma or a disability for whom wearing a face mask is unsuitable. For example, masks may make it harder for people with hearing loss to lip read and communicate, and there is a requirement for teachers of hearing impaired children to wear a protective face shield rather than no mask. The definition of 'discrimination' under the Human Rights Act is inclusive. Discrimination may include discrimination on the basis of certain attributes such as disability or race, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296.

Freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. The right means that a person cannot be arbitrarily forced to remain in, or move to or from, a place. The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers, like requiring permission before entering a public park or participating in a public demonstration in a public place. The right may be engaged where a public entity actively curtails a person's freedom of movement.

Freedom of thought, conscience, religion and belief; Freedom of expression; Peaceful assembly and freedom of association; Cultural rights – generally; Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

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, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is an absolute right, however limits on how a person manifests their belief can be justified.

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, if it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. While the concept of freedom of expression is broad, the way a person can exercise it can be limited. Restricting a person's contact with others limits the ways in which they can express their opinions and ideas. The Direction limits this right by restricting how a person may express themselves orally or through the garments they wear by requiring them to wear a certain type of face mask in high risks environments in Queensland. A person may still make or purchase a cloth mask of their choosing and is permitted to remove the mask in certain circumstances such as when making announcements, teaching or live broadcasting.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both the participants and organisers of peaceful assemblies. Restricting a person's movements and banning gatherings of more than 10 persons limits the ability for a person to peacefully assemble with others for a common purpose. Density limits on gatherings for religious ceremonies may limit religious practices, however the holding and expression of religious beliefs in other ways are not limited by the Direction. Weddings and funerals, which may be an expression of religious and cultural beliefs, may be held provided restrictions on numbers (20) and face masks are met. This supports the right to peaceful assembly and expression of beliefs while protecting community health and safety.

Cultural rights protect the rights of all people with particular cultural, religious, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. Limiting gatherings and reduced occupant density in places of worship may limit a person's ability to engage with others who share their cultural or religious background.

In addition to the general cultural rights, the Human Rights Act recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first peoples. They have the right to enjoy, maintain, control, protect and develop their culture, language and kinship ties with other members of their community. The right also protects Aboriginal peoples and Torres Strait Islander people's right to maintain and strengthen their distinct spiritual relationship with the land, territories, waters, coastal seas and other resources, and to conserve and protect the environment. Directions to limit gatherings, may limit the ability of Aboriginal peoples and Torres Strait Islander peoples to engage with community and their traditionally owned or otherwise occupied lands and waters.

Right to privacy

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 wear a face mask or potentially be fined. However, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask in certain situations such as to eat, drink, consume medicine or receive medical treatment. The right also encompasses an individual's rights to establish and develop meaningful social relations (*Krake 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 may limit this right as it may interfere with people's right to make and maintain social connections at homes, such as at parties and celebrations.

Right to protection of families and children

Queensland recognises families as the fundamental unit of society entitled to protection. This right 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. Internal limitations of lawfulness and arbitrariness apply to the right of the family.

Every child has the right, without discrimination, to the protection that is in their best interests as a child. The right recognises that special measures to protect children are necessary given their vulnerability due to age. The best interests of the child should be considered in all actions affecting a child, aimed at ensuring both the full and effective enjoyment of all the child's human rights and the holistic development of the child. Best interests depend on the individual circumstances of the child. The requirements contained in the Direction also has the potential to impact children through, for example, temporarily reducing their access to certain facilities

or events. The Direction also may limit this right as it places limits on family members, children and other personal visitors from gathering in private places by restricting gatherings to no more than 10 people.

Right to liberty and security of person

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.

This right is subject to a number of internal limitations and qualifications. Relevantly, the detention must not be arbitrary in the sense that it must not be capricious, unpredictable or unjust or otherwise disproportionate to the legitimate aim that is sought.

The right to liberty and security also incorporates a number of procedural elements, including that a person who is detained must be informed at the time of detention of the reason for detention and that a detained person is able to apply to a court for a declaration or order regarding the lawfulness of the person's detention. These procedural aspects of the right will continue to be limited. The requirements for a person to be given notice of the direction or order for detention and the reason for the detention will be clear in the notice

Right to education

The right of every child to access primary and secondary education appropriate to their needs is protected in Queensland. The right to education also says that every person has the right to have access, based on their abilities, to equally accessible further vocational education and training. The right to education is intended to be interpreted in line with the *Education (General Provisions) Act 2006* and to provide rights in relation to aspects of Queensland's responsibilities for education service delivery.

Internationally, this right has been interpreted as requiring that education be accessible to all individuals without discrimination.

Right to health services

Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment. The Direction does not limit or place any impediments on a person's right to receive health services.

Protecting the health and safety of the public is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom. The purpose of the limitations on human rights is to protect the Queensland public from serious risks to health and safety, including the potential for widespread loss of life that could occur if public health officials are unable to coordinate an effective public health response to the COVID-19 pandemic.

Based on the best available evidence and the experience of public health officials and populations in other countries, there is a risk that COVID-19 may spread rapidly throughout Queensland and not remain contained unless extraordinary measures are put in place for a period of time. This presents a clear and present danger to the health and wellbeing of Queenslanders, particularly vulnerable persons including the elderly and

immunocompromised. The uncontained spread of COVID-19 also has the potential to cause severe adverse economic and social consequences.

Against these indications, there is a need for the Direction to implement the various response measures, such as physical distancing measures, and requiring face masks to be worn to prevent COVID-19 spreading throughout the community and to mitigate potential adverse economic and social consequences associated with the disruption that will inevitably follow.

Justification

The purpose of the public health direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by restricting movement in public places in order to contain and prevent the spread of the virus.

Requiring people to wear a mask in most indoor and outdoor settings is to confine potential outbreaks. The Direction is in effect for a temporary period, and the face mask restrictions do not apply in particular environments. For example, a person can remove their mask when in an indoor space that is a residence, temporary accommodation premises or alone in a closed office. Face masks are also not required to be worn when a person is outdoors alone, or outdoors and only with members of their household. Ultimately, the purpose of wearing masks is to limit the opportunity for transmission of COVID-19 from high risk environments to the Queensland community.

To the extent that the Direction limits the right to freedom of movement, this is considered justified to minimise the spread of COVID-19 to other members of the community.

To the extent the Direction limits the right to equality and non-discrimination, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask such as to communicate with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication. A person is not required to wear a mask in high risk environments if they have a physical or mental health illness or condition, or disability, which makes wearing a face mask unsuitable.

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as, through private prayer.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community. Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. This internal limitation may apply where the Direction authorises restrictions on movement pursuant to a lawful direction based on a

reasonable belief that the restriction is necessary to assist in containing or responding to the spread of COVID-19 within the community. 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 or from seeking alternative employment. Gatherings in private residences and non-residences are also permitted for up to 10 people. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements 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 other ways. For example, through private gatherings of up to 10 people, private prayer, online tools, or meetings at places of worship, with no more than one person per 4 square metres indoors. Live streaming of a service or ceremony may also be conducted with the maximum number of people that may be present at the place of worship venue in accordance with occupant density requirements. The limitations on religious and cultural rights are considered justified.

Overall, the limitations on human rights are justified, as the Direction is only in force for a temporary period and will help contain the spread of COVID-19, thereby protecting the health and safety of the community. Given the particularly infectious Delta strain and the rapid progression of the current outbreak, any limitations are considered justified to prevent the spread of COVID-19 and protect the right to life of the community. The Chief Health Officer, Deputy Chief Health Officer or delegate may also grant a person an exemption from the requirements under the Direction due to extreme exceptional circumstances. However, restricted businesses are not able to request an exemption under the Direction.

The Direction imposes the restrictions for a limited amount of time and may be revoked following a review to ensure the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act.

From a public health perspective, the approach is to gradually increase the number of places where people may go, and the number of people that might gather. This reduces the likelihood of sudden outbreaks of the virus across the State, therefore reducing the risk to individuals and ensuring that the health system can mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts.

The limitation of human rights is necessary to ensure that public health officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19, including to the more transmissible variants, and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life sustaining treatment.

If these measures are not implemented and an outbreak of COVID-19 occurs in Queensland, demand for emergency and life-sustaining treatment could quickly exceed capacity and overwhelm the State's public health infrastructure. In addition to loss of life and serious adverse health impacts, this could potentially cause widespread economic disruption, social panic and civil unrest, further jeopardising the safety and wellbeing of the community.

The purpose of the Direction cannot be achieved through any other reasonably available and less restrictive means. Extensive campaigns by the Queensland and Commonwealth Governments are in place to educate members of the public about the risks of COVID-19 and how to minimise their potential exposure to infection. Experience abroad underscores that voluntary containment measures are inadequate to arrest the spread of COVID-19, particularly of the more contagious Delta variant of COVID-19, and that governments must proactively pursue more prescriptive approaches to respond effectively to this unprecedented public health emergency.

Queensland Health will continue to monitor and assess the situation to determine whether further restrictions are required or if restrictions may be eased. Accordingly, the Direction will only be in force for the time necessary for the Queensland Government and Queensland Health to further assess the current situation. The limitations under the Direction is reasonable as stricter restrictions are applied only to the affected 13 local government areas. The rest of Queensland is not subject to the stricter restrictions and can operate under the current level of eased requirements.

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.

Failure to impose these measures may result in Queensland's health infrastructure becoming overwhelmed, with the result that decisions will need to be made as to who receives lifesaving treatment and otherwise preventable deaths occurring. This is not an abstract threat; there are several countries which have been unable to mount an effective public health response that are now experiencing deaths at a higher rate than in countries that have implemented stronger containment and social distancing measures.

Although the Direction may potentially limit many rights, in many instances the limitations are minor in nature and frequently consistent with internal limitations in the Human Rights Act. It should also be noted that many Queenslanders are already taking voluntary precautions, to limit their potential exposure to COVID-19 and avoid spreading this disease to family members, friends and the broader community. Many individuals are already undertaking these measures voluntarily, which suggests they are unlikely to impose an unjustified burden on human rights.

Several safeguards exist in the Public Health Act and the Direction to ensure that any limitations on human rights are no more onerous than is required to slow the spread of COVID-19. On balance, any limitations on human rights are reasonable and justified to ensure the preservation of life and protection of the community from the worse impacts of a pandemic.

Public Health Directions – Human Rights Assessment

Restrictions for Impacted Areas (No. 14) (SEQ eased restrictions Stage 2) Direction

Title	<i>Restrictions for Impacted Areas (No. 14) (SEQ eased restrictions Stage 2) Direction</i>
Date effective	20 August 2021

Background

The *Restrictions for Impacted Areas (No. 14) (SEQ eased restrictions Stage 2) Direction* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis is prepared to consider the impacts of the Direction on the human rights identified in the *Human Rights Act 2019* and 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.

Purpose of the Direction

The purpose of the *Restrictions for Impacted Areas (No. 14) (SEQ eased restrictions Stage 2) Direction* (Direction) is to slow the spread of COVID-19 by restricting the movement and gathering of people, implementing social distancing measures, mandating the wearing of masks in certain circumstances and requiring restricted businesses to operate with certain limits such as occupant density.

In preparing the Direction, risks to the health and safety of Queenslanders have been identified and the current epidemiological situation, both in Queensland and internationally, 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.

This Direction extends and eases the following restrictions for the 11 Local Government Areas in South East Queensland from 4pm on Friday 20 August 2021:

- 30 people are now permitted to gather in a private residence or public spaces;
- people, including high school students, are required to wear masks outside of their homes in indoor and outdoor spaces. A person in an indoor workplace or an outdoor space is not required to wear a mask if they can physically distance ;
- indoor spaces are subject to an occupant density of:
 - for venues over 200 square metres - 1 person per 4 square metres for areas used by patrons or they can now have 75% of a venue's capacity where there is ticketed and allocated seating
 - for venues under 200 square metres - 1 person 2 square metres for areas used by patrons up to a maximum of 50 people;
- outdoor venues or spaces are subject to an occupant density of 1 person per 2 square metres or they can now have 75% of a venue's capacity where there is ticketed and allocated seating (whichever is greater);

- venues that serve food and drinks must operate for seated patrons only;
- restricted businesses, activities or undertakings in impacted areas must operate in accordance with the COVID Safe Checklist – Impacted Areas or the COVID Safe Event Checklist – Impacted Areas;
- wedding ceremonies and funerals can now have a maximum attendance of 100 people irrespective of occupant density;
- dancing is only permitted:
 - at a wedding for a maximum of 20 people
 - at a dance studio or dance class, or
 - by performers as part of a performance.

Human rights engaged

The human rights engaged by the Direction are:

- Right to recognition and equity before the law (section 15)
- Right to life (section 16)
- 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)
- Privacy (section 25)
- Protection of families and children (section 26)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to education (section 36)
- Right to health services (section 37)

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 placing restrictions on how people may gather, move and interact. It also restricts how certain businesses, activities and undertakings may operate. By requiring people to wear masks and restricting movements and gathering in high risk environments in the 11 local government areas, 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.

Right to recognition and equality under the law

Every person has the right to recognition as a person before the law and the right to enjoy their human rights without discrimination. Every person is equal before the law and is entitled to equal protection of the law without discrimination. Every person is entitled to equal and effective protection against discrimination. The requirements to wear face masks in high risk environments discriminates against people with particular medical conditions, history of trauma or a disability for whom wearing a face mask is unsuitable. For example, masks may make it harder for people with hearing loss to lip read and communicate, and there is a

requirement for teachers of hearing impaired children to wear a protective face shield rather than no mask. The definition of 'discrimination' under the Human Rights Act is inclusive. Discrimination may include discrimination on the basis of certain attributes such as disability or race, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296.

Freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. The right means that a person cannot be arbitrarily forced to remain in, or move to or from, a place. The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers, like requiring permission before entering a public park or participating in a public demonstration in a public place. The right may be engaged where a public entity actively curtails a person's freedom of movement.

Freedom of thought, conscience, religion and belief; Freedom of expression; Peaceful assembly and freedom of association; Cultural rights – generally; Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

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, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is an absolute right, however limits on how a person manifests their belief can be justified.

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, if it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. While the concept of freedom of expression is broad, the way a person can exercise it can be limited. Restricting a person's contact with others limits the ways in which they can express their opinions and ideas. The Direction limits this right by restricting how a person may express themselves orally or through the garments they wear by requiring them to wear a certain type of face mask in high risks environments in Queensland. A person may still make or purchase a cloth mask of their choosing and is permitted to remove the mask in certain circumstances such as when making announcements, teaching or live broadcasting.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both the participants and organisers of peaceful assemblies. Restricting a person's movements and banning gatherings of more than 30 persons limits the ability for a person to peacefully assemble with others for a common purpose. Density limits on gatherings for religious ceremonies may limit religious practices, however the holding and expression of religious beliefs in other ways are not limited by the Direction. Weddings and funerals, which may be an expression of religious and cultural beliefs, may be held provided restrictions on numbers (100) and face masks are met. This supports the right to peaceful assembly and expression of beliefs while protecting community health and safety.

Cultural rights protect the rights of all people with particular cultural, religious, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and

activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. Limiting gatherings and reduced occupant density in places of worship may limit a person's ability to engage with others who share their cultural or religious background.

In addition to the general cultural rights, the Human Rights Act recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first peoples. They have the right to enjoy, maintain, control, protect and develop their culture, language and kinship ties with other members of their community. The right also protects Aboriginal peoples and Torres Strait Islander people's right to maintain and strengthen their distinct spiritual relationship with the land, territories, waters, coastal seas and other resources, and to conserve and protect the environment. Directions to limit gatherings, may limit the ability of Aboriginal peoples and Torres Strait Islander peoples to engage with community and their traditionally owned or otherwise occupied lands and waters.

Right to privacy

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 wear a face mask or potentially be fined. However, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask in certain situations such as to eat, drink, consume medicine or receive medical treatment. The right also encompasses an individual's rights to establish and develop meaningful social relations (*Krake 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 may limit this right as it may interfere with people's right to make and maintain social connections at homes, such as at parties and celebrations.

Right to protection of families and children

Queensland recognises families as the fundamental unit of society entitled to protection. This right 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. Internal limitations of lawfulness and arbitrariness apply to the right of the family.

Every child has the right, without discrimination, to the protection that is in their best interests as a child. The right recognises that special measures to protect children are necessary given their vulnerability due to age. The best interests of the child should be considered in all actions affecting a child, aimed at ensuring both the full and effective enjoyment of all the child's human rights and the holistic development of the child. Best interests depend on the individual circumstances of the child. The requirements contained in the Direction also has the potential to impact children through, for example, temporarily reducing their access to certain facilities or events. The Direction also may limit this right as it places limits on family members, children and other personal visitors from gathering in private places by restricting gatherings to no more than 30 people.

Right to liberty and security of person

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.

This right is subject to a number of internal limitations and qualifications. Relevantly, the detention must not be arbitrary in the sense that it must not be capricious, unpredictable or unjust or otherwise disproportionate to the legitimate aim that is sought.

The right to liberty and security also incorporates a number of procedural elements, including that a person who is detained must be informed at the time of detention of the reason for detention and that a detained person is able to apply to a court for a declaration or order regarding the lawfulness of the person's detention. These procedural aspects of the right will continue to be limited. The requirements for a person to be given notice of the direction or order for detention and the reason for the detention will be clear in the notice

Right to education

The right of every child to access primary and secondary education appropriate to their needs is protected in Queensland. The right to education also says that every person has the right to have access, based on their abilities, to equally accessible further vocational education and training. The right to education is intended to be interpreted in line with the *Education (General Provisions) Act 2006* and to provide rights in relation to aspects of Queensland's responsibilities for education service delivery.

Internationally, this right has been interpreted as requiring that education be accessible to all individuals without discrimination.

Right to health services

Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment. The Direction does not limit or place any impediments on a person's right to receive health services.

Protecting the health and safety of the public is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom. The purpose of the limitations on human rights is to protect the Queensland public from serious risks to health and safety, including the potential for widespread loss of life that could occur if public health officials are unable to coordinate an effective public health response to the COVID-19 pandemic.

Based on the best available evidence and the experience of public health officials and populations in other countries, there is a risk that COVID-19 may spread rapidly throughout Queensland and not remain contained unless extraordinary measures are put in place for a period of time. This presents a clear and present danger to the health and wellbeing of Queenslanders, particularly vulnerable persons including the elderly and immunocompromised. The uncontained spread of COVID-19 also has the potential to cause severe adverse economic and social consequences.

Against these indications, there is a need for the Direction to implement the various response measures, such as physical distancing measures, and requiring face masks to be worn to

prevent COVID-19 spreading throughout the community and to mitigate potential adverse economic and social consequences associated with the disruption that will inevitably follow.

Justification

The purpose of the public health direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by restricting movement in public places in order to contain and prevent the spread of the virus.

Requiring people to wear a mask in most indoor and outdoor settings is to confine potential outbreaks. The Direction is in effect for a temporary period, and the face mask restrictions do not apply in particular environments. For example, a person can remove their mask when in an indoor space that is a residence, temporary accommodation premises or can physically distance in their workplace. Face masks are also not required to be worn when a person is outdoors alone, or outdoors and only with members of their household. Ultimately, the purpose of wearing masks is to limit the opportunity for transmission of COVID-19 from high risk environments to the Queensland community.

To the extent that the Direction limits the right to freedom of movement, this is considered justified to minimise the spread of COVID-19 to other members of the community.

To the extent the Direction limits the right to equality and non-discrimination, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask such as to communicate with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication. A person is not required to wear a mask in high risk environments if they have a physical or mental health illness or condition, or disability, which makes wearing a face mask unsuitable.

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as, through private prayer.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community. Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. This internal limitation may apply where the Direction authorises restrictions on movement pursuant to a lawful direction based on a reasonable belief that the restriction is necessary to assist in containing or responding to the spread of COVID-19 within the community. 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 or from seeking

alternative employment. Gatherings in private residences and non-residences are also permitted for up to 30 people. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements 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 other ways. For example, through private gatherings of up to 30 people, private prayer, online tools, or meetings at places of worship, with no more than one person per 4 square metres indoors. Live streaming of a service or ceremony may also be conducted with the maximum number of people that may be present at the place of worship venue in accordance with occupant density requirements. The limitations on religious and cultural rights are considered justified.

Overall, the limitations on human rights are justified, as the Direction is only in force for a temporary period and will help contain the spread of COVID-19, thereby protecting the health and safety of the community. Given the particularly infectious Delta strain and the rapid progression of the current outbreak, any limitations are considered justified to prevent the spread of COVID-19 and protect the right to life of the community. The Chief Health Officer, Deputy Chief Health Officer or delegate may also grant a person an exemption from the requirements under the Direction due to extreme exceptional circumstances. However, restricted businesses are not able to request an exemption under the Direction.

The Direction imposes the restrictions for a limited amount of time and may be revoked following a review to ensure the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act.

From a public health perspective, the approach is to gradually increase the number of places where people may go, and the number of people that might gather. This reduces the likelihood of sudden outbreaks of the virus across the State, therefore reducing the risk to individuals and ensuring that the health system can mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts.

The limitation of human rights is necessary to ensure that public health officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19, including to the more transmissible variants, and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life sustaining treatment.

If these measures are not implemented and an outbreak of COVID-19 occurs in Queensland, demand for emergency and life-sustaining treatment could quickly exceed capacity and overwhelm the State's public health infrastructure. In addition to loss of life and serious adverse health impacts, this could potentially cause widespread economic disruption, social panic and civil unrest, further jeopardising the safety and wellbeing of the community.

The purpose of the Direction cannot be achieved through any other reasonably available and less restrictive means. Extensive campaigns by the Queensland and Commonwealth Governments are in place to educate members of the public about the risks of COVID-19 and how to minimise their potential exposure to infection. Experience abroad underscores that

voluntary containment measures are inadequate to arrest the spread of COVID-19, particularly of the more contagious Delta variant of COVID-19, and that governments must proactively pursue more prescriptive approaches to respond effectively to this unprecedented public health emergency.

Queensland Health will continue to monitor and assess the situation to determine whether further restrictions are required or if restrictions may be eased. Accordingly, the Direction will only be in force for the time necessary for the Queensland Government and Queensland Health to further assess the current situation. The limitations under the Direction is reasonable as stricter restrictions are applied only to the affected 11 local government areas in South East Queensland. The rest of Queensland is not subject to the stricter restrictions and can operate under the current level of eased requirements.

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.

Failure to impose these measures may result in Queensland's health infrastructure becoming overwhelmed, with the result that decisions will need to be made as to who receives lifesaving treatment and otherwise preventable deaths occurring. This is not an abstract threat; there are several countries which have been unable to mount an effective public health response that are now experiencing deaths at a higher rate than in countries that have implemented stronger containment and social distancing measures.

Although the Direction may potentially limit many rights, in many instances the limitations are minor in nature and frequently consistent with internal limitations in the Human Rights Act. It should also be noted that many Queenslanders are already taking voluntary precautions, to limit their potential exposure to COVID-19 and avoid spreading this disease to family members, friends and the broader community. Many individuals are already undertaking these measures voluntarily, which suggests they are unlikely to impose an unjustified burden on human rights.

Several safeguards exist in the Public Health Act and the Direction to ensure that any limitations on human rights are no more onerous than is required to slow the spread of COVID-19. On balance, any limitations on human rights are reasonable and justified to ensure the preservation of life and protection of the community from the worse impacts of a pandemic.

Public Health Directions – Human Rights Assessment

Restrictions for Impacted Areas (No. 15) (SEQ eased restrictions Stage 3) Direction

Title	<i>Restrictions for Impacted Areas (No. 15) (SEQ eased restrictions Stage 3) Direction</i>
Date effective	27 August 2021

Background

The *Restrictions for Impacted Areas (No. 15) (SEQ eased restrictions Stage 3) Direction* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis is prepared to consider the impacts of the Direction on the human rights identified in the *Human Rights Act 2019* and 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.

Purpose of the Direction

The purpose of the *Restrictions for Impacted Areas (No. 15) (SEQ eased restrictions Stage 3) Direction* (Direction) is to slow the spread of COVID-19 by mandating the wearing of masks in certain circumstances.

In preparing the Direction, risks to the health and safety of Queenslanders have been identified and the current epidemiological situation, both in Queensland and internationally, 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.

This Direction mandates that people, including high school students, are required to wear masks outside of their homes in indoor and outdoor spaces from 4pm on Friday 27 August 2021.

Human rights engaged

The human rights engaged by the Direction are:

- Right to recognition and equity before the law (section 15)
- Right to life (section 16)
- Freedom of thought, conscience, religion and belief (section 20)
- Freedom of expression (section 21)
- Privacy (section 25)
- Protection of families and children (section 26)
- Right to education (section 36)
- Right to health services (section 37)

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 requiring people to wear masks in the 11 local government areas. 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.

Right to recognition and equality under the law

Every person has the right to recognition as a person before the law and the right to enjoy their human rights without discrimination. Every person is equal before the law and is entitled to equal protection of the law without discrimination. Every person is entitled to equal and effective protection against discrimination. The requirements to wear face masks in high risk environments such as indoor spaces and public transport, discriminates against people with particular medical conditions, history of trauma or a disability for whom wearing a face mask is unsuitable. For example, masks may make it harder for people with hearing loss to lip read and communicate, and there is a requirement for teachers of hearing impaired children to wear a protective face shield rather than no mask. The definition of 'discrimination' under the Human Rights Act is inclusive. Discrimination may include discrimination on the basis of certain attributes such as disability or race, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296.

Freedom of thought, conscience, religion and belief; Freedom of expression

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, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is an absolute right, however limits on how a person manifests their belief can be justified.

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, if it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. While the concept of freedom of expression is broad, the way a person can exercise it can be limited. Restricting a person's contact with others limits the ways in which they can express their opinions and ideas. The Direction limits this right by restricting how a person may express themselves orally or through the garments they wear by requiring them to wear a certain type of face mask in high risks environments in Queensland. A person may still make or purchase a cloth mask of their choosing and is permitted to remove the mask in certain circumstances such as when making announcements, teaching or live broadcasting.

Right to privacy

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 wear a face mask or potentially be fined. However, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask in certain situations such as to eat, drink, consume medicine or receive medical treatment.

Right to protection of families and children

Queensland recognises families as the fundamental unit of society entitled to protection. This right 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. Internal limitations of lawfulness and arbitrariness apply to the right of the family.

Every child has the right, without discrimination, to the protection that is in their best interests as a child. The right recognises that special measures to protect children are necessary given their vulnerability due to age. The best interests of the child should be considered in all actions affecting a child, aimed at ensuring both the full and effective enjoyment of all the child’s human rights and the holistic development of the child. Best interests depend on the individual circumstances of the child. The requirements contained in the Direction also has the potential to impact children through, for example, requiring them to wear a mask if they are over the age of 12 years or in high school.

Right to education

The right of every child to access primary and secondary education appropriate to their needs is protected in Queensland. The right to education also says that every person has the right to have access, based on their abilities, to equally accessible further vocational education and training. The right to education is intended to be interpreted in line with the *Education (General Provisions) Act 2006* and to provide rights in relation to aspects of Queensland’s responsibilities for education service delivery. Internationally, this right has been interpreted as requiring that education be accessible to all individuals without discrimination.

The requirement to wear a mask by children over the age of 12 or if they are in high school and by teachers may limit a child’s ability to receive an education appropriate to their needs if they have special requirements such as hearing impairments. However, a child’s right to education is balanced by allowing teachers to use face shields for hearing impaired students.

Right to health services

Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment. The Direction does not limit or place any impediments on a person’s right to receive health services.

Protecting the health and safety of the public is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom. The purpose of the limitations on human rights is to protect the Queensland public from serious risks to health and safety, including the potential for widespread loss of life that could occur if public health officials are unable to coordinate an effective public health response to the COVID-19 pandemic.

Based on the best available evidence and the experience of public health officials and populations in other countries, there is a risk that COVID-19 may spread rapidly throughout Queensland and not remain contained unless extraordinary measures are put in place for a period of time. This presents a clear and present danger to the health and wellbeing of Queenslanders, particularly vulnerable persons including the elderly and immunocompromised. The uncontained spread of COVID-19 also has the potential to cause severe adverse economic and social consequences.

Against these indications, there is a need for the Direction to implement the requirement to wear face masks to prevent COVID-19 spreading throughout the community and to mitigate potential adverse economic and social consequences associated with the disruption that will inevitably follow.

Justification

The purpose of the public health direction is to reduce the spread of the COVID-19 within the broader community.

The Direction requires people to wear a mask in most indoor and outdoor settings is to confine potential outbreaks. The Direction is in effect for a temporary period, and the face mask restrictions do not apply in particular environments. For example, a person can remove their mask when in an indoor space that is a residence, temporary accommodation premises or can physically distance in their workplace. Face masks are also not required to be worn when a person is outdoors alone, or outdoors and only with members of their household. Ultimately, the purpose of wearing masks is to limit the opportunity for transmission of COVID-19 from high risk environments to the Queensland community.

To the extent the Direction limits the right to equality and non-discrimination, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask such as to communicate with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication. A person is not required to wear a mask in high risk environments if they have a physical or mental health illness or condition, or disability, which makes wearing a face mask unsuitable.

Overall, the limitations on human rights are justified, as the Direction is only in force for a temporary period and will help contain the spread of COVID-19, thereby protecting the health and safety of the community. Given the particularly infectious Delta strain and the rapid progression of the current outbreak, any limitations are considered justified to prevent the spread of COVID-19 and protect the right to life of the community. The Chief Health Officer, Deputy Chief Health Officer or delegate may also grant a person an exemption from the requirements under the Direction due to extreme exceptional circumstances. However, restricted businesses are not able to request an exemption under the Direction.

The Direction imposes the restrictions for a limited amount of time and may be revoked following a review to ensure the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act.

From a public health perspective, the approach is to gradually limit the circumstances in which people are required to wear masks which reduces the likelihood of sudden outbreaks of the virus across the State, therefore reducing the risk to individuals and ensuring that the health

system can mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts.

The limitation of human rights is necessary to ensure that public health officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19, including to the more transmissible variants, and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life sustaining treatment.

If these measures are not implemented and an outbreak of COVID-19 occurs in Queensland, demand for emergency and life-sustaining treatment could quickly exceed capacity and overwhelm the State's public health infrastructure. In addition to loss of life and serious adverse health impacts, this could potentially cause widespread economic disruption, social panic and civil unrest, further jeopardising the safety and wellbeing of the community.

The purpose of the Direction cannot be achieved through any other reasonably available and less restrictive means. Extensive campaigns by the Queensland and Commonwealth Governments are in place to educate members of the public about the risks of COVID-19 and how to minimise their potential exposure to infection. Experience abroad underscores that voluntary containment measures are inadequate to arrest the spread of COVID-19, particularly of the more contagious Delta variant of COVID-19, and that governments must proactively pursue more prescriptive approaches to respond effectively to this unprecedented public health emergency.

Queensland Health will continue to monitor and assess the situation to determine whether further restrictions are required or if restrictions may be eased. Accordingly, the Direction will only be in force for the time necessary for the Queensland Government and Queensland Health to further assess the current situation. The limitations under the Direction is reasonable as mask wearing requirements are applied only to the affected 11 local government areas in South East Queensland. The rest of Queensland is not subject to this requirement.

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.

Failure to impose these measures may result in Queensland's health infrastructure becoming overwhelmed, with the result that decisions will need to be made as to who receives lifesaving treatment and otherwise preventable deaths occurring. This is not an abstract threat; there are several countries which have been unable to mount an effective public health response that are now experiencing deaths at a higher rate than in countries that have implemented stronger containment and social distancing measures.

Although the Direction may potentially limit many rights, in many instances the limitations are minor in nature and frequently consistent with internal limitations in the Human Rights Act. It should also be noted that many Queenslanders are already taking voluntary precautions, to limit their potential exposure to COVID-19 and avoid spreading this disease to family members, friends and the broader community. Many individuals are already wearing masks voluntarily, which suggests they are unlikely to impose an unjustified burden on human rights.

Several safeguards exist in the Public Health Act and the Direction to ensure that any limitations on human rights are no more onerous than is required to slow the spread of COVID-19. On balance, any limitations on human rights are reasonable and justified to ensure the preservation of life and protection of the community from the worse impacts of a pandemic.

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