Queensland Health

COVID-19 Public Health Rationale

Public Health and Social Measures Direction

2 December 2021

DRAFT NOT GOVERNMENT POLICY

Summary

Queensland's response to COVID-19 to date has successfully balanced the need to provide maximum protection to Queenslanders and the capacity of the Queensland health system according to the level of risk at any point in time, and minimising social and economic disruption.

Queensland's COVID-19 Vaccine Plan to Unite Families – A Plan for Queensland's Borders (the Vaccine Plan), announced on 18 October 2021, works within this same principle. There are now highly effective and safe vaccines for COVID-19 and as Queensland reaches target vaccination coverage thresholds across its eligible population, the risk to the community and the health system is significantly reduced.

In line with the Vaccine Plan targets, new home quarantine arrangements commenced on 15 November 2021 for fully vaccinated domestic arrivals entering Queensland from a COVID-19 hotspot. These new arrangements have provided greater certainty about when these travellers can enter Queensland and more flexible provisions on mandatory quarantine that minimise the social, emotional and financial impacts of border restrictions on individuals.[1]

The easing of border restrictions and quarantine requirements at the 80 per cent fully vaccinated milestone, expected to be reached by early December, will continue to build on these changes by removing quarantine requirements for all fully vaccinated travellers entering Queensland from COVID-19 hotspots and allowing fully vaccinated international travellers to undertake home quarantine. These new arrangements will provide greater certainty about when these travellers can enter Queensland and more flexible provisions on mandatory quarantine to minimise the social, emotional, and financial impacts of border restrictions on individuals.[2]

While preliminary modelling used to inform the development of the Vaccine Plan suggests that at higher rates of vaccination impacts at the population and the health system levels are reduced significantly, it also recognises that vaccination is not a panacea to COVID-19 transmission. Once border reopens there will be broad community exposure to the virus and a sharp rise in cases. While the high rate of vaccine coverage will provide great protection to community members against severe illness, a rise in cases will invariably prompt an increase in hospitalisations and deaths. Such scenario will place considerable pressure on both hospitals and the public health system in Queensland.

The recent surge in cases in Europe with the onset of winter and the relaxation of public health and social measures, illustrates how the virus can continue to quickly spread despite relatively high vaccination rates. Countries such as Germany and France, with fully vaccinated rates at 69.8 per cent and 68.5 per cent, respectively, are now experiencing significant pressures on their health systems and having to reinstate some restrictions on business, movement and gathering activities to reduce case growth and subsequent hospitalisations.

Although Queensland's vaccination program has gathered pace in recent months and vaccine targets are being met, vaccine hesitancy within some communities and cohorts has led to vaccination coverage not being uniformly distributed across the state. This exposes these communities and cohorts to greater

[1] Refer to Policy Rationale – Queensland's COVID-19 Vaccine Plan to Unite Families at 70 % - Border Restrictions Direction (No. 54).

[2] Refer to Policy Rationale – Protecting Queenslanders as We Plan to Unite Families at 80 % - Domestic and International Arrivals travel arrangements

risk associated with the reopening of borders and undermines Queensland's ability to reach the critical 90 per cent fully vaccinated rate.

To address these risks and ensure Queensland makes a sustainable transition to a 'Living with COVID-19' operating model, the *Public Health and Social Measures Direction* will restrict unvaccinated people's access to key settings and circumstances which are known to be highly conducive to community transmission and super spreading events.

When Queensland reaches the 80 per cent fully vaccinated milestone, only fully vaccinated workers and visitors will be able to work in and attend hospitality venues (hotels, pubs, clubs, taverns, bars, restaurants and cafes); indoor entertainment venues (nightclubs, live music venues, karaoke bars, theatres, cinemas and adult entertainment venues); stadiums, and festivals; and Queensland Government operated venues, such as galleries, museums and libraries.

In addition to providing baseline protection against community transmission, these restrictions will encourage a faster uptake of vaccinations across communities and cohorts with low vaccination rates as they target non-essential, but socially desirable leisure activities.

Changes to the *Hospital Entry Direction, Disability Accommodation Services Direction and Residential Aged Care Facilities Direction* have also been made to restrict unvaccinated people's access to aged care facilities, hospitals, prison facilities or disability services as residents in these settings, despite their vaccination status, are at a higher risk of experiencing severe morbidity and death from breakthrough infection.

While unvaccinated people will be able to attend weddings, if any people attending the wedding are unvaccinated, including the wedding party and any officials, a maximum of only 20 people will be allowed to attend the event.

Other settings such as essential retail and public transport are permitted to have both vaccinated and unvaccinated persons to ensure unvaccinated people can continue to meet their essential needs and their wellbeing is not put at risk. However, these settings will be required to operate with additional protective measures such as physical distancing and masks.

Funerals will not be limited to only vaccinated people, because funeral sometimes occur at short notice and often under difficult circumstances making it hard to ensure all attendees are vaccinated. However, funerals will still be required to comply with occupant density limits and caps on attendees to minimise the risk of transmission.

These amendments will apply from 17 December or when Queensland achieves 80 per cent fully vaccinated.

Background and Considerations at 2 December 2021

Epidemiological situation and responses across international and domestic jurisdictions

Various European countries are experiencing a sharp spike in new COVID-19 cases. Germany for instance is recording around 60,000 cases daily, while in the United Kingdom over 48,000 cases were reported on 1 December.

France is currently experiencing what is being described as a 'fifth wave' of COVID-19 with around 50,000 daily cases reported recently, and current forecasts warning that they could be experiencing 1,000 hospitalisations per day by January 2022.

Experts agree that a combination of less than optimum vaccine uptake, waning immunity among people inoculated early, and growing complacency about masks and distancing after governments relaxed curbs over the summer months are the most likely cause.

These recent spikes have prompted some countries to reimpose targeted lockdown restrictions. For example, in Austria people can only leave home under specific conditions – such as exercise and other activities for "physical and mental recovery," work and essential shopping. To control the current outbreak Austria has recently extended the lockdown to 20 days, now due to end on 11 December. In the Netherlands tighter restrictions have come into force, amid record COVID-19 cases and fear over the new Omicron variant. Under these restrictions non-essential shops, restaurants and entertainment venues must shut at 5pm, with supermarkets and pharmacies allowed to stay open until 8pm.

Many countries are also resorting to vaccination mandates to prevent unvaccinated people from entering certain settings for work or leisure activities in an attempt to break transmission links at high-risk venues and activities. Vaccination mandates for the entire population are currently being considered in Austria and Germany.

In Australia, NSW and Victoria, which experienced widespread and sustained outbreaks and long lockdowns for several months, are also imposing vaccine mandates to limit the access of unvaccinated people to certain venues and activities as they lifted restrictions to fully vaccinated individuals.

Jurisdictions that have not experienced ongoing and widespread outbreaks have also outlined restrictions for unvaccinated people as part of their reopening plans.

The table below provides examples of mandatory vaccination requirements across some jurisdictions in Australia and around the world.

Jurisdiction	Vaccine mandates for workers	Vaccine mandates for patrons
Victoria	Applies to workers leaving home for work in many sectors (hospitality, retail, professional services, healthcare/vulnerable settings).	Most businesses and venues are required to check that visitors and patrons are fully vaccinated before they enter the premises.
New South Wales	Applies to employees in many sectors (airport/ transport, education/childcare, retail, businesses, healthcare/vulnerable settings).	Patrons at retail venues (except critical retail premises) and businesses must provide vaccination proof, until 95 per cent vaccination coverage reached (expected 15 December).
Western Australia	Applies for a majority of occupations (about 75 per cent of workforce), rolled out in a phased approach from now until January 2022.	There are currently no mandates in place for patrons. At 90 per cent vaccination coverage mandate to be applied to large events, nightclubs and casinos.
South Australia	Mandates apply or planned in key vulnerable and critical settings, such as health, education, police aged care	There are currently no plans to mandate vaccination for patrons. Venues can bring in their own rules.
Tasmania	Mandates apply in health and aged care setting. Mandate for education sector currently under consideration.	There are currently no mandates in place for patrons.
Austria	Plans for a general vaccination mandate for the entire population from February 2021.	Restricted from many places – restaurants, hotels, theatres and ski lifts.
Denmark	Legislation to allow workplaces to mandate digital 'corona pass'.	Required to present a pass when visiting indoor bars, restaurants, other public places.
Israel	Vaccination passport (Green Pass) is required to enter workplaces. Booster shots recently included as a requirement in the Green Pass.	Green pass a pre-condition for entering most businesses and public places.
Canada	Applies for federally regulated air, rail, and marine transportation sectors and its travellers.	British Columbia requires a proof of vaccination to access various social, recreational, and public services.
Ukraine	Medical personnel, public sector employees (including teachers).	Restrictions for access to restaurants, sports and other public events.
Indonesia	Vaccinations mandatory for the entire adult population.	
Germany	Mandate apply for people attending bars, restaurants, and shops, except for basic necessities — like pharmacies or grocery stores.	

Queensland COVID-19 Operating Environment

Restrictions around international and interstate borders, including quarantine requirements, have been critical to Queensland's success to date in avoiding widespread community transmission and allowing the community to retain relatively high levels of freedom in social and economic activity compared to most jurisdictions around the world as well as in comparison to NSW and Victoria.

However, these protective measures have had an extensive impact on individuals and critical sectors of the Queensland economy, such as the tourism, hospitality, international students, and agricultural industries. The social and economic pressures this has created on Queensland's communities cannot be sustained indefinitely without placing a significant burden on the health and wellbeing of individuals and the economic sustainability of entire communities.

In addition, the emergence of the Delta variant early this year and its rapid spread around the globe has changed the COVID-19 context. Achieving true herd immunity, where enough of the population is immunised that vulnerable groups who cannot be vaccinated are safe from disease, it is not a likely outcome in the short to medium term. This has prompted many jurisdictions in Australia and around the world, including Queensland, to shift from a 'suppression' to a 'living with COVID-19' operating model for managing COVID-19 into the future.

In line with this shift, the Vaccine Plan, released on 18 October 2021, outlines how Queensland's border restrictions and quarantine requirements will be gradually adapted to provide greater freedom of movement across Queensland borders as Queensland's eligible population meets vaccination coverage milestones.

New home quarantine arrangements for fully vaccinated domestic arrivals entering Queensland from a COVID-19 hotspot commenced on 15 November 2021 as Queensland reached the 70 per cent threshold and enabled by amendments to the relevant Chief Health Officer Public Health Directions. As of 2 December 2021, 6,300 people are undertaking home quarantine.

At 80 per cent coverage, all fully vaccinated domestic travellers will be able to enter Queensland without having to Quarantine. Home quarantine will be permitted, subject to conditions, for fully vaccinated Australian citizens and residents travelling from an international destination.

At 90 per cent vaccination, the domestic border will be completely open and is expected to return to pre-pandemic movement levels. Similarly, quarantine requirements will be lifted for international travellers regardless of vaccination status. This will enable community members to pursue their personal, social and business interests with confidence and play a key role in Queensland's recovery in a 'Living with COVID-19' future.

However, the modelling used to inform the development of the Vaccine Plan highlights both, that COVID-19 will breach into the community from jurisdictions with ongoing community outbreaks as borders reopen and the importance of continuing to carefully manage the spread of COVID-19, particularly before Queensland reaches 90 per cent fully vaccinated.

The success in protecting Queensland's communities, health system and economy from the impact of widespread COVID-19 outbreaks to date has been determined by Queensland's ability to effectively plan and operationalise tailored protective measures in line with the level of risk at the time.

As Queensland shifts from a state-wide emergency response focused on eliminating COVID-19 from in the community, into a 'living with COVID-19' future where high population vaccination coverage protects against the threat of COVID-19 and treatment of the virus can be better managed by GPs and hospitals with new medications, there is still a need for targeted public health measures to manage the unpredictable nature of COVID-19 as it becomes endemic in the Queensland community.

For example, the speed at which COVID-19 will become endemic and the impact of initial outbreaks is not fully known. It is also uncertain whether further variants of concern (VOC) may emerge (assessment

of the Omicron VOC is currently being undertaken), to what degree vaccine and natural immunity will decline over time, or whether different outbreak patterns will be observed in different geographic areas.

Queensland's 'living with COVID-19' operating model will be highly reliant on adjusting protective measures for optimal efficiency in managing infections and maintaining health system capacity with as minimal interference on social and economic activities (i.e. measures with high public health utility and low restrictive impact) as possible.

Accordingly, on 9 November 2021, the Public Health and Social Measures linked to Vaccination Status: A Plan for 80% and Beyond (PHSM Plan) was released flagging the introduction of mandatory requirements for COVID-19 vaccination for workers and visitors to a number of non-essential high risk settings and activities.

This mandate, which will become effective on 17 December, will replace COVID-19 density and gatherings restrictions at these settings and provide greater freedom for businesses and patrons. Achieving uniform vaccination coverage across workers and visitors at these settings provides a baseline level of protection against community transmission, mitigating the risk of uncontrolled outbreaks to the community and the associated impacts on individuals and the health system.

Queensland progress towards the Vaccine Plan Vaccination Thresholds

While each day Queensland is seeing a steady rise in vaccination rates, vaccination coverage is not uniform across the state, with some communities falling well below the state's average. Also, the current growth in vaccination rates does not suggest Queensland will achieve 90 per cent fully vaccinated in the very near future. This creates a significant risk to Queensland as border reopens and COVID-19 begins to circulate widely in the community.

Some of the communities with the lowest vaccination rates in the State are also some of the most vulnerable to the effects of COVID-19 (e.g. First Nations, culturally and linguistically diverse (CALD) communities, and rural and remote communities). The burden of disease in these communities and the limited capacity of their local health systems to provide acute health care services place them at significant risk. Protecting these communities has always been at the forefront of Queensland's pandemic response and will continue to be so.

In addition, although there is strong evidence from clinical studies that COVID-19 vaccines are highly effective in breaking transmission links and protecting individuals from severe illness, like most other vaccines, they are not 100 per cent effective. This means some fully vaccinated people will still get infected with SARS-CoV-2. These individuals may or may not develop COVID-19 symptoms, but they can contribute to further community transmission.

The extent to which fully vaccinated individuals are affected by COVID-19 into the future will be greatly influenced by the rate of vaccination coverage within their communities. It is important to minimise the contact between fully vaccinated and unvaccinated individuals, particularly in settings known to be highly conducive to transmission.

The Department of the Premier and Cabinet has recently commissioned qualitative research to identify the major factors driving vaccine hesitancy across Local Government Areas (LGAs) with low vaccination rates.

While the research identified communication and other tactics that can be used to change behaviour and overcome each of these major factors, it also identified the risk of entrenched resistance. Although they can be effective, communication and information activities often take a considerable amount of time to change people's attitudes and behaviours.

Given the considerable risk associated with the reopening of Queensland borders and the impact the circulation of COVID-19 will have on communities that have largely been virus free, more active instruments for minimising outbreaks and incentivising uptake of vaccines are needed.

Therefore, a number of targeted restrictions on unvaccinated people will be provided to minimise the risk of uncontrolled community outbreaks and encourage a faster uptake of vaccinations across communities and cohorts with low vaccination rates. This will protect both the unvaccinated and vaccinated alike and provide an important safeguard in the early transition phase to a 'living with COVID' future that appropriately deals with the uncertainties around how the pandemic will develop.

Key Direction Requirements and Rationale

The *Public Health and Social Measures Direction* specifies restrictions on the access to a number of venues and activities that applies to unvaccinated people and which businesses and individuals must comply with.

Vulnerable Facilities

Throughout the COVID-19 pandemic, it has been apparent that the most vulnerable to COVID-19 are the elderly, the immunocompromised and those with comorbidities or underlying health conditions.[3] Last year, for instance, during the height of Victoria's Second Wave, there were 38 and 45 deaths in the St Basil's Home for the Aged and Epping Gardens Aged Care, respectively. Besides the profound impact such outbreaks have on residents, their loved ones and the broader community, they are also devastating to the operations of Residential Aged Care Facilities (RACFs). At the Epping Garden Aged Care facility alone, 86 staff became infected and required to immediately quarantine creating an unsustainable staffing shortage at a time when the demand for services surged.

For this reason, Queensland has already mandated vaccination for workers across all health care settings—covering aged care, public and private hospitals, general practitioners, in-home care provision, and not-for profit health organisations.

Research indicates that fully vaccinated older and immunocompromised Australians are at higher risk of severe disease and death from a breakthrough infection of COVID-19. Although research is ongoing, experts believe the same reasons that made them more susceptible at the start of the pandemic could be causing them to bear the burden of severe breakthrough infections.[4]

Protecting the most vulnerable in the community has been a key guiding principle in Queensland's response to date and will continue to be so for as long the threat of COVID-19 remains. Accordingly, a number of additional protections must continue to be in place to protect the health and wellbeing of residents and patients in aged care facilities, hospitals, residential disability services and prisons, who remain among the most vulnerable to morbidity and mortality from COVID-19, independent of vaccination status.

Hospitality Venues and Indoor entertainment venues

Unvaccinated people will not be able to enter "quick service" restaurants (including cafes, restaurants, fast-food outlets), pubs, licensed clubs, RSL clubs, taverns, function centres, bars, wineries, distilleries and microbreweries, and licensed premises in hotels. These premises are considered high-risk, given the large number of people from many households and areas across a region attending the same venue at the same time and being at close proximity to each other for prolonged periods of time. Specific activities

[3] https://www.healthdirect.gov.au/coronavirus-covid-19-groups-at-higher-risk-faqs#who; accessed 6 July 2021.

[4] Monitoring Incidence of COVID-19 Cases, Hospitalisations and Deaths by Vaccination Status -13 U.S. Jurisdictions, 4 April 4 – 17 July 2021, Morbidity and Mortality Weekly Report, Centers for Disease Control and Prevention.

Bermingham, C., Morgan, J. and Nafilyan, V.. Deaths involving COVID-19 by vaccination status, England: deaths occurring between 2 January and 2 July 2021, Office of National Statistics, 13 September 2021.

[4] Lozano, R. et al, The role of football as a super-spreading event in the SARS-CoV-2 pandemic, October 2020, The Journal of sports medicine and physical fitness 60(10):1408-1409

in these settings such as eating, drinking, singing and dancing are also known to increase the risk of transmission.

Preventing virus seeding in these environments has been a key measure at times of heightened risk of community transmission. As borders reopen and COVID-19 circulates widely in the community, vaccination status restrictions is an important public health measure to ensure our 'Living with COVID-19' response.

For the same reasons, unvaccinated people will not be able to enter nightclubs, indoor live music venues, karaoke bars, concerts, theatres, cinemas casinos, gaming or gambling, theatres, cinemas and adult entertainment venues. In addition, as young people (between 18-30 years of age) form a large proportion of visitors attending these venues and have accounted for a large proportion of all cases in the NSW outbreak, ensuring these venues are accessible by only vaccinated people will have a significant impact on slowing the spread of COVID-19 in this very mobile cohort.

Restrictions on the unvaccinated will also apply for Queensland Government operated venues, such as galleries, museums and libraries.

Outdoor Entertainment activities

Unvaccinated people will not be able to attend sports stadiums, cultural festivals, art festivals, music festivals, convention centres, show grounds and any major events involving 5,000 or more patrons.

While where a setting is primarily outdoors, such as an outdoor festival, stadium, or theme park, the risk of transmission is lower. Transmission does still occur at these settings when people are crowded together, such as while queuing, or crowded around a stage, and in close proximity for extended periods.

In particular, large gatherings present a significant risk of infection and have early in the pandemic led to superspreading events, fuelling clusters of infection that proved very difficult to contain.[5] When the virus infiltrates and circulates widely in the community, superspreading events are pivotal in driving increased case numbers, therefore all protections available must be utilised to prevent superspreading events.

Avoiding rapid surge in cases caused by superspreading events will support the protection of vital health care resources and ensure that standard care for Queenslanders is not compromised by COVID-19 surges.

Unvaccinated people will also not be able to work or partake in tourism experiences, including reef excursions and attending theme parks. These settings present a significant risk to the health system as people from diverse geographical areas gather in significant numbers and may return to their communities carrying the virus, therefore potentially spreading it to various regions at the same time.

Essential Services and other settings

Settings such as essential retail and public transport are permitted to have both vaccinated and unvaccinated persons. This ensures unvaccinated people can continue to meet their essential needs (i.e. food and clothing) which is critical to their ongoing wellbeing. However, these settings will be required to operate with additional protective measures such as physical distancing and masks.

While unvaccinated people will be able to attend weddings, if any people attending a wedding are unvaccinated, including the wedding party and any officials, a maximum of only 20 people will be allowed to attend the event. Weddings are an important rite of passage in almost all societies and cultures. Therefore, it is important in a living with COVID-19 future that these activities are allowed to proceed. However, given the nature of weddings, where people from multiple households and geographical

locations gather and remain in close proximity to each other for extended periods of time, in an environment where physical distancing is difficult to maintain, it is important that the number of attendants are limited if an unvaccinated person attends.

Similarly, funerals will not be limited to only vaccinated people. This is in recognition that funerals are also an important ritual across all cultures which sometimes occur at short notice and often under difficult circumstances, therefore making it hard to ensure all attendees are vaccinated. However, funerals will still be required to comply with occupant density limits and caps on attendees to minimise the risk of transmission.

Restrictions on unvaccinated individuals will not apply to short-term rentals and accommodation under requirements for hospitality venues. These venues provide an essential service to individuals (i.e. shelter). Restricting access to anyone could place these people at significant risk of harm.

An analysis of transmission risk at targeted settings and supporting evidence is provided below at Attachment A.

Public health considerations – 2 December 2021

Epidemiological situation

Queensland

- Queensland reported three (3) new COVID-19 cases in the previous 24 hours:
  - one case (fully vaccinated) detected on the Gold Coast with no known contact with another case.
  - two cases detected on day five of hotel quarantine, both with recent interstate travel (New South Wales and Victoria respectively).
- The total number of cases in Queensland stands at 2,133.
- Queensland is managing a total of 18 active cases, with 14 in the hospital (nil in ICU) and four awaiting transfer. There are currently no active First Nations cases in Queensland.
- There has been a significant increase in the number of people entering home quarantine, now permitted for many domestic arrivals under the Vaccine Plan after Queensland achieved 70 per cent vaccination coverage on 14 November.
- There are currently 10,721 people in quarantine: 7,354 people in home quarantine, 3,256 people in government hotel quarantine and 111 in alternate quarantine.
- As at 30 November 2021, a total of 3,158,650 Queenslanders aged 16 and over have been vaccinated with two doses of a COVID-19 vaccine, which amounts to 76.80 per cent of this cohort; 3,565,779 people – 86.65 per cent – have had at least one dose.

Emergence of Omicron variant

- On 26 November, the World Health Organization (WHO) classified a new variant, the Omicron or B.1.1.529 variant as a variant of concern.
- The first known confirmed infection was from a specimen collected on 9 November 2021.
- The variant was first reported to the WHO from South Africa on 24 November 2021.
- The variant has a large number of mutations (including 26-32 on the spike protein, which is considerably more than the Delta variant), and preliminary evidence is suggesting this variant may produce an increased risk of reinfection among people who have had COVID-19 previously.
- Omicron is being urgently investigated by researchers globally, with the WHO announcing it could take weeks for sufficient data and analysis to draw preliminary conclusions.
- There is currently insufficient information available to make conclusions on the transmissibility and disease severity of the variant. The effectiveness of available vaccines against the Omicron variant is also under investigation.

National

- As at 1 December, in the 24 hours prior jurisdictions have reported 1,440 newly confirmed cases.
- Australia has reported 87.4 per cent of the eligible population aged 16 years and over as fully vaccinated; 92.6 per cent have had at least one dose.
- NSW and Victoria, with sustained and widespread outbreaks of the Delta variant since June-July, are seeing a reduction in daily new cases in recent weeks with fluctuating, but generally downward trajectory. Noting wide-ranging lifting of restrictions and lockdown conditions, Queensland is monitoring case numbers in these jurisdictions as well as in the Australian Capital Territory (ACT) where daily positive cases have also been gradually falling since the start of the latest outbreak.
- A total of seven cases of Omicron variant have been recorded in Australia, with six in NSW and one in the Northern Territory (NT).
- Quarantine requirements for Australians returning from overseas to NSW, Victoria, ACT and South Australia were had started to ease in November. However, following the emergence of the Omicron variant, these jurisdictions have re-introduced restrictions for arrivals from countries of concern.

New South Wales

- NSW reported 251 new locally acquired COVID-19 cases and no new deaths in the past 24 hours; there have been 75,975 locally acquired cases and 574 deaths reported since 16 June.
- NSW is currently managing 160 cases in hospital, with 26 people in ICU (11 requiring ventilation).
- NSW has reported that 92.5 per cent of the eligible population aged 16 years and over is fully vaccinated and 94.6 per cent has received at least one dose.
- NSW has a range of movement and gathering restrictions in place for unvaccinated people, which will remain in effect until 15 December.

Victoria

- Victoria has reported 1,179 new locally acquired cases and six deaths in the last 24 hours; there now have been 102,131 locally acquired cases and 523 deaths reported since 16 June.
- Victoria is managing 299 cases in hospital, including 43 in intensive care (18 requiring ventilation).
- As at 1 December, 91 per cent of eligible Victorians aged 16 years and over are fully vaccinated of a COVID-19 vaccine and 93.4 per cent has received at least one dose.
- There are currently no restrictions in place for Victorians who are fully vaccinated.

Australian Capital Territory

- ACT has reported four new locally acquired cases and nil deaths in the last 24 hours; there have been 2,010 locally acquired cases and 11 deaths reported since 12 August.
- ACT is managing eight cases in hospital, with three people in intensive care, two of whom requiring ventilation.
- Over 95 per cent of eligible population in ACT aged 16 years and over are fully vaccinated.
- The vaccination rate of the population over 12 years old is 97.8 per cent fully vaccinated.

Northern Territory

- One new community case reported in past 24 hours. The Katherine and Robinson River outbreak now totals 59 cases (since 15 November 2021).
- As at 1 December, 77.9 per cent of eligible population in NT aged 16 years and over are fully vaccinated of a COVID-19 vaccine and 87.7 per cent has received at least one dose.
- The lockdown for Katherine has moved to a lockout from 27 November. During the lockout period, people inside the designated area are not permitted to leave and people outside are not able to enter, except for essential workers. This is due to lift on 7 December.

Global

- As at 1 December, more than 8,036 billion doses of COVID-19 vaccine have been administered globally (John Hopkins University).
- The cumulative number of confirmed cases reported globally is now over 263 million and the cumulative number of deaths is over 5.2 million (John Hopkins University).
- Globally, weekly case incidence plateaued during the week of 22-28 November 2021, with nearly 3.8 million confirmed new cases reported, similar to the previous week's figures. However, new weekly deaths decreased by 10 per cent in the past seven days as compared to the previous week, with over 47,500 new deaths reported.
- The African, Western Pacific and European Regions reported increases in new weekly cases of 93 per cent, 24 per cent and 7 per cent, respectively, while the Regions of the Americas and South-East Asia reported decreases of 24 per cent and 11 per cent, respectively. (Note: the increase in the African Region was largely due to batch reporting of antigen tests by South Africa last week, therefore the trends should be interpreted with caution.) New weekly deaths decreased by 36 per cent and 8 per cent in the

Regions of the Americas and the Eastern Mediterranean, respectively, and increased by 26 per cent and 7 per cent in the South-East Asia and African Regions, respectively. (WHO).

Living with COVID-19

- The Queensland Government has launched a state-wide campaign to encourage Queenslanders to get vaccinated. There is a particular focus on encouraging increased uptake in regional and remote areas. Many of these areas currently have lower vaccination coverage than the State average.
- From Monday 1 November, Designated COVID-19 Hospitals in Queensland are offering booster COVID-19 vaccination doses for people who received their second dose at least six months ago.
- On 18 October 2021, Queensland released the COVID-19 Vaccine Plan to Unite Families. Under this plan, changes to border restrictions and quarantine requirements at increasing levels of state-wide vaccination coverage are described.
- At 70 per cent of Queensland's eligible population fully vaccinated (achieved on 15 November), anyone who has been in a declared domestic hotspot in the previous 14 days can travel into Queensland provided they are fully vaccinated; arrive by air; have a negative COVID-19 test in the previous 72 hours can undertake home quarantine for 14 days (subject to meeting conditions).
- At 80 per cent of Queensland's eligible population fully vaccinated (expected in early December) travellers from an interstate hotspot can arrive by road or air, with no quarantine required but must be fully vaccinated and have a negative COVID-19 test in the previous 72 hours. Direct international arrivals can undertake home quarantine subject to conditions set by Queensland Health, provided they are fully vaccinated and have a negative COVID-19 test in previous 72 hours.
- At 90 per cent of Queensland's eligible population fully vaccinated, there will be no entry restrictions or quarantine for vaccinated arrivals from interstate or overseas. Unvaccinated travellers will need to apply for a border pass, or enter within the international arrivals cap, and undertake quarantine.
- On 9 November 2021, the Queensland Government released its *Public Health and Social Measures linked to Vaccination Status: A Plan for 80% and Beyond*, which sets out measures variously applying to vaccinated and unvaccinated people aged 16 years and over.
- Under the Plan, once Queensland reaches 80 per cent double dose vaccination coverage there will be no COVID-19 density restrictions on pubs, clubs, cafés, cinemas, theatres, music festivals where all staff and attendees are fully vaccinated.

Public Health System capacity

- Currently, Queensland Public Health Units are working to ensure the Queensland community is complying with public health controls. Another key focus for Queensland's Public Health Units is to ensure that those directed to undertake quarantine, including home quarantine, comply with all requirements, including the testing regime.
- Additional restrictions are imposed and lifted in response to evidence of community outbreaks to ensure the safety of Queenslanders, and more specifically our most vulnerable people in residential aged care facilities, hospitals, and disability accommodation services.
- While cases of COVID-19 in the Queensland community have been managed well to date, it is important to mitigate against widespread outbreaks. It is particularly important to quickly bring clusters under control with effective contact tracing and other protective measures to maintain the integrity of the health system to respond to non-COVID-19 related care.

Health Care System capacity

- Queensland will soon transition to the next phase of the COVID-19 response, which will involve wider circulation of COVID-19 in the Queensland community. Queensland Health has considered a range of epidemiological modelling, including scenario-based impacts to hospital capacity and workforce. This modelling, and lessons from the recent NSW and Victorian outbreaks, have identified that a flexible and

high capacity health system delivery model is critical. It is expected that with increased vaccine protection, the number of people requiring hospitalisation and intensive care in the event of an outbreak are likely to remain within hospital and health system capacity.

- As Queensland's response to COVID-19 has evolved, expert advisory groups, particularly the COVID-19 Response Group have further developed and refined Queensland Health's response plans. Particular consideration has been given to the impacts of the Delta variant and an increasing likelihood of a surge in cases as Queensland transitions to living with COVID-19.
- To support health system delivery in this new phase of COVID-19, Queensland Health is operating a tiered health system response to activate additional capacity when triggers associated with increasing case numbers are met. This response includes expanding to hospitals and settings (such as homes) beyond the Designated COVID-19 Hospital Network, postponing elective surgeries, and leveraging private hospital capacity as required.
- The established Designated COVID Hospital Network can accommodate a moderate surge in cases, across both inpatient and at home care through Hospital in the Home (HITH) placements.
- Strategies are in place with private providers to minimise the interruption to urgent elective services should a wider community outbreak across Queensland impact on hospital and health service delivery. Strong partnerships with major private providers will assist public hospital systems to respond to a COVID-19 surge.

Community acceptance and adherence

- Queensland's public health measures have been generally well-received and met with compliance. The community have so far been largely supportive of public health measures.
- There are ongoing concerns of 'pandemic fatigue', particularly in vulnerable sections of the community, and associated non-compliance with public health measures nationally. However, the need for lockdowns or widespread restrictions is expected to reduce dramatically with increased vaccination coverage. Queensland, like other jurisdictions, is preparing to move into a new 'living with endemic COVID-19'.
- Emerging key issues relate to vaccine mandates imposed by state and territories in various settings, and the complexities of differing freedoms for vaccinated and unvaccinated people. State and territory mandates can vary considerably with local context, with vaccine mandates in some jurisdictions applying to the majority of the population.

Wastewater monitoring

- To strengthen surveillance capabilities and increase confidence that transmission is not occurring, Queensland conducts a surveillance program to detect traces of coronavirus in wastewater in 19 communities across the state.
- Wastewater monitoring systems detect viral fragments and can help experts determine where in the state there might be people with a current or recent COVID-19 infection. The system has significant value in its potential to serve as an early warning system for potentially undetected cases. It cannot pinpoint the exact source of the viral fragments.
- COVID-19 fragments were detected in wastewater samples collected from the Coombabah and Elanora wastewater treatment plants on 29 November.

Attachment A - Risk factors and evidence of COVID-19 transmission at targeted settings

Vulnerable Facilities

SETTING	Risk factors within setting				Likelihood~	Consequence		EVIDENCE
	Worker mobility	Close proximity	Indoor environment	Other infection control measures*		Individuals	Community (outbreak)	
Health care (hospitals) *Essential service*	*High staff movement and client contact*	*Shared wards, high mobility*	*Enclosed environment, windows do not open*	*Highly trained clinical environment*	*People attend when unwell*	*People receiving medical treatment*	*Visitors vaccinated (17 Dec 2021)*	**AHPPC statement on mandatory vaccination of all workers in health care settings[i] (endorsed by National Cabinet (1 October 2021)** **NSW Delta Outbreak (June 2020)** - COVID-19 infection in multiple hospital outbreaks e.g. Concord Hospital, Liverpool Hospital; Bella Vista private health clinic, Liverpool private health clinic, Lakemba GP clinic and St Vincent's Hospital (> 5 cases). **United Kingdom** - 11.3% of patients in UK hospitals became infected after hospital admission[ii].
Aged care *Essential service*	*High staff movement and client contact*	*Residential style accomm Communal dining*	*Residential style accomm may be adaptable*	*Varied standards; can be impractical*	*Primary risk from carers/visitors (vaccination required)*	*Elderly people with comorbidities*	*Visitors vaccinated (17 Dec 2021)*	**AHPPC recommends mandatory vaccination of aged care in-home and community aged care workers (endorsed by National Cabinet 5 November 2021)[iii]** Victoria 2nd wave (June – July 2020) - Led to Australia having one of the highest rates worldwide of deaths in residential aged care as a percentage of total death (October 2020). Over half of active cases related to outbreaks in residential facilities. NSW Outbreak (July 2021 - ongoing) - Involved at least 34 Aged Care Facilities
Disability *Essential service*	*High staff movement and client contact*	*Residential style accomm Communal dining*	*Residential style accomm may be adaptable*	*Varied standards; can be impractical*	*Primary risk from carer/visitors (vaccination required)*	*People with disability*	*Visitors vaccinated (17 Dec 2021)*	**AHPPC statement on mandating vaccination for disability support workers (endorsed by National Cabinet 5 November 2021)[iv]** - People with disability are at higher risk as they are more likely to live in a long-term care home, need to have close contact with care providers, have difficulty wearing a mask, physical distancing and personal hygiene[v]. - People with Down Syndrome are more likely to have more severe COVID-19 infection[vi]. - Many people with disabilities have diabetes, cancer, heart disease, or obesity - these conditions may put them at higher risk of severe illness due to COVID-19. **United Kingdom** - 58% of all COVID-19 deaths involved cases with disability - People with disability significantly higher likelihood of death (age adjusted)[vii]
Correctional and detention facilities *Essential service*	*High staff movement and contact with detained persons*	*Restricted residential style accommodation; limited space and freedom of movement*	*Enclosed environment, windows do not open*	*Can be impractical, difficult to enforce / ensure compliance*	*Movement of prison staff and detained persons between facilities and their communities*	*Overrepresentation of vulnerable cohorts*	*Visitors vaccinated (17 Dec 2021)* *Cohort movements into the community if case undetected*	**Corrections setting identified as a high-risk setting for COVID-19 by CDNA, priority population for vaccination rollout in Australia.** - Vaccination uptake alone will not prevent outbreaks and disease in prisons, but increased vaccination coverage will reduce their severity and protect those who are vaccinated from moderate and severe illness and death. - Vaccination uptake among workers and people detained in these settings is typically low, with higher vaccine hesitancy than the general population[4] **QLD** - Uptake in Qld may be higher than in other jurisdictions, over 11,500 doses delivered at facilities to date. - BYDC / Corrections Academy Training facility outbreak August 2020 was Qld's second largest outbreak at 49 cases. **NSW** - Outbreak in NSW prisons (including Parklea) in September 2021; over 300 cases, Aboriginal and Torres Strait Islander making up one quarter of cases. - Figures given at a budget estimates hearing suggest over 550 inmates tested positive to 5 November 2021; 228 of whom likely to have acquired COVID-19 while incarcerated; 75 Corrective Services staff were infected. University of NSW report[viii] on the impact of COVID-19 in prisons - key risk factors: infection prevention protocols including mask wearing, hand sanitiser, vaccination coverage of staff and incarcerated persons, population density, within the setting, quality of air ventilation, extent of movement between sections within the prison and between prisons, and the health and demographic profile of the incarcerated population US Study of COVID-19 cases among 1.3 million people in US prisons (June 2020; prior to Delta variant)[ix] - Case rate for prison population was 5.5 times higher than general US population; death rate was 3 times higher. Study relied on officially reported data, but testing rates low, so likely an underestimate of cases.

SETTING	Risk factors within setting				Likelihood~	Consequence		EVIDENCE
	Worker mobility	Close proximity	Indoor environment	Other infection control measures*		Individuals	Community (outbreak)	
	Potential for contact with many travellers	*During peak periods, physical distancing is more difficult to maintain*	*Enclosed but spacious buildings*	*National mask-mandate, established procedures*	*Travellers from international hotspots, high traffic* *(Cases even with high proportion of passengers vaccinated)*	*Predominately vaccinated passengers, variable risk profile of travellers*	*High traffic and high mobility, wide geographic spread*	

*PPE, Mask wearing, hand hygiene
~Mobility of cohort and extent of community access

Low likelihood
Medium likelihood
High likelihood

I. Australian Health Protection Principal Committee (AHPPC) statement on mandatory vaccination of all workers in health care settings | Australian Government Department of Health
II. Hospital-acquired SARS-CoV-2 infection in the UK's first COVID-19 pandemic wave - The Lancet
III. Australian Health Protection Principal Committee (AHPPC) statement on mandatory vaccination of aged care in-home and community aged care workers | Australian Government Department of Health
IV. Australian Health Protection Principal Committee (AHPPC) statement on mandating vaccination for disability support workers | Australian Government Department of Health
V. COVID-19 Vaccines for People with Disabilities | CDC
VI. People with Certain Medical Conditions | CDC
VII. Deaths involving COVID-19 by self-reported disability status during the first two waves of the COVID-19 pandemic in England: a retrospective, population-based cohort study - The Lancet Public Health
VIII. https://www.publicdefenders.nsw.gov.au/Documents/updated-report-impact-of-covid-19-on-nsw-prisoners-september-2021.pdf
IX. https://jamanetwor.com/journals/jama/fullarticle/2768249

Non-Essential Settings and Activities

SETTING	Risk factors within setting				No protective measures COVID-19 circulating in community			PHSM Plan (17 December 2021)			EVIDENCE
					Likelihood~	Consequence		Likelihood	Consequence		
	Worker/visitor mobility	Close proximity	Indoor environment	Other infection control measures*		Individual	Community		Individual	Community	
Hospitality venues *Voluntary attendance*	*Potential for contact with many people*	*Crowded environment; extended period of time at setting*	*Enclosed environment; eating, drinking and dancing*	*Varied standards; can be impractical*	*High capacity; extended periods of close contact significant patron turnover*	*Mixed risk profile of individuals*	*Wide geographic and demographic spread*	– *All staff and visitors required to be vaccinated^* – *Vaccination significantly reduces risk of transmission, infection and moderate to severe illness and death.* – *When breakthrough infections do occur, vaccinated people are infectious for a shorter period of time[8]*			People release respiratory fluids during exhalation (e.g., quiet breathing, speaking, singing, exercise, coughing, sneezing) in the form of droplets across a spectrum of sizes. These droplets carry the SARS-CoV-2 virus that causes COVID-19. - The largest droplets settle out of the air rapidly, within seconds to minutes. - The smallest very fine droplets, and aerosol particles formed when these fine droplets rapidly dry, are small enough that they can remain suspended in the air for minutes to hours. Risk of transmission is greatest within 1.8 metres of an infectious source where the concentration of fine droplets and particles is greatest. Although infections through inhalation at distances greater than six feet from an infectious source are less likely than at closer distances, infection over greater distances is also seen in the following scenarios - Infectious person in an indoor environment for more than 15 minutes - People passing through space that infectious person has occupied Known risk factors increasing risk of infection in these scenarios are: - Enclosed spaces with inadequate ventilation or air handling - Increased exhalation of respiratory fluids if the infectious person is engaged in physical exertion or raises their voice (e.g. exercising, shouting, singing) - Prolonged exposure to these conditions, typically more than 15 minutes.[6] Lengthy, close interactions are the the riskiest type of interaction in any environment. The indoor transmission risk of COVID-19 is well-established nationally and globally. Outdoor transmission is not as common. However, the consequences of transmission that occurs in crowded environments can be significant. Fleeting contact at the MCG in Victoria at the outset of the Delta outbreak in June 2021 led to a number of additional cases among close contacts. Similarly, transmission at queueing 'pinch points' at AAMI Park in Victoria led to additional cases and 2,100 close contacts. Risk is reduced when people are fully vaccinated.[7]
Indoor entertainment venues *Voluntary attendance*	*Potential for contact with many people*	*Crowded environment; extended period of time at setting*	*Enclosed environment; eating, drinking and dancing*	*Varied standards; can be impractical*	*High capacity; significant patron turnover*	*Mixed risk profile of individuals*	*Wide geographic and demographic spread*				
Outdoor entertainment venues *Voluntary attendance*	*Potential for contact with many people*	*Extended period of time at setting; crowding at key points – food, toilet, and queues*	*Outdoor environment; high patron capacity and potential for high mobility, eating, drinking*	*Varied standards; can be impractical*	*Extended periods of close contact; pinch points in queues*	*Mixed risk profile of individuals*	*Wide geographic and demographic spread*				
Festivals (entire venues) *Voluntary attendance*	*Potential for contact with many people*	*Extended period of time at setting; crowding at key points – food, toilet, and queues*	*High patron capacity, high mobility, eating, drinking; may be enclosed party or fully*	*Varied standards; can be impractical*	*Extended periods of close contact; pinch points in queues; dancing, singing*	*Mixed risk profile of individuals*	*Wide geographic and demographic spread*				
Weddings (entire venue) *Voluntary attendance*	*Potential for contact with many people*	*Extended period of time at setting; close proximity highly likely*	*High patron capacity; high mobility, eating, drinking; may be enclosed party or fully*	*Varied standards; can be impractical*	*Extended periods of close contact dancing, singing*	*Mixed risk profile of individuals*	*Wide geographic and demographic spread*				
Qld Govt galleries, museums libraries *Voluntary attendance*	*Potential for contact with many people*	*Extended period of time at setting; crowding at key points – food, toilet, and queues*	*Enclosed environment, windows do not open*	*Varied standards; can be impractical*	*High capacity; significant patron turnover*	*Mixed risk profile of individuals*	*Wide geographic and demographic spread*				

*PPE, Mask wearing, hand hygiene

[6] https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/sars-cov-2-transmission.html (including extensive referencing and sources)

[7] https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-people.html (including extensive referencing and sources)

[8] https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html (including extensive referencing and sources)

~Mobility of cohort and extent of community access
^Additional restrictions apply at weddings where unvaccinated people in attendance – density restrictions of max 20 people

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[i] Australian Health Protection Principal Committee (AHPPC) statement on mandatory vaccination of all workers in health care settings | Australian Government Department of Health
[ii] Hospital-acquired SARS-CoV-2 infection in the UK's first COVID-19 pandemic wave - The Lancet
[iii] Australian Health Protection Principal Committee (AHPPC) statement on mandatory vaccination of aged care in-home and community aged care workers | Australian Government Department of Health
[iv] Australian Health Protection Principal Committee (AHPPC) statement on mandating vaccination for disability support workers | Australian Government Department of Health
[v] COVID-19 Vaccines for People with Disabilities | CDC
[vi] People with Certain Medical Conditions | CDC
[vii] Deaths involving COVID-19 by self-reported disability status during the first two waves of the COVID-19 pandemic in England: a retrospective, population-based cohort study - The Lancet Public Health
[viii] https://www.publicdefenders.nsw.gov.au/Documents/updated-report-impact-of-covid-19-on-nsw-prisoners-september-2021.pdf
[ix] https://jamanetwork.com/journals/jama/fullarticle/2768249

Public Health Directions – Human Rights Assessment
Public Health and Social Measures linked to vaccination status Direction

Title	*Public Health and Social Measures linked to vaccination status Direction*
Date effective	2 December 2021

Background

The *Public Health and Social Measures linked to vaccination status 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 *Public Health and Social Measures linked to vaccination status Direction* (the Direction) is to reduce the impact of COVID-19 on individuals and the Queensland health system by providing an operational framework for vaccination requirements for owners, operators, visitors and staff entering and remaining in certain businesses, activities and undertakings once eighty percent of eligible Queenslanders, aged 16 years or older are fully vaccinated.

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.

The Direction aligns with Queensland Government's *Public Health and Social Measures linked to vaccination status, A Plan for 80% and Beyond.*

How the Direction achieves the purpose

Outlining the vaccination requirements for owners, operators, visitors and staff entering and remaining in certain businesses, activities and undertakings will help to reduce the impacts on individuals and the health system with the anticipated spread of COVID-19 once Queensland borders open to other Australian States and Territories.

The Direction achieves this by providing vaccination requirements, occupancy density levels (1 person per 4 square metres), physical distancing, collection of contact information for contact tracing, and proof of vaccination for certain businesses, activities and undertakings. Certain businesses and undertakings may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

On 18 October 2021, the Queensland Government released '*Queensland's COVID-19 Vaccine Plan to Unite Families'* (the Vaccine Plan), outlining Queensland's plan for easing of border restrictions once 70 per cent of eligible Queenslanders are fully vaccinated. The plan

outlined additional requirements once 80 per cent of the eligible Queensland population (16 years and older) were fully vaccinated.

On 9 November 2021, the Queensland Government released its *Public Health and Social Measures linked to vaccination status: A Plan for 80% and Beyond* outlining public health and social measures linked to COVID-19 vaccination status that will take effect when 80 per cent of the Queensland community is double vaccinated. The Plan outlined vaccination requirements for staff and patrons entering businesses. These are captured within the Direction and include the following:

a. Vulnerable settings (prisons and youth detention centres) must not allow unvaccinated visitors except in limited circumstances.
b. Only vaccinated staff and patrons are permitted to enter the following venues:
    i. Hospitality venues (examples: hotels, pubs, clubs, taverns, bars, restaurants and cafes).
    ii. Indoor entertainment venues (examples: nightclubs, indoor live music venues, karaoke bars, concerts, theatres and cinemas).
    iii. Outdoor entertainment activities (examples: tourism experiences including reef excursions, sports stadiums and theme parks).
    iv. Festivals – entire venue – indoor and outdoor (examples: folk festivals, arts festivals, and music festivals where ticketed entry applies).
    v. Queensland Government owned galleries, museums and libraries.
c. Wedding ceremonies and receptions indoor and outdoor(if any persons are unvaccinated, a maximum of 20 people can attend.
d. Other settings (such as certain other retail venues) density restrictions continue to apply according to the COVID Safe Future Roadmap.

The mandatory use of Check In Qld app is required for all businesses and activities covered by the Direction and is used to verify proof of vaccination for persons 16 years or older. Additional businesses and undertakings, including shopping centres, supermarkets, retail stores and public-facing government agencies, are also included to require them to collect contact information. From 7.00pm 18 November 2021, the Check In Qld app has incorporated a person's vaccination information, enabling owners and operators of businesses to verify patrons' COVID-19 vaccination status. The Check In Qld app will also enable contact tracing to occur quickly where a diagnosed COVID-19 case has been in the community. The Direction provides exceptions for using the Check In Qld app where it would result in safety or liability issues. Where an exception applies, contact information and proof of vaccination is required to be collected using another method and provided to a health official in the event of an outbreak.

Human rights engaged

The human rights engaged by the Direction are:

- Right to equality (section 15)
- Right to life (section 16)
- Consent to medical 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)
- Right of equal access to the public service (section 23)
- Property rights (section 24)
- Right to privacy (section 25)
- Right to non-interference with family and protection of family (sections 25 and 26)
- Right of children to protection in their best interests (section 26)

- Cultural rights of Indigenous and non-Indigenous peoples (sections 27 and 28)
- Right to humane treatment when deprived of liberty (section 30)
- Right to health services (section 37)

- Right to equality (section 15): 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. Discrimination includes direct and indirect discrimination on the basis of a protected attribute under the *Anti-Discrimination Act 1991*, such as age, pregnancy, impairment or religious belief. Because the definition is inclusive, discrimination under the *Human Rights Act* also likely covers additional analogous grounds, which may include conscientious belief (however, it is considered that vaccination status or employment status in a particular industry will not be protected attributes as these are not immutable characteristics: *Miron v Trudel* [1995] 2 SCR 418, 496-7 [148]). The direction may result in people with protected attributes being treated differently (for example, a person with a genuine religious objection to vaccines may not be able to enter an art gallery or continue their employment at a hospitality venue). But not all differential treatment amounts to direct or indirect discrimination.

  The proposed direction will directly discriminate on the basis of age. A person who is 16 or older will not be permitted to enter various non-essential businesses, whereas a child under 16 will be permitted (even though anyone 12 or older is currently eligible for vaccination against COVID-19).

  However, it is considered that the direction does not directly or indirectly discriminate on the basis of any other protected or analogous attribute. A person with an impairment in the form of a medical contraindication will be treated by the direction in the same way as a person who is vaccinated (provided they are able to provide proof). Further, the policy prevents people from entering certain businesses because they are unvaccinated, not because they have one of those protected or analogous attributes. This means there is no direct discrimination on the basis of an impairment, pregnancy, religious belief or conscientious belief.

  Broadly, indirect discrimination is an unreasonable requirement that applies to everyone but has a disproportionate impact on people with an attribute (such as a religious or conscientious objection to vaccines). Preventing unvaccinated people from entering certain businesses may have a disproportionate impact on people who are pregnant or who have a religious or conscientious objection to vaccines. However, it is considered that the requirements under the direction are reasonable in light of the public health rationale. Because the requirement is reasonable, there is no indirect discrimination on the basis of an impairment, pregnancy, religious belief or conscientious belief.

- Right to life is protected (section 16): 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. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in Queensland, in particular vulnerable Queenslanders, by placing vaccination requirements on who may enter and remain in certain businesses, and restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

  On the other hand, as with any medical intervention, requiring a person to be vaccinated may come with a small risk of unintended consequences, some of which may be life threatening. Presently, in Australia, the Therapeutic Goods Administration has found that

9 deaths were linked to a COVID-19 vaccination (not necessarily caused by a COVID-19 vaccination) (of the more than 39 million doses that have been administered so far).[1] Human rights cases in Europe have held that the possibility that a small number of fatalities may occur does not mean that the right to life is limited by a compulsory vaccination scheme (*Application X v United Kingdom* (1978) 14 Eur Comm HR 31, 32-3; *Boffa v San Marino* (1998) 92 Eur Comm HR 27, 33). Arguably, the right to life is engaged (that is relevant), but not limited, by the proposed direction. As noted above, the right to life is promoted by the proposed direction.

- Right not to be subjected to medical treatment without full, free and informed consent (section 17(c)): Section 17(c) of the *Human Rights Act* provides that a person must not be subject to medical treatment without the person's full, free and informed consent. Medical treatment for the purposes of section 17(c) includes administering a drug for the purpose of treatment or prevention of disease, even if the treatment benefits the person (*Kracke v Mental Health Review Board* (2009) 29 VAR 1, 123 [576]; *De Bruyn v Victorian Institute of Forensic Mental Health* (2016) 48 VR 647, 707 [158]-[160]). While the direction will prevent people from entering certain businesses if they are not vaccinated, the direction will not compel anyone to be vaccinated without their consent. Arguably, this means that the right in section 17(c) is not limited (*Kassam v Hazzard* [2021] NSWSC 1320, [55]-[70]). However, international human rights cases suggest the right may be limited in circumstances where a person is left with little practical choice but to receive the treatment (*GF v Minister of COVID-19 Response* [2021] NZHC 2526, [70]-[72]). It is possible that the proposed direction will leave people with little practical choice but to receive a vaccine, so that while consent is given, that consent may not be full and free for the purposes of section 17(c).

- Right to freedom of movement (section 19): Every person lawfully within Queensland has the right to move about freely within Queensland. The Direction limits the freedom of movement by restricting who may enter and remain in certain businesses or undertake certain activities according to their vaccination status. For example, the Direction provides that only fully vaccinated people are able to attend outdoor music festivals, or other outdoor events which may limit the way patrons can move in and around the event. While freedom of movement is limited, the restriction on movement is not so severe that the right to liberty in section 29 is also limited (*Loielo v Giles* (2020) 63 VR 1, 59 [218]).

- Freedom of thought, conscience and religion (section 20) and freedom of expression (section 21): Section 20 of the *Human Rights Act* provides that a person has the right to freedom of thought, conscience, religion and belief. Some people have deeply held religious or conscientious objections to vaccines. For example, the Catholic Church has previously advised against using vaccine products that use cell lines derived from an aborted foetus (such as AstraZeneca), unless another vaccine (such as Pfizer) is not available. The effect of the direction is that people with a conscientious or religious objection to vaccines will not be able to enter, work in or provide services at certain businesses, activities and undertakings if they remain unvaccinated after 17 December 2021.

  Freedom of religion in section 20 also encompasses a right not to be coerced or restrained in a way that limits the person's freedom to have or adopt a religion or belief (separate from the freedom to manifest their religion or belief). Similarly, freedom of expression in section 21 encompasses a right to hold an opinion without interference. At international law these are absolute rights (*Christian Youth Camps v Cobaw Community Health Service* (2014) 50 VR 256, 395 [537]). However, nothing in the proposed direction would coerce a person to believe a particular thing or not to hold a particular opinion. It would only limit a

[1] <https://www.tga.gov.au/periodic/covid-19-vaccine-weekly-safety-report-02-12-2021>.

person's manifestation of that belief or opinion. Accordingly, those aspects of those rights are not limited by the proposed direction.

- Right to peaceful assembly and freedom of association (section 22): Freedom of assembly and association upholds the right of individuals to gather together for any peaceful purpose and to associate with each other. The Direction will limit the rights of peaceful assembly and association through the vaccination requirements placed on certain businesses and the requirements for physical distancing and occupant density measures to be observed. For example, people who are not vaccinated will not be able to meet at a library or a café, or visit loved ones in a prison (except if required to accompany a minor or other person as a parent, guardian, carer or support person).

- The right of access to the public service (section 23): Under section 23(2)(b) of the *Human Rights Act*, everyone has a right of equal access to the public service and public office. A risk of dismissal from the public service may engage this right (UN Human Rights Committee, *Communication No 203/1986*, 34th sess, UN Doc Supp No 40 (A/44/40) Appendix (4 November 1988) [4] ('*Hermoza v Peru*')). The effect of the proposed direction is that some public service employees may need to be vaccinated in order to be able to continue in their role, such as people working at museums or libraries, or compliance inspectors who are required to visit venues such as licensed clubs as part of their role.

- Right to property (section 24): Everyone has the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. One right in the bundle of rights which make up 'ownership' is the right to decide who to allow onto one's property. The proposed direction interferes with that right by stipulating that certain businesses cannot allow unvaccinated staff and patrons to enter the property owned or occupied by the business, and by setting occupant density requirements. 'Property' may also include business 'goodwill', such as a clientele base, and possibly the right to practise a profession (*Malik v United Kingdom* [2012] ECHR 438, [89]-[93]). The direction may effectively deprive some businesses of a cohort of their clientele base who refuse to be vaccinated. The right to property will only be engaged where the relevant property interest is held by a natural person. Section 24(2) also only protects against deprivations of property which are 'arbitrary'. As arbitrary in this context means (among other things) disproportionate, it is convenient to consider whether the impact is arbitrary below when considering whether the impact is justified (following the approach in *Minogue v Thompson* [2021] VSC 56, [86], [140]).

- Right to privacy (section 25): There are a number of different aspects of the right to privacy that may be engaged.

  First, the proposed direction would require owners, operators, visitors and staff to share personal information, such as their vaccination status. Requiring a person to disclose personal information interferes with privacy (*DPP (Vic) v Kaba* (2014) 44 VR 526, 564 [132]). Arguably, the freedom to impart information under section 21(2) includes a freedom not to impart information (*Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080). However, a limit on this right would add no more to the interference with privacy.

  Second, the right to privacy includes a right to bodily integrity (*Pretty v United Kingdom* (2002) 35 EHRR 1, [61]; *PBU v Mental Health Tribunal* (2018) 56 VR 141, 179 [125]). This right will be limited by compulsory vaccination, whether as an involuntary treatment, or where there are repercussions for failing to vaccinate, such as an inability to access services (*Vavřička v The Czech Republic* (European Court of Human Rights, Grand Chamber, Applications nos. 47621/13 and 5 others, 8 April 2021) [263]).

Third, because the right to privacy encompasses an individual's right to establish and develop meaningful social relations (*Kracke v Mental Health Review Board (General)* (2009) 29 VAR 1, [619]-[620]), the right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95]). The direction may engage this right by interfering with the ability of people to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues. The direction may also engage a person's right to work by requiring that they be fully vaccinated to work in certain businesses.

The right to privacy in section 25(a) will only be limited if the interference with privacy is 'unlawful' or 'arbitrary'. As these raise questions that are addressed in considering whether any limit is justified, it is convenient to consider these questions at the next stage when considering justification (following the approach in *Minogue v Thompson* [2021] VSC 56, [86], [140]).

- Right to non-interference with family (section 25) and protection of families (section 26): Section 25(a) of the *Human Rights Act* protects a right not to have one's family unlawfully or arbitrarily interfered with. The proposed direction may interfere with a person's family, for example, by preventing an unvaccinated family member from attending a wedding (due to the cap of 20 people) or visiting a person in a prison or youth detention centre (with some exceptions). By preventing children between 16 and 18 from attending certain businesses, the direction may also interfere with a parent's decision about their child's health. Again, whether the interference is lawful and non-arbitrary will be considered below when considering whether the interference is justified.

  Section 26(1) of the *Human Rights Act* recognises that families are the fundamental group unit of society and are entitled to be protected by society and the State. That right is an 'institutional guarantee'. Compared to the individual protection of families in section 25(a), '[t]he true significance of [section 26(1)] lies not in the warding off of State interference but rather in the protected existence of the family' (Schabas, U*N International Covenant on Civil and Political Rights: Nowak's CCPR Commentary* (NP Engel, 3rd ed, 2019) 633-4 [1]-[2], 639 [12]). The proposed direction does not limit the right of families to be protected under section 26, because the proposed direction does not threaten the existence of the family as an institution of society.

- Best interests of the child (section 26): Under section 26(2) of the *Human Rights Act*, 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. 'The child's right to health … and his or her health condition are central in assessing the child's best interest.' In all decisions about a child's health, 'the views of the child must also be given due weight based on his or her age and maturity' (UN Committee on the Rights of the Children, *General comment No 14*, UN Doc CRC/C/GC/14 (29 May 2013) 9). The proposed direction seeks to safeguard the best interests of the child by limiting the vaccination requirements to enter business premises to age 16 years and over.

  The proposed direction protects the best interests of the child by preventing unvaccinated persons from visiting youth detention centres (with some exceptions), in order to prevent the risk of an outbreak amongst youths in the youth detention centre. However, by doing

so, the direction may also limit other aspects of the right of children to protection in their best interests by, for example, preventing visits from unvaccinated family members.

- Cultural rights – generally (section 27) and Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): Section 27 of the *Human Rights Act* protects the rights of all people with particular cultural, religion, racial and linguistic backgrounds to enjoy their culture, declare and practise 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. Section 28 provides that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people and must not be denied the right, together with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practise their culture.

  The proposed direction may limit cultural rights in a number of ways. For example, it will set vaccination as a condition of entry for various cultural festivals, such as the Paniyiri Greek Festival in Brisbane and the Yarrabah Music and Cultural Festival in Far North Queensland. The direction may also prevent unvaccinated people from gathering and sharing in their cultural traditions at a wedding(where there is a cap of 20 people if anyone is unvaccinated.

- Right to humane treatment when deprived of liberty (section 30): Under section 30(1) of the *Human Rights Act*, any person deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person. That right is relevant whenever prisoners are 'subjected to hardship or constraint other than the hardship or constraint that results from the deprivation of liberty'. The right is relevant to this direction because it may impact a prisoner's connection to family and the community through visitors (by preventing unvaccinated people from visiting prisons, with some exceptions). A similar point applies to youth detention centres. However, whether the right is in fact 'limited' must take into account that 'although prisoners do not forgo their human rights, their enjoyment of many of the rights and freedoms enjoyed by other citizens will necessarily be compromised by the fact that they have been deprived of their liberty' (*Castles v Secretary, Department of Justice* (2010) 28 VR 141, 169 [108]-[110]; *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273, [239]). It is considered that limits on visitation fall into that category. For similar reasons, it is considered that the right not to be subjected to cruel, inhuman or degrading treatment or punishment under section 17(b) is also not limited.

- Right to health services (section 37): Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment. An objective of the proposed direction is to avoid a surge in hospitalisations once borders reopen. Preventing hospitals from being overwhelmed ensures access to health serves and thereby protects the right in section 37.

In summary, the proposed direction seeks to protect and promote the right to life, the right of access to health services and the best interests of the child (sections 16, 26 and 37). On the other hand, the proposed direction limits or may limit the right to non-discrimination on the basis of age (section 15), the right not to receive medical treatment without full, free and informed consent (section 17(c)), freedom of movement (section 19), freedom of conscience and religion (section 20(1)), the freedom not to impart information (section 21(2)), freedom of peaceful assembly and association (section 22), the right of equal access to the public service

(section 23), property rights (section 24), the right to privacy (which may include privacy of personal information, a right to bodily integrity and aspects of the right to work) (section 25(a)), the right to non-interference with family (section 25(a)), the right to protection in the best interests of the child (section 26) and cultural rights of Indigenous and non-Indigenous peoples (sections 27 and 28).

Compatibility with Human Rights

The direction will be compatible with human rights if the limits it imposes are reasonable and justified.

A limit on a human right will be reasonable and justified if:

- it is imposed under law (section 13(1));
- after considering the nature of the human rights at stake (section 13(2)(a));
- it has a proper purpose (section 13(2)(b));
- it actually helps to achieve that purpose (section 13(2)(c));
- there is no less restrictive way of achieving that purpose (section 13(2)(d)); and,
- it strikes a fair balance between the need to achieve the purpose and the impact on human rights (section 13(2)(e), (f) and (g)).

Are the limits imposed 'under law'? (section 13(1))

The Chief Health Officer is authorised to give the proposed direction under section 362B of the *Public Health Act* if they reasonably believe the direction is necessary to assist in containing, or to respond to, the spread of COVID-19 within the community.

The nature of the rights that would be limited (section 13(2)(a))

What is at stake, in human rights terms, is the ability of all people to take part in all aspects of community life. The direction implicates the ability of people to lead dignified lives, integrated in their community. Requiring people to choose between vaccination and a life integrated in their community brings into play the principle that people are entitled to make decisions about their own lives and their own bodies, which is an aspect of their individual personality, dignity and autonomy (*Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 121-2 [569], 123 [577]). When it comes to people with genuine religious and conscientious objections, one of the values that underpins a pluralistic society like Queensland is 'accommodation of a wide variety of beliefs', including beliefs about health and vaccinations (*R v Oakes* [1986] 1 SCR 103, 136 [64]). Creating consequences for a person's employment also affects a person's dignity and autonomy through work. Those values at stake inform what it is that needs to be justified.

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

The purpose of the proposed direction is to reduce the impact on individuals and the health system from spread of the COVID-19 within the broader community once Queensland borders open to other States and Territories. This can only be achieved by setting vaccination requirements and managing occupant density in certain settings such as restaurants, events and entertainment venues and privately owned and operated premises in order to contain and prevent the spread of the virus. A further objective is to drive vaccination uptake.

Additionally, requiring most people entering certain businesses, activities and undertakings to provide proof of vaccination and contact information via the Check In Qld app, or another approved method, is to assist Queensland Health to quickly respond to and confine potential outbreaks and enable appropriate support of individuals who are considered close contacts within available resources. Ultimately, the purpose of collecting contact information is to limit the opportunity for transmission of COVID-19 when a positive COVID-19 person has been in the community before being diagnosed.

The aim of protecting public health is a proper purpose. As noted above, protecting people in the community from the risk of COVID-19 promotes their human rights to life (section 16) and access to health services (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) article 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*).

The limit on the right to equality and non-discrimination in section 15 has a slightly different purpose. Children under 16 are not subject to vaccination requirements under the proposed direction, even though children 12 and over are currently eligible for COVID-19 vaccinations. The reason why the age of 16 has been selected as the cut off is that children who are 16 or over will generally be mature enough to make decisions about their health and whether to be vaccinated. This means that, generally, only children who have the capacity to make decisions about whether to be vaccinated will face the consequences of that decision. This serves the purpose of protecting children in their best interests under section 26(2) of the *Human Rights Act*. That is a proper purpose under section 13(2)(b).

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purposes. The available evidence to date is that vaccination against COVID-19 helps to reduce the risk of being infected and transmitting the virus on to others (even if the vaccine is not 100 percent effective).[2] This means vaccinated owners, operators, visitors and staff will be less likely to be infected by other members of the community at the businesses, activities and undertakings covered by the direction. Further, they are less likely to transmit the virus on to others. If they do contract COVID-19 at these businesses, activities or undertakings, their symptoms will be less severe and less likely to result in hospitalisation.

Requiring people to provide contact information and proof of vaccination when they enter a venue or an event, limiting the occupant density and requiring compliance with COVID Safe Checklist all help to limit the opportunities for transmission of COVID-19. Additionally, the requirement for businesses and visitors to use the Check In Qld app as the method for providing and collecting contact information (subject to some exceptions) will help to achieve the public health objective, by ensuring ready access to critical information for the purposes of contact tracing.

The rational connection is not undermined by providing exceptions for people with a contraindication or children under 16. Even with those exceptions, it is still the case that a greater proportion of owners, operators, visitors and staff at businesses covered by the direction will be vaccinated.

[2] Australian Technical Advisory Group on Immunisation (ATAGI), *Clinical guidance on use of COVID-19 vaccine in Australia in 2021 (v7.4)* (29 October 2021) 26-32.

When it comes to the age cut off of 16, it might be said that age is not a suitable proxy for maturity. Some children who are younger than 16 will have the maturity to make decisions about vaccination, and some children who are older will not have that maturity. Nonetheless, age is the best available proxy for maturity. Age-based distinctions of this kind 'are a common and necessary way of ordering our society' (*Gosselin v Quebec (Attorney General)* [2002] 4 SCR 429, 467 [31]).

Necessary (section 13(2)(d))

The following less restrictive alternatives were considered:

- applying the vaccination requirement to fewer businesses, activities and undertakings;
- allowing a wider range of exemptions (such as a genuine religious objection);
- requiring businesses and undertakings to adopt a range of control measures such as social distancing, face masks and improving ventilation;
- giving businesses a choice to address the health risk through either requiring patrons and staff to be vaccinated or operating with lower occupant density limits or patron caps; and,
- applying the direction to anyone over 12 years old (to reduce the limit on the right to non-discrimination) or applying the direction to anyone over 18 years old (to reduce the impact on the best interests of the child).

As to the first alternative of applying the direction to fewer venues, the Policy Rationale for the proposed direction explains that each of the categories of venues are included in the direction because they are high-risk. For example, prisons are included because the risks of COVID-19 to prisoners are higher. Prisoners typically have a lower health status and the enclosed environment of prisons gives rise to the risk of super-spreader events[3]. Hospitality and entertainment venues are included because they are sites where large numbers of people from many households and areas across a region attend at the same time in close proximity for prolonged periods of time. Theme parks and tourist settings are included because they often attract people from diverse geographical areas who gather together and then return to their communities, giving rise to risks of seeding.

Removing any of these categories of venues would not achieve the purpose of reducing the risks of COVID-19 transmission to the same extent as the direction in its current form. It should also be pointed out that the selection of venues is carefully tailored to the impact on human rights. Essential retail and public transport have not been included (other than to the extent that essential retail are required to collect contact information) to ensure that unvaccinated people can continue to meet their essential needs. Given that funerals are an important ritual which sometimes occur at short notice and often under difficult circumstances, unvaccinated people can still attend a funeral with other safeguards in place. Short-term rental and accommodation are not included because these venues provide the basic need of shelter. Access to government services – such as access to courts – are also specifically excluded. This carveout facilities the right of access to the courts, which is an aspect of the right to a fair trial in section 31 of the *Human Rights Act* (*Bare v IBAC* (2015) 48 VR 129, 250 [375]).

As to the second option of allowing a wider range of exemptions, any additional exemptions would come at greater risk of COVID-19 transmission. Accordingly, this option would not be as effective in achieving the public health objective. Further, assessing the genuineness of a person's religious or conscientious belief would be extremely difficult in each individual case

[3] https://www.aihw.gov.au/reports/australias-health/health-of-prisoners, https://nypost.com/2021/02/06/federal-executions-were-likely-covid-19-superspreader-events/>.

and resource-intensive given the scope of the direction. Accordingly, this alternative option would also not be reasonably practicable.

The third option is to require the businesses covered by the direction to implement an alternative suite of control measures, such as social distancing and face masks. However, these alternative control measures, alone or in combination, are unlikely to be equally as effective as a vaccination requirement. The Therapeutic Goods Administration advises that '[v]accination against COVID-19 is the most effective way to reduce deaths and severe illness from infection.'[4] Further, the precautionary principle applied by epidemiologists provides that, 'from a purely public health perspective, all reasonable and effective measures to mitigate th[e] risk should ideally be put in place', not merely some of those measures (*Palmer v Western Australia [No 4]* [2020] FCA 1221, [79]). In particular, vaccination and face masks are not mutually exclusive. It is true that face mask requirements have been relaxed in South East Queensland in advance of the borders reopening, but they may be reintroduced if necessary, alongside vaccination requirements. Further, it is not clear that face masks would necessarily be less restrictive of human rights. A requirement to be vaccinated may be more intrusive of human rights for an individual in the short-term (as it involves medical treatment). However, a requirement to wear a face mask would impact all people – whether vaccinated or not – on a day-to-day basis.

The fourth alternative option is to give businesses a choice to address the health risk through either requiring patrons and staff to be vaccinated or operating with lower occupant density limits or patron caps. While occupant density limits and patron caps help reduce the risk of COVID-19 transmission, these measures combined with high vaccination rates significantly reduces the risk of transmission even further.

The final alternative option is to change the age range of the people who will be subject to the vaccination condition of entry. Changing the direction so that it applies to all people who are eligible for vaccination (currently those over 12 years of age) would impose a lesser limit on the right to non-discrimination. However, it would mean that children are held responsible for health decisions they do not necessarily have the maturity to make. That is, this option would impose a greater burden on the right of children to protection in their best interests. Another alternative is to change the direction so that it only applies to adults (anyone over 18). However, this would expose visitors and staff at businesses to a greater risk of COVID-19 transmission.

In considering whether the limits on human rights are the least restrictive means, it is relevant that a number of safeguards are built in.

- The direction includes safeguards on the collection of contact information, including limiting the purpose for which the information may be used, requiring it to be securely stored and disposed of after an appropriate period of time. This is reinforced by part 7A, division 6 of the *Public Health Act* which sets out safeguards for personal information collected, including protection against direct or derivative use of the information in criminal proceedings (thereby safeguarding the right not to testify against oneself in section 32(2)(k) of the *Human Rights Act*).
- There are exceptions to the requirement to provide contact information and proof of vaccination where it is not reasonable for a person to provide contact information such as emergency situations, if the person is conducting law enforcement activities (for example, police), or if the person is a child under the age of 16 and not accompanied by an adult. The exceptions based on risk to physical safety promote the right to security of the person in section 29(1) of the *Human Rights Act*.

[4] <https://www.tga.gov.au/periodic/covid-19-vaccine-weekly-safety-report-02-12-2021>.

- There are alternative ways of providing contact information and proof of vaccination for people who are unable to do so because of age, disability or language barriers, or because of a lack of Internet access by the business. These businesses are still required to transfer the information to an electronic format within 24 hours.
- The Check In Queensland app was developed taking human rights into account, including a complete human rights assessment.
- The direction is also in effect for a temporary period. The vaccination requirements within the direction will be regularly reassessed by the Chief Health Officer, and in particular once the population reaches 90 per cent double vaccination, with the opportunity to open up the community and economy further to everyone regardless of vaccination status.

There is no less restrictive, equally effective and practicable way to reduce the risk of COVID-19 transmission in the community. Accordingly, the limits on human rights are necessary to achieve the direction's public health objective.

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

The purpose of the Direction is to reduce the risk of COVID-19 spreading within the community and driving vaccination uptake. The benefits of achieving this purpose include reduced impacts on individuals and the health system as more COVID-19 circulates in the community. It also provides the opportunity to open up the Queensland community and economy further to everyone regardless of vaccination status. The benefit also translates to a reduced impact on the health care system by preventing the significant pressure on the health care system caused by the spread of COVID-19 in the community. Conversely, a failure to mitigate the risk of transmission would likely result in loss of life.

On the other side of the scales, these benefits come at the cost of deep and wide impacts on some people, especially people who are not vaccinated against COVID-19. Some people may be effectively locked out of the life of their community. While incentivising vaccination protects public health, it may interfere with a person's autonomy to make decisions about their bodies and their own health, and it may effectively force people to go against their deeply-held conscientious or religious beliefs.

When considering the weight of the impact on human rights, it should be emphasised that human rights come with responsibilities (reflected in clause 4 of the preamble to the *Human Rights Act*). As human rights cases overseas have held, individuals have a 'shared responsibility' or 'social duty' to vaccinate against communicable diseases 'in order to protect the health of the whole society' (*Pl ÚS 16/14* (Constitutional Court of the Czech Republic, 27 January 2015) 17 [102]; *Acmanne v Belgium* (1984) 40 Eur Comm HR 251, 265; *Boffa v San Marino* (1998) 92 Eur Comm HR 27, 35; *Solomakhin v Ukraine* [2012] ECHR 451, [36]; *Vavřička v The Czech Republic* (European Court of Human Rights, Grand Chamber, Applications nos. 47621/13 and 5 others, 8 April 2021) [279], [306] (majority), [2] (Judge Lemmens)). That is, people have a choice not to get vaccinated, but if they exercise that choice, they are putting the health, livelihoods and human rights of others in their community at risk. The right to exercise that choice carries less weight on the human rights side of the scales.

On balance, the importance of limiting the spread of COVID-19 within Queensland (taking into account the right to life) and reducing the impacts on individuals and the health system 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 within Queensland.

Queensland Health

COVID-19 Public Health Rationale

Public Health and Social Measures linked to vaccination status Direction (No. 2)

22 December 2021

DRAFT NOT GOVERNMENT POLICY

The *Public Health and Social Measures linked to vaccination status Direction*, that commenced on 17 December, aims to reduce the impact of COVID-19 on individuals and the Queensland health system by providing an operational framework for vaccination requirements for owners, operators, visitors and staff entering and remaining in certain businesses, activities and undertakings once eighty percent of eligible Queenslanders, aged 16 years or older are fully vaccinated.

Businesses and other activities covered by the Direction include

- hospitality venues such as pubs, clubs, taverns, bars, restaurants, cafes and fast food outlets
- indoor entertainment venues such as nightclubs, live music venues, karaoke bars, concerts, theatres or cinemas, casinos
- outdoor entertainment activities such as sporting stadiums or theme parks
- festivals – either indoor or outdoor – such as musical festivals, folk festivals or arts festivals
- activities – either indoor or outdoor – such as convention centres and showgrounds
- places of worship, wherever services are held
- Queensland Government owned galleries, museums or libraries.

This Policy Rationale should be read with the full policy rationale for the Direction.

The updated *Public Health and Social Measures linked to vaccination status Direction (No 2)* makes technical amendments to ensure consistency with the content of other Public Health Directions and to clarify existing policy intent only. In particular, the changes in version 2 of the direction clarify requirements relating to convention and entertainment centres; stadiums; and private hire of venues for other religious and civil services.

For religious ceremonies held in a private hire venue, the technical correction is required to ensure entertainment venues understand that when a religious and civil service is held in the venue with exclusive use of the venue, the vaccination and entry requirements for the place of worship rather than the entertainment venue apply to people entering and remaining for the service. The occupant density requirements for places of worship and funerals have also been clarified by removing the reference to an alternative maximum of 200 people, which was creating uncertainty and confusion.

In addition, the direction clarifies the exception from vaccination requirements for official duties and emergencies. It provides that an unvaccinated person may enter a business, activity or undertaking to undertake a legislated regulatory or compliance function, where delay in carrying out the function would cause a safety risk. The example in the direction is for the testing of a fire alarm system.

It is considered that the potential risks posed by an unvaccinated person entering a premises to conduct these functions (in terms of the risk of COVID-19 transmission) are outweighed by the risks associated with the regulatory or compliance function not being performed. Fire alarm testing and other safety testing play a critical role in ensuring that these premises are protected from a wide range of safety risks. It is not intended that the provision would be utilised for other compliance activities that do not regulate public safety risks, such as record-keeping, financial operations and so on. The expectation is that people who attend to perform these compliance activities are subject to the Direction's vaccination requirements.

Public Health Directions – Human Rights Assessment
Public Health and Social Measures linked to vaccination status Direction

Title	*Public Health and Social Measures linked to vaccination status Direction No 2*
Date effective	22 December 2021

Background

The *Public Health and Social Measures linked to vaccination status 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 *Public Health and Social Measures linked to vaccination status Direction* (the Direction) is to reduce the impact of COVID-19 on individuals and the Queensland health system by providing an operational framework for vaccination requirements for owners, operators, visitors and staff entering and remaining in certain businesses, activities and undertakings once eighty percent of eligible Queenslanders, aged 16 years or older are fully vaccinated. The updated *Public Health and Social Measures linked to vaccination status Direction No 2* makes technical amendments to ensure consistency with the content of other Public Health Directions and to clarify existing policy intent only.

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.

The Direction aligns with Queensland Government's *Public Health and Social Measures linked to vaccination status, A Plan for 80% and Beyond.*

How the Direction achieves the purpose

Outlining the vaccination requirements for owners, operators, visitors and staff entering and remaining in certain businesses, activities and undertakings will help to reduce the impacts on individuals and the health system with the anticipated spread of COVID-19 once Queensland borders open to other Australian States and Territories.

The Direction achieves this by providing vaccination requirements, occupancy density levels (1 person per 4 square metres), physical distancing, collection of contact information for contact tracing, and proof of vaccination for certain businesses, activities and undertakings. Certain businesses and undertakings may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

On 18 October 2021, the Queensland Government released '*Queensland's COVID-19*

Vaccine Plan to Unite Families' (the Vaccine Plan), outlining Queensland's plan for easing of border restrictions once 70 per cent of eligible Queenslanders are fully vaccinated. The plan outlined additional requirements once 80 per cent of the eligible Queensland population (16 years and older) were fully vaccinated.

On 9 November 2021, the Queensland Government released its *Public Health and Social Measures linked to vaccination status: A Plan for 80% and Beyond* outlining public health and social measures linked to COVID-19 vaccination status that will take effect when 80 per cent of the Queensland community is double vaccinated. The Plan outlined vaccination requirements for staff and patrons entering businesses. These are captured within the Direction and include the following:

a. Vulnerable settings (prisons and youth detention centres) must not allow unvaccinated visitors except in limited circumstances.
b. Only vaccinated staff and patrons are permitted to enter the following venues:
    i. Hospitality venues (examples: hotels, pubs, clubs, taverns, bars, restaurants and cafes).
    ii. Indoor entertainment venues (examples: nightclubs, indoor live music venues, karaoke bars, concerts, theatres and cinemas).
    iii. Outdoor entertainment activities (examples: tourism experiences including reef excursions, sports stadiums and theme parks).
    iv. Festivals – entire venue – indoor and outdoor (examples: folk festivals, arts festivals, and music festivals where ticketed entry applies).
    v. Queensland Government owned galleries, museums and libraries.
c. Wedding ceremonies and receptions indoor and outdoor(if any persons are unvaccinated, a maximum of 20 people can attend.
d. Other settings (such as certain other retail venues) density restrictions continue to apply according to the COVID Safe Future Roadmap.

The mandatory use of Check In Qld app is required for all businesses and activities covered by the Direction and is used to verify proof of vaccination for persons 16 years or older. Additional businesses and undertakings, including shopping centres, supermarkets, retail stores and public-facing government agencies, are also included to require them to collect contact information. From 7.00pm 18 November 2021, the Check In Qld app has incorporated a person's vaccination information, enabling owners and operators of businesses to verify patrons' COVID-19 vaccination status. The Check In Qld app will also enable contact tracing to occur quickly where a diagnosed COVID-19 case has been in the community. The Direction provides exceptions for using the Check In Qld app where it would result in safety or liability issues. Where an exception applies, contact information and proof of vaccination is required to be collected using another method and provided to a health official in the event of an outbreak.

Human rights engaged

The human rights engaged by the Direction are:
- Right to equality (section 15)
- Right to life (section 16)
- Consent to medical 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)
- Right of equal access to the public service (section 23)
- Property rights (section 24)
- Right to privacy (section 25)

- Right to non-interference with family and protection of family (sections 25 and 26)
- Right of children to protection in their best interests (section 26)
- Cultural rights of Indigenous and non-Indigenous peoples (sections 27 and 28)
- Right to humane treatment when deprived of liberty (section 30)
- Right to health services (section 37)

- Right to equality (section 15): 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. Discrimination includes direct and indirect discrimination on the basis of a protected attribute under the *Anti-Discrimination Act 1991*, such as age, pregnancy, impairment or religious belief. Because the definition is inclusive, discrimination under the *Human Rights Act* also likely covers additional analogous grounds, which may include conscientious belief (however, it is considered that vaccination status or employment status in a particular industry will not be protected attributes as these are not immutable characteristics: *Miron v Trudel* [1995] 2 SCR 418, 496-7 [148]). The direction may result in people with protected attributes being treated differently (for example, a person with a genuine religious objection to vaccines may not be able to enter an art gallery or continue their employment at a hospitality venue). But not all differential treatment amounts to direct or indirect discrimination.

  The proposed direction will directly discriminate on the basis of age. A person who is 16 or older will not be permitted to enter various non-essential businesses, whereas a child under 16 will be permitted (even though anyone 12 or older is currently eligible for vaccination against COVID-19).

  However, it is considered that the direction does not directly or indirectly discriminate on the basis of any other protected or analogous attribute. A person with an impairment in the form of a medical contraindication will be treated by the direction in the same way as a person who is vaccinated (provided they are able to provide proof). Further, the policy prevents people from entering certain businesses because they are unvaccinated, not because they have one of those protected or analogous attributes. This means there is no direct discrimination on the basis of an impairment, pregnancy, religious belief or conscientious belief.

  Broadly, indirect discrimination is an unreasonable requirement that applies to everyone but has a disproportionate impact on people with an attribute (such as a religious or conscientious objection to vaccines). Preventing unvaccinated people from entering certain businesses may have a disproportionate impact on people who are pregnant or who have a religious or conscientious objection to vaccines. However, it is considered that the requirements under the direction are reasonable in light of the public health rationale. Because the requirement is reasonable, there is no indirect discrimination on the basis of an impairment, pregnancy, religious belief or conscientious belief.

- Right to life is protected (section 16): 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. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in Queensland, in particular vulnerable Queenslanders, by placing vaccination requirements on who may enter and remain in certain businesses, and restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

On the other hand, as with any medical intervention, requiring a person to be vaccinated may come with a small risk of unintended consequences, some of which may be life threatening. Presently, in Australia, the Therapeutic Goods Administration has found that 9 deaths were linked to a COVID-19 vaccination (not necessarily caused by a COVID-19 vaccination) (of the more than 39 million doses that have been administered so far).[1] Human rights cases in Europe have held that the possibility that a small number of fatalities may occur does not mean that the right to life is limited by a compulsory vaccination scheme (*Application X v United Kingdom* (1978) 14 Eur Comm HR 31, 32-3; *Boffa v San Marino* (1998) 92 Eur Comm HR 27, 33). Arguably, the right to life is engaged (that is relevant), but not limited, by the proposed direction. As noted above, the right to life is promoted by the proposed direction.

- Right not to be subjected to medical treatment without full, free and informed consent (section 17(c)): Section 17(c) of the *Human Rights Act* provides that a person must not be subject to medical treatment without the person's full, free and informed consent. Medical treatment for the purposes of section 17(c) includes administering a drug for the purpose of treatment or prevention of disease, even if the treatment benefits the person (*Kracke v Mental Health Review Board* (2009) 29 VAR 1, 123 [576]; *De Bruyn v Victorian Institute of Forensic Mental Health* (2016) 48 VR 647, 707 [158]-[160]). While the direction will prevent people from entering certain businesses if they are not vaccinated, the direction will not compel anyone to be vaccinated without their consent. Arguably, this means that the right in section 17(c) is not limited (*Kassam v Hazzard* [2021] NSWSC 1320, [55]-[70]). However, international human rights cases suggest the right may be limited in circumstances where a person is left with little practical choice but to receive the treatment (*GF v Minister of COVID-19 Response* [2021] NZHC 2526, [70]-[72]). It is possible that the proposed direction will leave people with little practical choice but to receive a vaccine, so that while consent is given, that consent may not be full and free for the purposes of section 17(c).

- Right to freedom of movement (section 19): Every person lawfully within Queensland has the right to move about freely within Queensland. The Direction limits the freedom of movement by restricting who may enter and remain in certain businesses or undertake certain activities according to their vaccination status. For example, the Direction provides that only fully vaccinated people are able to attend outdoor music festivals, or other outdoor events which may limit the way patrons can move in and around the event. While freedom of movement is limited, the restriction on movement is not so severe that the right to liberty in section 29 is also limited (*Loielo v Giles* (2020) 63 VR 1, 59 [218]).

- Freedom of thought, conscience and religion (section 20) and freedom of expression (section 21): Section 20 of the *Human Rights Act* provides that a person has the right to freedom of thought, conscience, religion and belief. Some people have deeply held religious or conscientious objections to vaccines. For example, the Catholic Church has previously advised against using vaccine products that use cell lines derived from an aborted foetus (such as AstraZeneca), unless another vaccine (such as Pfizer) is not available. The effect of the direction is that people with a conscientious or religious objection to vaccines will not be able to enter, work in or provide services at certain businesses, activities and undertakings if they remain unvaccinated after 17 December 2021.

  Freedom of religion in section 20 also encompasses a right not to be coerced or restrained in a way that limits the person's freedom to have or adopt a religion or belief (separate from the freedom to manifest their religion or belief). Similarly, freedom of expression in section 21 encompasses a right to hold an opinion without interference. At international

[1] <https://www.tga.gov.au/periodic/covid-19-vaccine-weekly-safety-report-02-12-2021>.

law these are absolute rights (*Christian Youth Camps v Cobaw Community Health Service* (2014) 50 VR 256, 395 [537]). However, nothing in the proposed direction would coerce a person to believe a particular thing or not to hold a particular opinion. It would only limit a person's manifestation of that belief or opinion. Accordingly, those aspects of those rights are not limited by the proposed direction.

- Right to peaceful assembly and freedom of association (section 22): Freedom of assembly and association upholds the right of individuals to gather together for any peaceful purpose and to associate with each other. The Direction will limit the rights of peaceful assembly and association through the vaccination requirements placed on certain businesses and the requirements for physical distancing and occupant density measures to be observed. For example, people who are not vaccinated will not be able to meet at a library or a café, or visit loved ones in a prison (except if required to accompany a minor or other person as a parent, guardian, carer or support person).

- The right of access to the public service (section 23): Under section 23(2)(b) of the *Human Rights Act*, everyone has a right of equal access to the public service and public office. A risk of dismissal from the public service may engage this right (UN Human Rights Committee, *Communication No 203/1986*, 34th sess, UN Doc Supp No 40 (A/44/40) Appendix (4 November 1988) [4] ('*Hermoza v Peru*')). The effect of the proposed direction is that some public service employees may need to be vaccinated in order to be able to continue in their role, such as people working at museums or libraries, or compliance inspectors who are required to visit venues such as licensed clubs as part of their role.

- Right to property (section 24): Everyone has the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. One right in the bundle of rights which make up 'ownership' is the right to decide who to allow onto one's property. The proposed direction interferes with that right by stipulating that certain businesses cannot allow unvaccinated staff and patrons to enter the property owned or occupied by the business, and by setting occupant density requirements. 'Property' may also include business 'goodwill', such as a clientele base, and possibly the right to practise a profession (*Malik v United Kingdom* [2012] ECHR 438, [89]-[93]). The direction may effectively deprive some businesses of a cohort of their clientele base who refuse to be vaccinated. The right to property will only be engaged where the relevant property interest is held by a natural person. Section 24(2) also only protects against deprivations of property which are 'arbitrary'. As arbitrary in this context means (among other things) disproportionate, it is convenient to consider whether the impact is arbitrary below when considering whether the impact is justified (following the approach in *Minogue v Thompson* [2021] VSC 56, [86], [140]).

- Right to privacy (section 25): There are a number of different aspects of the right to privacy that may be engaged.

  First, the proposed direction would require owners, operators, visitors and staff to share personal information, such as their vaccination status. Requiring a person to disclose personal information interferes with privacy (*DPP (Vic) v Kaba* (2014) 44 VR 526, 564 [132]). Arguably, the freedom to impart information under section 21(2) includes a freedom not to impart information (*Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080). However, a limit on this right would add no more to the interference with privacy.

  Second, the right to privacy includes a right to bodily integrity (*Pretty v United Kingdom* (2002) 35 EHRR 1, [61]; *PBU v Mental Health Tribunal* (2018) 56 VR 141, 179 [125]). This right will be limited by compulsory vaccination, whether as an involuntary treatment, or

where there are repercussions for failing to vaccinate, such as an inability to access services (*Vavřička v The Czech Republic* (European Court of Human Rights, Grand Chamber, Applications nos. 47621/13 and 5 others, 8 April 2021) [263]).

Third, because the right to privacy encompasses an individual's right to establish and develop meaningful social relations (*Kracke v Mental Health Review Board (General)* (2009) 29 VAR 1, [619]-[620]), the right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95]). The direction may engage this right by interfering with the ability of people to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues. The direction may also engage a person's right to work by requiring that they be fully vaccinated to work in certain businesses.

The right to privacy in section 25(a) will only be limited if the interference with privacy is 'unlawful' or 'arbitrary'. As these raise questions that are addressed in considering whether any limit is justified, it is convenient to consider these questions at the next stage when considering justification (following the approach in *Minogue v Thompson* [2021] VSC 56, [86], [140]).

- Right to non-interference with family (section 25) and protection of families (section 26): Section 25(a) of the *Human Rights Act* protects a right not to have one's family unlawfully or arbitrarily interfered with. The proposed direction may interfere with a person's family, for example, by preventing an unvaccinated family member from attending a wedding (due to the cap of 20 people) or visiting a person in a prison or youth detention centre (with some exceptions). By preventing children between 16 and 18 from attending certain businesses, the direction may also interfere with a parent's decision about their child's health. Again, whether the interference is lawful and non-arbitrary will be considered below when considering whether the interference is justified.

  Section 26(1) of the *Human Rights Act* recognises that families are the fundamental group unit of society and are entitled to be protected by society and the State. That right is an 'institutional guarantee'. Compared to the individual protection of families in section 25(a), '[t]he true significance of [section 26(1)] lies not in the warding off of State interference but rather in the protected existence of the family' (Schabas, U*N International Covenant on Civil and Political Rights: Nowak's CCPR Commentary* (NP Engel, 3rd ed, 2019) 633-4 [1]-[2], 639 [12]). The proposed direction does not limit the right of families to be protected under section 26, because the proposed direction does not threaten the existence of the family as an institution of society.

- Best interests of the child (section 26): Under section 26(2) of the *Human Rights Act*, 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. 'The child's right to health … and his or her health condition are central in assessing the child's best interest.' In all decisions about a child's health, 'the views of the child must also be given due weight based on his or her age and maturity' (UN Committee on the Rights of the Children, *General comment No 14*, UN Doc CRC/C/GC/14 (29 May 2013) 9). The proposed direction seeks to safeguard the best interests of the child by limiting the vaccination requirements to enter business premises to age 16 years and over.

The proposed direction protects the best interests of the child by preventing unvaccinated persons from visiting youth detention centres (with some exceptions), in order to prevent the risk of an outbreak amongst youths in the youth detention centre. However, by doing so, the direction may also limit other aspects of the right of children to protection in their best interests by, for example, preventing visits from unvaccinated family members.

- Cultural rights – generally (section 27) and Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): Section 27 of the *Human Rights Act* protects the rights of all people with particular cultural, religion, racial and linguistic backgrounds to enjoy their culture, declare and practise 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. Section 28 provides that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people and must not be denied the right, together with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practise their culture.

  The proposed direction may limit cultural rights in a number of ways. For example, it will set vaccination as a condition of entry for various cultural festivals, such as the Paniyiri Greek Festival in Brisbane and the Yarrabah Music and Cultural Festival in Far North Queensland. The direction may also prevent unvaccinated people from gathering and sharing in their cultural traditions at a wedding(where there is a cap of 20 people if anyone is unvaccinated.

- Right to humane treatment when deprived of liberty (section 30): Under section 30(1) of the *Human Rights Act*, any person deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person. That right is relevant whenever prisoners are 'subjected to hardship or constraint other than the hardship or constraint that results from the deprivation of liberty'. The right is relevant to this direction because it may impact a prisoner's connection to family and the community through visitors (by preventing unvaccinated people from visiting prisons, with some exceptions). A similar point applies to youth detention centres. However, whether the right is in fact 'limited' must take into account that 'although prisoners do not forgo their human rights, their enjoyment of many of the rights and freedoms enjoyed by other citizens will necessarily be compromised by the fact that they have been deprived of their liberty' (*Castles v Secretary, Department of Justice* (2010) 28 VR 141, 169 [108]-[110]; *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273, [239]). It is considered that limits on visitation fall into that category. For similar reasons, it is considered that the right not to be subjected to cruel, inhuman or degrading treatment or punishment under section 17(b) is also not limited.

- Right to health services (section 37): Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment. An objective of the proposed direction is to avoid a surge in hospitalisations once borders reopen. Preventing hospitals from being overwhelmed ensures access to health serves and thereby protects the right in section 37.

In summary, the proposed direction seeks to protect and promote the right to life, the right of access to health services and the best interests of the child (sections 16, 26 and 37). On the other hand, the proposed direction limits or may limit the right to non-discrimination on the basis of age (section 15), the right not to receive medical treatment without full, free and

informed consent (section 17(c)), freedom of movement (section 19), freedom of conscience and religion (section 20(1)), the freedom not to impart information (section 21(2)), freedom of peaceful assembly and association (section 22), the right of equal access to the public service (section 23), property rights (section 24), the right to privacy (which may include privacy of personal information, a right to bodily integrity and aspects of the right to work) (section 25(a)), the right to non-interference with family (section 25(a)), the right to protection in the best interests of the child (section 26) and cultural rights of Indigenous and non-Indigenous peoples (sections 27 and 28).

Compatibility with Human Rights

The direction will be compatible with human rights if the limits it imposes are reasonable and justified.

A limit on a human right will be reasonable and justified if:

- it is imposed under law (section 13(1));
- after considering the nature of the human rights at stake (section 13(2)(a));
- it has a proper purpose (section 13(2)(b));
- it actually helps to achieve that purpose (section 13(2)(c));
- there is no less restrictive way of achieving that purpose (section 13(2)(d)); and,
- it strikes a fair balance between the need to achieve the purpose and the impact on human rights (section 13(2)(e), (f) and (g)).

Are the limits imposed 'under law'? (section 13(1))

The Chief Health Officer is authorised to give the proposed direction under section 362B of the *Public Health Act* if they reasonably believe the direction is necessary to assist in containing, or to respond to, the spread of COVID-19 within the community.

The nature of the rights that would be limited (section 13(2)(a))

What is at stake, in human rights terms, is the ability of all people to take part in all aspects of community life. The direction implicates the ability of people to lead dignified lives, integrated in their community. Requiring people to choose between vaccination and a life integrated in their community brings into play the principle that people are entitled to make decisions about their own lives and their own bodies, which is an aspect of their individual personality, dignity and autonomy (*Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 121-2 [569], 123 [577]). When it comes to people with genuine religious and conscientious objections, one of the values that underpins a pluralistic society like Queensland is 'accommodation of a wide variety of beliefs', including beliefs about health and vaccinations (*R v Oakes* [1986] 1 SCR 103, 136 [64]). Creating consequences for a person's employment also affects a person's dignity and autonomy through work. Those values at stake inform what it is that needs to be justified.

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

The purpose of the proposed direction is to reduce the impact on individuals and the health system from spread of the COVID-19 within the broader community once Queensland borders open to other States and Territories. This can only be achieved by setting vaccination requirements and managing occupant density in certain settings such as restaurants, events

and entertainment venues and privately owned and operated premises in order to contain and prevent the spread of the virus. A further objective is to drive vaccination uptake.

Additionally, requiring most people entering certain businesses, activities and undertakings to provide proof of vaccination and contact information via the Check In Qld app, or another approved method, is to assist Queensland Health to quickly respond to and confine potential outbreaks and enable appropriate support of individuals who are considered close contacts within available resources. Ultimately, the purpose of collecting contact information is to limit the opportunity for transmission of COVID-19 when a positive COVID-19 person has been in the community before being diagnosed.

The aim of protecting public health is a proper purpose. As noted above, protecting people in the community from the risk of COVID-19 promotes their human rights to life (section 16) and access to health services (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) article 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*).

The limit on the right to equality and non-discrimination in section 15 has a slightly different purpose. Children under 16 are not subject to vaccination requirements under the proposed direction, even though children 12 and over are currently eligible for COVID-19 vaccinations. The reason why the age of 16 has been selected as the cut off is that children who are 16 or over will generally be mature enough to make decisions about their health and whether to be vaccinated. This means that, generally, only children who have the capacity to make decisions about whether to be vaccinated will face the consequences of that decision. This serves the purpose of protecting children in their best interests under section 26(2) of the *Human Rights Act*. That is a proper purpose under section 13(2)(b).

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purposes. The available evidence to date is that vaccination against COVID-19 helps to reduce the risk of being infected and transmitting the virus on to others (even if the vaccine is not 100 percent effective).[2] This means vaccinated owners, operators, visitors and staff will be less likely to be infected by other members of the community at the businesses, activities and undertakings covered by the direction. Further, they are less likely to transmit the virus on to others. If they do contract COVID-19 at these businesses, activities or undertakings, their symptoms will be less severe and less likely to result in hospitalisation.

Requiring people to provide contact information and proof of vaccination when they enter a venue or an event, limiting the occupant density and requiring compliance with COVID Safe Checklist all help to limit the opportunities for transmission of COVID-19. Additionally, the requirement for businesses and visitors to use the Check In Qld app as the method for providing and collecting contact information (subject to some exceptions) will help to achieve the public health objective, by ensuring ready access to critical information for the purposes of contact tracing.

The rational connection is not undermined by providing exceptions for people with a contraindication or children under 16. Even with those exceptions, it is still the case that a

[2] Australian Technical Advisory Group on Immunisation (ATAGI), *Clinical guidance on use of COVID-19 vaccine in Australia in 2021 (v7.4)* (29 October 2021) 26-32.

greater proportion of owners, operators, visitors and staff at businesses covered by the direction will be vaccinated.

When it comes to the age cut off of 16, it might be said that age is not a suitable proxy for maturity. Some children who are younger than 16 will have the maturity to make decisions about vaccination, and some children who are older will not have that maturity. Nonetheless, age is the best available proxy for maturity. Age-based distinctions of this kind 'are a common and necessary way of ordering our society' (*Gosselin v Quebec (Attorney General)* [2002] 4 SCR 429, 467 [31]).

Necessary (section 13(2)(d))

The following less restrictive alternatives were considered:

- applying the vaccination requirement to fewer businesses, activities and undertakings;
- allowing a wider range of exemptions (such as a genuine religious objection);
- requiring businesses and undertakings to adopt a range of control measures such as social distancing, face masks and improving ventilation;
- giving businesses a choice to address the health risk through either requiring patrons and staff to be vaccinated or operating with lower occupant density limits or patron caps; and,
- applying the direction to anyone over 12 years old (to reduce the limit on the right to non-discrimination) or applying the direction to anyone over 18 years old (to reduce the impact on the best interests of the child).

As to the first alternative of applying the direction to fewer venues, the Policy Rationale for the proposed direction explains that each of the categories of venues are included in the direction because they are high-risk. For example, prisons are included because the risks of COVID-19 to prisoners are higher. Prisoners typically have a lower health status and the enclosed environment of prisons gives rise to the risk of super-spreader events[3]. Hospitality and entertainment venues are included because they are sites where large numbers of people from many households and areas across a region attend at the same time in close proximity for prolonged periods of time. Theme parks and tourist settings are included because they often attract people from diverse geographical areas who gather together and then return to their communities, giving rise to risks of seeding.

Removing any of these categories of venues would not achieve the purpose of reducing the risks of COVID-19 transmission to the same extent as the direction in its current form. It should also be pointed out that the selection of venues is carefully tailored to the impact on human rights. Essential retail and public transport have not been included (other than to the extent that essential retail are required to collect contact information) to ensure that unvaccinated people can continue to meet their essential needs. Given that funerals are an important ritual which sometimes occur at short notice and often under difficult circumstances, unvaccinated people can still attend a funeral with other safeguards in place. Short-term rental and accommodation are not included because these venues provide the basic need of shelter. Access to government services – such as access to courts – are also specifically excluded. This carveout facilities the right of access to the courts, which is an aspect of the right to a fair trial in section 31 of the *Human Rights Act* (*Bare v IBAC* (2015) 48 VR 129, 250 [375]).

[3] https://www.aihw.gov.au/reports/australias-health/health-of-prisoners, https://nypost.com/2021/02/06/federal-executions-were-likely-covid-19-superspreader-events/>.

As to the second option of allowing a wider range of exemptions, any additional exemptions would come at greater risk of COVID-19 transmission. Accordingly, this option would not be as effective in achieving the public health objective. Further, assessing the genuineness of a person's religious or conscientious belief would be extremely difficult in each individual case and resource-intensive given the scope of the direction. Accordingly, this alternative option would also not be reasonably practicable.

The third option is to require the businesses covered by the direction to implement an alternative suite of control measures, such as social distancing and face masks. However, these alternative control measures, alone or in combination, are unlikely to be equally as effective as a vaccination requirement. The Therapeutic Goods Administration advises that '[v]accination against COVID-19 is the most effective way to reduce deaths and severe illness from infection.'[4] Further, the precautionary principle applied by epidemiologists provides that, 'from a purely public health perspective, all reasonable and effective measures to mitigate th[e] risk should ideally be put in place', not merely some of those measures (*Palmer v Western Australia [No 4]* [2020] FCA 1221, [79]). In particular, vaccination and face masks are not mutually exclusive. It is true that face mask requirements were relaxed in South East Queensland in advance of the borders reopening, but they have now been reintroduced alongside vaccination requirements. Further, it is not clear that face masks would necessarily be less restrictive of human rights. A requirement to be vaccinated may be more intrusive of human rights for an individual in the short-term (as it involves medical treatment). However, a requirement to wear a face mask would impact all people – whether vaccinated or not – on a day-to-day basis.

The fourth alternative option is to give businesses a choice to address the health risk through either requiring patrons and staff to be vaccinated or operating with lower occupant density limits or patron caps. While occupant density limits and patron caps help reduce the risk of COVID-19 transmission, these measures combined with high vaccination rates significantly reduces the risk of transmission even further.

The final alternative option is to change the age range of the people who will be subject to the vaccination condition of entry. Changing the direction so that it applies to all people who are eligible for vaccination (currently those over 12 years of age) would impose a lesser limit on the right to non-discrimination. However, it would mean that children are held responsible for health decisions they do not necessarily have the maturity to make. That is, this option would impose a greater burden on the right of children to protection in their best interests. Another alternative is to change the direction so that it only applies to adults (anyone over 18). However, this would expose visitors and staff at businesses to a greater risk of COVID-19 transmission.

In considering whether the limits on human rights are the least restrictive means, it is relevant that a number of safeguards are built in.

- The direction includes safeguards on the collection of contact information, including limiting the purpose for which the information may be used, requiring it to be securely stored and disposed of after an appropriate period of time. This is reinforced by part 7A, division 6 of the *Public Health Act* which sets out safeguards for personal information collected, including protection against direct or derivative use of the information in criminal proceedings (thereby safeguarding the right not to testify against oneself in section 32(2)(k) of the *Human Rights Act*).
- There are exceptions to the requirement to provide contact information and proof of vaccination where it is not reasonable for a person to provide contact information such

[4] <https://www.tga.gov.au/periodic/covid-19-vaccine-weekly-safety-report-02-12-2021>.

as emergency situations, if the person is conducting law enforcement activities (for example, police), or if the person is a child under the age of 16 and not accompanied by an adult. The exceptions based on risk to physical safety promote the right to security of the person in section 29(1) of the *Human Rights Act*.

- There are alternative ways of providing contact information and proof of vaccination for people who are unable to do so because of age, disability or language barriers, or because of a lack of Internet access by the business. These businesses are still required to transfer the information to an electronic format within 24 hours.
- The Check In Queensland app was developed taking human rights into account, including a complete human rights assessment.
- The direction is also in effect for a temporary period. The vaccination requirements within the direction will be regularly reassessed by the Chief Health Officer, and in particular once the population reaches 90 per cent double vaccination, with the opportunity to open up the community and economy further to everyone regardless of vaccination status.

There is no less restrictive, equally effective and practicable way to reduce the risk of COVID-19 transmission in the community. Accordingly, the limits on human rights are necessary to achieve the direction's public health objective.

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

The purpose of the Direction is to reduce the risk of COVID-19 spreading within the community and driving vaccination uptake. The benefits of achieving this purpose include reduced impacts on individuals and the health system as more COVID-19 circulates in the community. It also provides the opportunity to open up the Queensland community and economy further to everyone regardless of vaccination status. The benefit also translates to a reduced impact on the health care system by preventing the significant pressure on the health care system caused by the spread of COVID-19 in the community. Conversely, a failure to mitigate the risk of transmission would likely result in loss of life.

On the other side of the scales, these benefits come at the cost of deep and wide impacts on some people, especially people who are not vaccinated against COVID-19. Some people may be effectively locked out of the life of their community. While incentivising vaccination protects public health, it may interfere with a person's autonomy to make decisions about their bodies and their own health, and it may effectively force people to go against their deeply-held conscientious or religious beliefs.

When considering the weight of the impact on human rights, it should be emphasised that human rights come with responsibilities (reflected in clause 4 of the preamble to the *Human Rights Act*). As human rights cases overseas have held, individuals have a 'shared responsibility' or 'social duty' to vaccinate against communicable diseases 'in order to protect the health of the whole society' (*Pl ÚS 16/14* (Constitutional Court of the Czech Republic, 27 January 2015) 17 [102]; *Acmanne v Belgium* (1984) 40 Eur Comm HR 251, 265; *Boffa v San Marino* (1998) 92 Eur Comm HR 27, 35; *Solomakhin v Ukraine* [2012] ECHR 451, [36]; *Vavřička v The Czech Republic* (European Court of Human Rights, Grand Chamber, Applications nos. 47621/13 and 5 others, 8 April 2021) [279], [306] (majority), [2] (Judge Lemmens)). That is, people have a choice not to get vaccinated, but if they exercise that choice, they are putting the health, livelihoods and human rights of others in their community at risk. The right to exercise that choice carries less weight on the human rights side of the scales.

On balance, the importance of limiting the spread of COVID-19 within Queensland (taking into account the right to life) and reducing the impacts on individuals and the health system 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 within Queensland.

COVID-19 Public Health Rationale

Public Health and Social Measures linked to vaccination status Direction (No. 3)

7 February 2022

DRAFT NOT GOVERNMENT POLICY

Summary

This Policy Rationale should be read with the full policy rationale for the Direction.

The *Public Health and Social Measures linked to vaccination status Direction (No. 2)* (the Direction), that commenced on 17 December, aims to reduce the impact of COVID-19 on individuals and the Queensland health system by providing an operational framework for vaccination requirements for owners, operators, visitors and staff entering and remaining in certain businesses, activities and undertakings.

Businesses covered by the Direction include:

- hospitality venues such as pubs, clubs, taverns, bars, restaurants, cafes and fast-food outlets
- indoor entertainment venues such as nightclubs, live music venues, karaoke bars, concerts, theatres or cinemas, casinos
- outdoor entertainment activities such as sporting stadiums or theme parks
- festivals – either indoor or outdoor – such as musical festivals, folk festivals or arts festivals
- activities – either indoor or outdoor – such as convention centres and showgrounds
- Queensland Government owned galleries, museums or libraries.

The current Direction also outlines the circumstances in which a business, activity or undertaking is required to collect the contact information of visitors and staff for contact tracing purposes. Contact information is collected upon entry to a business when 'checking-in' utilising the Check in Qld App.

In line with the COVID-19 Vaccine Plan to Unite Families (the Vaccine Plan), Queensland has been gradually easing its border restrictions for interstate and international arrivals from November 2021. This has coincided with the emergence of the Omicron variant of concern and prompted a significant shift in the epidemiological situation in Queensland, with widespread community transmission now occurring.

High case numbers have been accompanied by a necessary shift in policies for test, trace, isolate and quarantine (TTIQ) measures. This follows a recent statement released by the Australian Health Protection Principal Committee (AHPPC) in relation to TTIQ in the context of high levels of COVID-19 community transmission. In relation to the management of exposure locations and use of QR check-ins, AHPPC noted the limited utility of listing exposure locations at high case numbers. As such, AHPPC recommend limiting use of QR check-ins to locations where there is:

- high risk of transmission for vulnerable individuals,
- large numbers of unvaccinated individuals or,
- settings where an outbreak would cause significant disruption (i.e., critical industries).
- AHPPC recommends the review of QR code check ins in lower risk exposure locations.

On 31 December 2021, Queensland Health ceased routine publication of exposure locations with contact tracing alerts communicated to the public as required for action.

In alignment with this shift in policy, and recent AHPPC statement, the updated Direction retains the requirement for high-risk businesses and vulnerable settings (i.e., where vaccination is a requirement for entry to the premise) to collect contact information. These are the settings with the greatest risk of transmission and adverse outcomes. For clarity, the requirement to collect contact information – or

'checking-in' – will be removed for low-risk businesses including supermarkets, taxi, rideshare, pharmacy, hairdresser etc.

Background and rationale as at 7 February 2022

Queensland is experiencing widespread community transmission, predominately of the Omicron variant. This is occurring within a highly vaccinated population (92.2 per cent single dose, 89.9 per cent double dose and 58.4 per cent of the population eligible for a booster dose as at 5 February 2022).

Although preliminary evidence on Omicron suggests that the risk of severe outcomes at the population level is lower than that posed by the Delta variant, due to its high rate of transmissibility Omicron has spread through the Queensland community at a much greater rate than calculated in previous Delta-focused planning. This rate of spread is also being experienced nationally and globally.

There have been different patterns of transmission across Queensland, with the South-East corner presenting the majority of cases. However, as the Omicron wave develops in coming weeks and new ones emerge in coming months, we can expect to see more cases in regional areas.

As of 7 February, there are 47,876 active cases, down from 77,808 reported a week ago. The 7-day PCR positivity rate also continues to decline for Queensland, sitting at 25.7 per cent as of 5 February in comparison to 27.5 per cent as of 31 January. There has been a substantial reduction in hospitalisations - from 821 on 31 January to 724 on 7 February.

The downward trend in case numbers and PCR positivity rates indicate Queensland is at or near the peak for the current wave. However, the reduction in case numbers is expected to slow with school students returning to face to face learning on 7 February, in line with the Queensland Back to School Plan.

A sharp increase in transmission among school-aged children is expected and although this cohort typically experience less severe disease (and therefore not expected to result in a considerable increase in hospitalisations), students will be bringing the virus home to their parents and grandparents.

The return to school, combined with higher levels of movement in the community including people returning to the workplace, will likely slow the reduction in cases and extend the current wave through to March. Rather than a continuous downward trend in cases, it is expected that cases will plateau with spikes in cases occurring for at least the next 8 to 12 months.

In Queensland, the broad Public Health and Social Measures (PHSMs) will continue to apply, ensuring that only fully vaccinated people are entering high-risk settings where the potential for COVID-19 transmission is greater and will continue to be an important strategy for limiting community spread.

Equally important is the requirement to collect contact information in these settings to ensure targeted and efficient contact tracing can be undertaken as required.

In their statement regarding TTIQ, AHPPC note other population level approaches including PHSMs and ongoing vaccination, particularly achieving high booster coverage, are key to keeping cases within manageable levels and therefore preventing health system overwhelm.

Current requirements - collection of contact information

The current Direction requires that that contact information is to be collected electronically using the Check in Qld App. The Check in Qld App also allows patrons to easily display proof of vaccination at the time of check in when entering a high risk or vulnerable setting. As at 1 February 2022, there have been 1,009.1 million check ins by customers and 248,330 approved locations / businesses.

All businesses specified in the Direction, including in settings that are considered at low risk of transmission e.g., supermarket, hairdresser, butcher, retail stores, national park etc., are required to collect contact information from visitors and staff (refer Table 1).

The *Public Health Act* permits the use of the Check in Qld App for both contact tracing and to ensure compliance with vaccination requirements.

Jurisdictional comparison

All states and territories have in place government endorsed check-in apps using QR codes with mandatory check-in requirements for patrons visiting certain types of venues, as summarised in Table 2.

In mid-December 2021 NSW removed the use of mandatory check-ins other than for high-risk venues (including hospitals, aged and disability care facilities, gyms, places of worship, funerals, personal services, pubs and clubs and outdoor music festivals with over 1,000 people); however, it appears this decision was subsequently changed with mandatory check-ins reintroduced in other settings such as retail.

Several states and territories (including Queensland) have in place vaccination mandates for patrons in certain settings as an additional public health and safety measure: including NSW, NT, WA and Tasmania.

Proposed changes - collection of contact information

In order to better reflect Queensland's current approach to contact tracing and AHPPC's recommended approach on TTIQ, which includes focusing on high-risk locations or settings, it is proposed that 'checking-in' is required in any setting where there is a vaccine mandate currently in place. This approach is best aligned to other jurisdictions and means the current requirement to collect contact information is retained for:

- for any business, activity or undertaking defined as high-risk and subject to vaccination requirements – e.g., hospitality venues, indoor entertainment venues, outdoor entertainment venues, festivals, weddings, funerals
- vulnerable settings - hospitals, residential aged care facilities, prisons, youth detention centres and disability accommodation services. These settings are subject to vaccination requirements.
- visitors to schools and early childhood education and care (ECEC) where it will be useful to have access to information to manage outbreaks, particularly with the potential for a large number of unvaccinated and partially vaccinated children on return to school.

In these settings, check-in will continue to be required by using the Check in Qld App which as noted above, allows visitors to easily demonstrate compliance (at a point in time or retrospectively) with mandatory vaccination requirements.

It is proposed that the current requirements for the collection of contact information would be removed for any business, activity or undertaking previously described as 'other settings' (or essential services) and where vaccination requirements do not apply – e.g., supermarket, retail stores, university or training provider, hairdresser, ride share / taxi etc.

'Other settings' have been excluded and are considered low risk of transmission. To date in Queensland, these settings (also described as essential services available to everyone regardless of vaccination status) have not typically been associated with super spreader events or large outbreaks. In these environments, people are generally not in close contact and do not attend for extensive periods. Additional public health measures such as mask wearing, physical distancing and sanitising are also required at these locations.

There have been recent reports in the media nationally about the limited usefulness of the check-in app for the purposes of contact tracing. Public Health experts warn that any suggestions for removal of check-ins be carefully considered as these still serve a purpose in many high-risk settings, as well as where people are re-tracing their own movements when diagnosed with COVID-19 and for future outbreaks of potential new variants of concern.

Table 1 – Current and proposed requirements for collection of contact information

Business or activity		Contact information currently required (Option 3)	Ongoing requirement to collect contact information (Option 1)	Unvaccinated permitted entry (yes/no)	Density Limits (if unvaccinated permitted)
Vulnerable Settings and high-risk settings	Residential aged care facilities, disability accommodation services and hospitals	✓	✓	Yes for medical treatment, end of life, childbirth, emergency.	
	Youth detention centres, and prisons	✓	✓	No (unless accompanying minor/ other person)	
Schools and ECEC	Visitors to schools	✓	✓		
Hospitality venue	Hospitality venue - Cafés, restaurants, pubs, clubs, RSL clubs, taverns, function centres, bars, wineries, distilleries and microbreweries, and these premises in accommodation hotels, or within a shopping centre or other unrestricted business, activity or undertaking.	✓	✓	No	
	Food court	✓	X	Yes	Yes – 1: 2 square metre
	Takeaway	✓	X	Yes	
	Private venue hire – where more than 20 people attend or the occupant density is more than 1 person per 4 square metres	✓	✓	Yes	Yes
Hospitality – Residential	Short-term rentals/accommodation (hotels, serviced apartments: hostels, bed and breakfasts, backpackers, boarding houses)	✓	✓	Yes	Yes
	Caravan and camping parks, National parks	✓	X	Yes	
Indoor entertainment venues	Nightclubs, Indoor live music venues, karaoke bars, concerts, theatres, cinemas, bowling alleys, amusement arcade. Casinos, gaming, gambling venues Convention and entertainment centres, including any outdoor areas. Adult entertainment venues (strip clubs), brothels, sex on premises venues and sole operator sex workers	✓	✓	No	
Outdoor Entertainment Activities	Stadiums (capacity above 5,000)	✓	✓	No	
	Stadiums (capacity 4,999 or less)	✓	X	Yes	
	Theme parks, outdoor amusement parks, tourism experiences, but not including national parks and public gardens. Zoos, aquariums, wildlife centres	✓	✓	No	
	Showgrounds	✓	✓	No (except private venue hire, part usage for market, gym)	
Festivals	Cultural festivals, art festivals, music festivals, where ticketed entry applies	✓	✓	No	
Government Owned Galleries, Museums, libraries	Galleries, museums, national and state institutions, and historic sites State Government Libraries	✓	✓	No	
Other Government Services	Customer service centres providing licensing and registration services for members of the public, Queensland Courts, post office, Medicare office, Centrelink	✓	X	Yes	

Business or activity		Contact information currently required (Option 3)	Ongoing requirement to collect contact information (Option 1)	Unvaccinated permitted entry (yes/no)	Density Limits (if unvaccinated permitted)
Other settings- community facilities	Community facilities (community centres and halls, recreation centres, youth centres, community clubs, RSL halls, PCYCs) (*excluding any dining, gaming or hospitality business in the facility)*; Outdoor community events (for example movie in the park, New Year's eve fire works, marathons, fetes, drive-in cinema) Markets (for example, farmers markets , artisan markets, Christmas markets)	✓	X	Yes	Yes (indoor only)
Weddings	Wedding ceremonies and receptions – with more than 20 people in attendance	✓	✓	Yes	Yes
Other Religious	Other religious and civil services, churches and places of worship	✓	X	Yes	Yes
	Funerals	✓*	X	Yes	Yes (indoor funerals)
	Private venue hire for religious and civil services, for example hiring a private venue, such as cinema or hall, for a religious service	✓	X	Yes	Yes (indoor) – 1:2 square metre
Other Settings	Dine-in-canteens (e.g., schools, university dormitories, mining camp)	X	X	Yes	
	Universities and other higher education institutions such as Technical And Further Education (TAFE) and Registered Training Organisations (RTOs)	✓	X	Yes	Yes
	Hairdressing, beauty therapy, nail services, tanning, cosmetic injections, personal appearance, massage, day spas, saunas, bath houses, floatation services, wellness centres	✓	X	Yes	Yes – 1: 2 square metre
	Real estate auctions, auction houses and open house inspections	✓	X	Yes	Yes - 1: 2 square metre
	Retail for example: Retail shopping centres, take away shops, food courts, department stores, pharmacies, supermarkets, grocers, bakeries, butcher's shops, fishmongers, bottle shops, convenience stores, delicatessens, bank branches, post offices, customer service branches of insurers, hardware stores, newsagents, furniture stores, electrical stores, recreational goods stores, clothing and footwear stores, newsagents, a part of a place engaged in agriculture or industry which sells to the public the produce or products of the business, and indoor and outdoor food, craft or other markets, service stations and roadhouses, including convenience outlets and food courts within a roadhouse or service station.	✓	X	Yes	
	Transport operator (taxi, rideshare, limousine, water taxi or ferry)	✓	X	Yes	
Other Settings - gyms, indoor sports centres	Indoor play centre Gyms, health clubs, fitness centres, yoga, Pilates, CrossFit boxes, barre, spin facilities dance studios, boot camps and personal training. Indoor sports centres and venues, community sports clubs, indoor swimming pools.	✓	X	Yes	Yes - 1: 2 square metre
Other Settings	Professional sporting codes, elite sport, elite athletes	X	X	Yes	

**except outdoor funerals*

Table 2 - Jurisdictional comparison (as available on 1 February 2022)

	App	Settings where check in is mandatory	Settings where vaccination is mandatory for patrons
NSW	Service NSW App	Mandatory at certain premises (revised 27 Dec), including • retail premises • food and drink premises, pubs, bars and registered clubs • hairdressers, spas, beauty salons. etc • gyms (except dance, yoga/Pilates, gymnastics, and martial arts studios) • hospitals (except patients of hospitals or hospitals with an electronic entry recording) • residential care facilities or hostels (except for residents) • places of public worship • funeral, memorials and gatherings afterwards • entertainment venues, incl. nightclubs, casinos, strip clubs, sex on premises venues, sex services premises • indoor music festivals with more than 1000 people.	Restaurants, cafes and hospitality venues, indoor/outdoor entertainment and recreation facilities are open to all patrons. Restrictions apply for unvaccinated people for: indoor music festival with more than 1,000 people.
Victoria	Service Victoria App	• All workplaces must use Service Victoria app for record keeping, ensuring all workers and visitors check in. • Check in must be conducted upon entry, regardless of the duration of the visit. • Situations where check-in is not required: where confidentiality is required, for contactless transactions/payments, etc • Situation where check in required but Service Victoria app doesn't need to be used: schools, patients at hospitals/care facilities, workers at farms, etc.	Apply for people over the age of 12 and 2 months for • hospitality (restaurants, cafes, pubs) and entertainment venues (cinemas, zoos, etc) • community (library) and arts/ cultural premises (galleries and museums) • nightlife venues, such as bars and nightclubs • events, such as festivals, fun runs and conferences • tourism venues, tours, buses • casinos, adult entertainment venues
ACT	Check In CBR app	• People must check in wherever a Check In CBR QR code is displayed • People over the age of 16 must check in when on public transport and in venues, cafes, bars, restaurants, shops, supermarkets, uber, rideshares, hire cars, at events and already restricted businesses.	Vaccination mandatory in some workforces as a condition of employment.
SA	COVID SAfe Check-In	Any place where a defined public activity is conducted, such as retail premises, passenger transport and gatherings of 51 to 200 people at a residential premise (if permitted), must use an approved contact tracing system, specifically: • businesses where there is onsite purchase and consumption of food or beverages (indoor or outdoor) • sport, fitness or recreation activities • indoor public meetings; ceremonies, public assemblies • personal care services • public entertainment venues • recreational transport, public transport, rideshare • nightclubs • relevant licensed premises, casinos or gaming areas • real estate auctions and inspections • health care, residential care, disability support or aged care services • consumption occurs and where the sale or hire involves customers who are physically present	Density and mask requirements apply.
NT	The Territory Check In App	Check-in with the Territory Check In app required at all places - businesses, organisations, community groups, venues, services and activities.	A Vaccine Pass system requires customers to show proof of their vaccination status upon entry to licensed hospitality venues: • Bars, pubs, nightclubs and clubs licensed to sell and consume liquor on premises • Casinos, licensed gaming venues • Restaurants with a liquor licence • Cinema, theatre, concert, music or dance halls Does not apply to take away food/ beverages; food court, market stall, casual dining (without liquor licence).
WA	Safe WA	Businesses are required to maintain a contact register: • Food and licensed venues (restaurants, takeaway services, food courts, cafés, bars, pubs, nightclubs) • Retailers (supermarkets, department stores, pharmacies, hardware and general retailers) • gyms, indoor sporting centres, wellness centres, health clubs and fitness centres, saunas and bathhouses • indoor play centres • swimming pool, both indoors and outdoors • places of worship, and funeral parlours • beauty and personal care • galleries, museums, cinemas, theatres etc • motor vehicles or boats, capable of carrying 12 or more passengers and is used for a party, tour or function • auction houses and real estate inspections • community facilities, libraries and halls • zoos and amusement parks • function centres • hotels, motels, campgrounds • boarding schools or residential colleges (not including residents) • adult entertainment premises • event venues, outdoor functions under 500. • Public/ private hospitals (visitors only – persons visiting patients or attending meetings, couriers, contractors) • airport terminals.	Proof of vaccination is required for everyone aged 16 and over at these venues: • All hospitality, food and licensed venues (excluding food and non-alcoholic beverage takeaway, food courts) • nightclubs • bottle shops — including drive-through bottle-shops • Specified entertainment venues including casinos, gaming/ gambling • galleries and museums • cinemas, theatres, concert halls or other live-music venues • major stadiums • indoor play centres • amusement parks with ticketed or managed entry, Perth Zoo • any other indoor entertainment venues open to the public • residential aged-care and hospitals (exceptions apply) • Indoor events with over 500 patrons
TAS	Check in TAS	Tasmanians and visitors 16 years or older are required to check in at: • Accommodation locations	Patrons must now be fully vaccinated to enter a pub, nightclub or bar, or to attend a licensed event where alcohol is served to people who are likely to be standing and drinking.

	App	Settings where check in is mandatory	Settings where vaccination is mandatory for patrons
		• Auction houses, real estate auctions and open homes • Beauty treatment premises, hairdressing, spas etc • Certain medical facilities and RACFs • Cinemas, casinos, entertainment, gambling, dance venues, nightclubs, strip clubs, amusement parks, arcades • Concert venues, theatres, arenas, auditoriums, stadiums • Galleries, museums, national institutions, libraries • Gatherings approved as COVID-19 Safe Events • Markets, fairs, mobile food vans and stalls • Passenger terminals, incl. bus, ferry and airports; and passenger transport, including taxis, rideshare, buses ferries • Places of worship • Restaurants, cafes, food courts, premises selling alcohol for drinking onsite • Shopping centres and retail including shops, pharmacies, supermarkets etc • Schools and childcare centres (except home education) • Sport and fitness venues (Swimming pools, gyms, etc) • Tourist venues, sites, activities, zoos, wildlife centres • Veterinary and animal care locations	

Public Health Directions – Human Rights Assessment
Public Health and Social Measures linked to vaccination status Direction

Title	*Public Health and Social Measures linked to vaccination status Direction No 3*
Date effective	7 February 2022

Background

The *Public Health and Social Measures linked to vaccination status 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 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 *Public Health and Social Measures linked to vaccination status Direction (No.3)* (the Direction) is to reduce the impact of COVID-19 on individuals and the Queensland health system by providing an operational framework for vaccination requirements for owners, operators, visitors and staff entering and remaining in certain businesses, activities and undertakings once eighty percent of eligible Queenslanders, aged 16 years or older are fully vaccinated. The updated *Public Health and Social Measures linked to vaccination status Direction (No 3)* removes the requirement for use of the Check-in Qld app in businesses, activities or undertakings other than where vaccination is a condition of entry.

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.

The Direction aligns with Queensland Government's *Public Health and Social Measures linked to vaccination status, A Plan for 80% and Beyond.*

How the Direction achieves the purpose

Outlining the vaccination requirements for owners, operators, visitors and staff entering and remaining in certain businesses, activities and undertakings will help to reduce the impacts on individuals and the health system with the anticipated spread of COVID-19 once Queensland borders open to other Australian States and Territories.

The Direction achieves this by providing vaccination requirements, occupancy density levels, physical distancing, and proof of vaccination for certain businesses, activities and undertakings. Certain businesses and undertakings may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

On 18 October 2021, the Queensland Government released '*Queensland's COVID-19*

Vaccine Plan to Unite Families' (the Vaccine Plan), outlining Queensland's plan for easing of border restrictions once 70 per cent of eligible Queenslanders are fully vaccinated. The plan outlined additional requirements once 80 per cent of the eligible Queensland population (16 years and older) were fully vaccinated.

On 9 November 2021, the Queensland Government released its *Public Health and Social Measures linked to vaccination status: A Plan for 80% and Beyond* outlining public health and social measures linked to COVID-19 vaccination status that will take effect when 80 per cent of the Queensland community is double vaccinated. The Plan outlined vaccination requirements for staff and patrons entering businesses. These are captured within the Direction and include the following:

a. Vulnerable settings (prisons and youth detention centres) must not allow unvaccinated visitors except in limited circumstances.
b. Only vaccinated staff and patrons are permitted to enter the following venues:
    i. Hospitality venues (examples: hotels, pubs, clubs, taverns, bars, restaurants and cafes).
    ii. Indoor entertainment venues (examples: nightclubs, indoor live music venues, karaoke bars, concerts, theatres and cinemas).
    iii. Outdoor entertainment activities (examples: tourism experiences including reef excursions, some sports stadiums and theme parks).
    iv. Festivals – entire venue – indoor and outdoor (examples: folk festivals, arts festivals, and music festivals where ticketed entry applies).
    v. Queensland Government owned galleries, museums and libraries.
c. Wedding ceremonies and receptions indoor and outdoor where no more than 20 people attend.
d. Other settings (such as certain other retail venues) density restrictions continue to apply according to the COVID Safe Future Roadmap.

The mandatory use of Check In Qld app is required only for businesses and activities covered by the Direction that require mandatory vaccination for entry and is used to verify proof of vaccination for persons 16 years or older. Additional businesses and undertakings, including shopping centres, supermarkets, retail stores and public-facing government agencies, are also included to require them to collect contact information. From 7.00pm 18 November 2021, the Check In Qld app has incorporated a person's vaccination information, enabling owners and operators of businesses to verify patrons' COVID-19 vaccination status. . The Direction provides exceptions for using the Check In Qld app where it would result in safety or liability issues. Where an exception applies, contact information and proof of vaccination is required to be collected using another method and provided to a health official in the event of an outbreak.

Human rights engaged

The human rights engaged by the Direction are:
- Right to equality (section 15)
- Right to life (section 16)
- Consent to medical 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)
- Right of equal access to the public service (section 23)
- Property rights (section 24)
- Right to privacy (section 25)
- Right to non-interference with family and protection of family (sections 25 and 26)

- Right of children to protection in their best interests (section 26)
- Cultural rights of Indigenous and non-Indigenous peoples (sections 27 and 28)
- Right to humane treatment when deprived of liberty (section 30)
- Right to health services (section 37)

- Right to equality (section 15): 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. Discrimination includes direct and indirect discrimination on the basis of a protected attribute under the *Anti-Discrimination Act 1991*, such as age, pregnancy, impairment or religious belief. Because the definition is inclusive, discrimination under the *Human Rights Act* also likely covers additional analogous grounds, which may include conscientious belief (however, it is considered that vaccination status or employment status in a particular industry will not be protected attributes as these are not immutable characteristics: *Miron v Trudel* [1995] 2 SCR 418, 496-7 [148]). The direction may result in people with protected attributes being treated differently (for example, a person with a genuine religious objection to vaccines may not be able to enter an art gallery or continue their employment at a hospitality venue). But not all differential treatment amounts to direct or indirect discrimination.

  The proposed direction will directly discriminate on the basis of age. A person who is 16 or older will not be permitted to enter various non-essential businesses, whereas a child under 16 will be permitted (even though anyone 12 or older is currently eligible for vaccination against COVID-19).

  However, it is considered that the direction does not directly or indirectly discriminate on the basis of any other protected or analogous attribute. A person with an impairment in the form of a medical contraindication will be treated by the direction in the same way as a person who is vaccinated (provided they are able to provide proof). Further, the policy prevents people from entering certain businesses because they are unvaccinated, not because they have one of those protected or analogous attributes. This means there is no direct discrimination on the basis of an impairment, pregnancy, religious belief or conscientious belief.

  Broadly, indirect discrimination is an unreasonable requirement that applies to everyone but has a disproportionate impact on people with an attribute (such as a religious or conscientious objection to vaccines). Preventing unvaccinated people from entering certain businesses may have a disproportionate impact on people who are pregnant or who have a religious or conscientious objection to vaccines. However, it is considered that the requirements under the direction are reasonable in light of the public health rationale. Because the requirement is reasonable, there is no indirect discrimination on the basis of an impairment, pregnancy, religious belief or conscientious belief.

- Right to life is protected (section 16): 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. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in Queensland, in particular vulnerable Queenslanders, by placing vaccination requirements on who may enter and remain in certain businesses, and restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

  On the other hand, as with any medical intervention, requiring a person to be vaccinated may come with a small risk of unintended consequences, some of which may be life

threatening. Presently, in Australia, the Therapeutic Goods Administration has found that 9 deaths were linked to a COVID-19 vaccination (not necessarily caused by a COVID-19 vaccination) (of the more than 39 million doses that have been administered so far).[1] Human rights cases in Europe have held that the possibility that a small number of fatalities may occur does not mean that the right to life is limited by a compulsory vaccination scheme (*Application X v United Kingdom* (1978) 14 Eur Comm HR 31, 32-3; *Boffa v San Marino* (1998) 92 Eur Comm HR 27, 33). Arguably, the right to life is engaged (that is relevant), but not limited, by the proposed direction. As noted above, the right to life is promoted by the proposed direction.

- Right not to be subjected to medical treatment without full, free and informed consent (section 17(c)): Section 17(c) of the *Human Rights Act* provides that a person must not be subject to medical treatment without the person's full, free and informed consent. Medical treatment for the purposes of section 17(c) includes administering a drug for the purpose of treatment or prevention of disease, even if the treatment benefits the person (*Kracke v Mental Health Review Board* (2009) 29 VAR 1, 123 [576]; *De Bruyn v Victorian Institute of Forensic Mental Health* (2016) 48 VR 647, 707 [158]-[160]). While the direction will prevent people from entering certain businesses if they are not vaccinated, the direction will not compel anyone to be vaccinated without their consent. Arguably, this means that the right in section 17(c) is not limited (*Kassam v Hazzard* [2021] NSWSC 1320, [55]-[70]). However, international human rights cases suggest the right may be limited in circumstances where a person is left with little practical choice but to receive the treatment (*GF v Minister of COVID-19 Response* [2021] NZHC 2526, [70]-[72]). It is possible that the proposed direction will leave people with little practical choice but to receive a vaccine, so that while consent is given, that consent may not be full and free for the purposes of section 17(c).

- Right to freedom of movement (section 19): Every person lawfully within Queensland has the right to move about freely within Queensland. The Direction limits the freedom of movement by restricting who may enter and remain in certain businesses or undertake certain activities according to their vaccination status. For example, the Direction provides that only fully vaccinated people are able to attend outdoor music festivals, or other outdoor events which may limit the way patrons can move in and around the event. While freedom of movement is limited, the restriction on movement is not so severe that the right to liberty in section 29 is also limited (*Loielo v Giles* (2020) 63 VR 1, 59 [218]).

- Freedom of thought, conscience and religion (section 20) and freedom of expression (section 21): Section 20 of the *Human Rights Act* provides that a person has the right to freedom of thought, conscience, religion and belief. Some people have deeply held religious or conscientious objections to vaccines. For example, the Catholic Church has previously advised against using vaccine products that use cell lines derived from an aborted foetus (such as AstraZeneca), unless another vaccine (such as Pfizer) is not available. The effect of the direction is that people with a conscientious or religious objection to vaccines will not be able to enter, work in or provide services at certain businesses, activities and undertakings if they remain unvaccinated after 17 December 2021.

  Freedom of religion in section 20 also encompasses a right not to be coerced or restrained in a way that limits the person's freedom to have or adopt a religion or belief (separate from the freedom to manifest their religion or belief). Similarly, freedom of expression in section 21 encompasses a right to hold an opinion without interference. At international law these are absolute rights (*Christian Youth Camps v Cobaw Community Health Service* (2014) 50 VR 256, 395 [537]). However, nothing in the proposed direction would coerce a

[1] <https://www.tga.gov.au/periodic/covid-19-vaccine-weekly-safety-report-02-12-2021>.

person to believe a particular thing or not to hold a particular opinion. It would only limit a person's manifestation of that belief or opinion. Accordingly, those aspects of those rights are not limited by the proposed direction.

- Right to peaceful assembly and freedom of association (section 22): Freedom of assembly and association upholds the right of individuals to gather together for any peaceful purpose and to associate with each other. The Direction will limit the rights of peaceful assembly and association through the vaccination requirements placed on certain businesses and the requirements for physical distancing and occupant density measures to be observed. For example, people who are not vaccinated will not be able to meet at a library or a café, or visit loved ones in a prison (except if required to accompany a minor or other person as a parent, guardian, carer or support person).

- The right of access to the public service (section 23): Under section 23(2)(b) of the *Human Rights Act*, everyone has a right of equal access to the public service and public office. A risk of dismissal from the public service may engage this right (UN Human Rights Committee, *Communication No 203/1986*, 34th sess, UN Doc Supp No 40 (A/44/40) Appendix (4 November 1988) [4] ('*Hermoza v Peru*')). The effect of the proposed direction is that some public service employees may need to be vaccinated in order to be able to continue in their role, such as people working at museums or libraries, or compliance inspectors who are required to visit venues such as licensed clubs as part of their role.

- Right to property (section 24): Everyone has the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. One right in the bundle of rights which make up 'ownership' is the right to decide who to allow onto one's property. The proposed direction interferes with that right by stipulating that certain businesses cannot allow unvaccinated staff and patrons to enter the property owned or occupied by the business, and by setting occupant density requirements. 'Property' may also include business 'goodwill', such as a clientele base, and possibly the right to practise a profession (*Malik v United Kingdom* [2012] ECHR 438, [89]-[93]). The direction may effectively deprive some businesses of a cohort of their clientele base who refuse to be vaccinated. The right to property will only be engaged where the relevant property interest is held by a natural person. Section 24(2) also only protects against deprivations of property which are 'arbitrary'. As arbitrary in this context means (among other things) disproportionate, it is convenient to consider whether the impact is arbitrary below when considering whether the impact is justified (following the approach in *Minogue v Thompson* [2021] VSC 56, [86], [140]).

- Right to privacy (section 25): There are a number of different aspects of the right to privacy that may be engaged.

  First, the proposed direction would require owners, operators, visitors and staff to share personal information, such as their vaccination status. Requiring a person to disclose personal information interferes with privacy (*DPP (Vic) v Kaba* (2014) 44 VR 526, 564 [132]). Arguably, the freedom to impart information under section 21(2) includes a freedom not to impart information (*Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080). However, a limit on this right would add no more to the interference with privacy.

  Second, the right to privacy includes a right to bodily integrity (*Pretty v United Kingdom* (2002) 35 EHRR 1, [61]; *PBU v Mental Health Tribunal* (2018) 56 VR 141, 179 [125]). This right will be limited by compulsory vaccination, whether as an involuntary treatment, or where there are repercussions for failing to vaccinate, such as an inability to access

services (*Vavřička v The Czech Republic* (European Court of Human Rights, Grand Chamber, Applications nos. 47621/13 and 5 others, 8 April 2021) [263]).

Third, because the right to privacy encompasses an individual's right to establish and develop meaningful social relations (*Kracke v Mental Health Review Board (General)* (2009) 29 VAR 1, [619]-[620]), the right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95]). The direction may engage this right by interfering with the ability of people to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues. The direction may also engage a person's right to work by requiring that they be fully vaccinated to work in certain businesses.

The right to privacy in section 25(a) will only be limited if the interference with privacy is 'unlawful' or 'arbitrary'. As these raise questions that are addressed in considering whether any limit is justified, it is convenient to consider these questions at the next stage when considering justification (following the approach in *Minogue v Thompson* [2021] VSC 56, [86], [140]).

- Right to non-interference with family (section 25) and protection of families (section 26): Section 25(a) of the *Human Rights Act* protects a right not to have one's family unlawfully or arbitrarily interfered with. The proposed direction may interfere with a person's family, for example, by preventing an unvaccinated family member from attending a wedding (due to the cap of 20 people) or visiting a person in a prison or youth detention centre (with some exceptions). By preventing children between 16 and 18 from attending certain businesses, the direction may also interfere with a parent's decision about their child's health. Again, whether the interference is lawful and non-arbitrary will be considered below when considering whether the interference is justified.

  Section 26(1) of the *Human Rights Act* recognises that families are the fundamental group unit of society and are entitled to be protected by society and the State. That right is an 'institutional guarantee'. Compared to the individual protection of families in section 25(a), '[t]he true significance of [section 26(1)] lies not in the warding off of State interference but rather in the protected existence of the family' (Schabas, U*N International Covenant on Civil and Political Rights: Nowak's CCPR Commentary* (NP Engel, 3rd ed, 2019) 633-4 [1]-[2], 639 [12]). The proposed direction does not limit the right of families to be protected under section 26, because the proposed direction does not threaten the existence of the family as an institution of society.

- Best interests of the child (section 26): Under section 26(2) of the *Human Rights Act*, 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. 'The child's right to health … and his or her health condition are central in assessing the child's best interest.' In all decisions about a child's health, 'the views of the child must also be given due weight based on his or her age and maturity' (UN Committee on the Rights of the Children, *General comment No 14*, UN Doc CRC/C/GC/14 (29 May 2013) 9). The proposed direction seeks to safeguard the best interests of the child by limiting the vaccination requirements to enter business premises to age 16 years and over.

  The proposed direction protects the best interests of the child by preventing unvaccinated persons from visiting youth detention centres (with some exceptions), in order to prevent

the risk of an outbreak amongst youths in the youth detention centre. However, by doing so, the direction may also limit other aspects of the right of children to protection in their best interests by, for example, preventing visits from unvaccinated family members.

- Cultural rights – generally (section 27) and Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): Section 27 of the *Human Rights Act* protects the rights of all people with particular cultural, religion, racial and linguistic backgrounds to enjoy their culture, declare and practise 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. Section 28 provides that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people and must not be denied the right, together with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practise their culture.

  The proposed direction may limit cultural rights in a number of ways. For example, it will set vaccination as a condition of entry for various cultural festivals, such as the Paniyiri Greek Festival in Brisbane and the Yarrabah Music and Cultural Festival in Far North Queensland. The direction may also prevent unvaccinated people from gathering and sharing in their cultural traditions at a wedding (where there is a cap of 20 people if anyone is unvaccinated.

- Right to humane treatment when deprived of liberty (section 30): Under section 30(1) of the *Human Rights Act*, any person deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person. That right is relevant whenever prisoners are 'subjected to hardship or constraint other than the hardship or constraint that results from the deprivation of liberty'. The right is relevant to this direction because it may impact a prisoner's connection to family and the community through visitors (by preventing unvaccinated people from visiting prisons, with some exceptions). A similar point applies to youth detention centres. However, whether the right is in fact 'limited' must take into account that 'although prisoners do not forgo their human rights, their enjoyment of many of the rights and freedoms enjoyed by other citizens will necessarily be compromised by the fact that they have been deprived of their liberty' (*Castles v Secretary, Department of Justice* (2010) 28 VR 141, 169 [108]-[110]; *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273, [239]). It is considered that limits on visitation fall into that category. For similar reasons, it is considered that the right not to be subjected to cruel, inhuman or degrading treatment or punishment under section 17(b) is also not limited.

- Right to health services (section 37): Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment. An objective of the proposed direction is to avoid a surge in hospitalisations once borders reopen. Preventing hospitals from being overwhelmed ensures access to health serves and thereby protects the right in section 37.

In summary, the proposed direction seeks to protect and promote the right to life, the right of access to health services and the best interests of the child (sections 16, 26 and 37). On the other hand, the proposed direction limits or may limit the right to non-discrimination on the basis of age (section 15), the right not to receive medical treatment without full, free and informed consent (section 17(c)), freedom of movement (section 19), freedom of conscience and religion (section 20(1)), the freedom not to impart information (section 21(2)), freedom of peaceful assembly and association (section 22), the right of equal access to the public service (section 23), property rights (section 24), the right to privacy (which may include privacy of

personal information, a right to bodily integrity and aspects of the right to work) (section 25(a)), the right to non-interference with family (section 25(a)), the right to protection in the best interests of the child (section 26) and cultural rights of Indigenous and non-Indigenous peoples (sections 27 and 28).

Compatibility with Human Rights

The direction will be compatible with human rights if the limits it imposes are reasonable and justified.

A limit on a human right will be reasonable and justified if:

- it is imposed under law (section 13(1));
- after considering the nature of the human rights at stake (section 13(2)(a));
- it has a proper purpose (section 13(2)(b));
- it actually helps to achieve that purpose (section 13(2)(c));
- there is no less restrictive way of achieving that purpose (section 13(2)(d)); and,
- it strikes a fair balance between the need to achieve the purpose and the impact on human rights (section 13(2)(e), (f) and (g)).

Are the limits imposed 'under law'? (section 13(1))

The Chief Health Officer is authorised to give the proposed direction under section 362B of the *Public Health Act* if they reasonably believe the direction is necessary to assist in containing, or to respond to, the spread of COVID-19 within the community.

The nature of the rights that would be limited (section 13(2)(a))

What is at stake, in human rights terms, is the ability of all people to take part in all aspects of community life. The direction implicates the ability of people to lead dignified lives, integrated in their community. Requiring people to choose between vaccination and a life integrated in their community brings into play the principle that people are entitled to make decisions about their own lives and their own bodies, which is an aspect of their individual personality, dignity and autonomy (*Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 121-2 [569], 123 [577]). When it comes to people with genuine religious and conscientious objections, one of the values that underpins a pluralistic society like Queensland is 'accommodation of a wide variety of beliefs', including beliefs about health and vaccinations (*R v Oakes* [1986] 1 SCR 103, 136 [64]). Creating consequences for a person's employment also affects a person's dignity and autonomy through work. Those values at stake inform what it is that needs to be justified.

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

The purpose of the proposed direction is to reduce the impact on individuals and the health system from spread of the COVID-19 within the broader community once Queensland borders open to other States and Territories. This can only be achieved by setting vaccination requirements and managing occupant density in certain settings such as restaurants, events and entertainment venues and privately owned and operated premises in order to contain and prevent the spread of the virus. A further objective is to drive vaccination uptake.

Additionally, requiring people entering certain businesses, activities and undertakings where vaccination is required for entry to provide proof of vaccination and contact information via the

Check In Qld app, or another approved method, is to assist Queensland Health to quickly respond to and confine potential outbreaks and enable appropriate support of individuals who are considered close contacts within available resources. Ultimately, the purpose of collecting contact information is to limit the opportunity for transmission of COVID-19 when a positive COVID-19 person has been in the community before being diagnosed.

The aim of protecting public health is a proper purpose. As noted above, protecting people in the community from the risk of COVID-19 promotes their human rights to life (section 16) and access to health services (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) article 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*).

The limit on the right to equality and non-discrimination in section 15 has a slightly different purpose. Children under 16 are not subject to vaccination requirements under the proposed direction, even though children 12 and over are currently eligible for COVID-19 vaccinations. The reason why the age of 16 has been selected as the cut off is that children who are 16 or over will generally be mature enough to make decisions about their health and whether to be vaccinated. This means that, generally, only children who have the capacity to make decisions about whether to be vaccinated will face the consequences of that decision. This serves the purpose of protecting children in their best interests under section 26(2) of the *Human Rights Act*. That is a proper purpose under section 13(2)(b).

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purposes. The available evidence to date is that vaccination against COVID-19 helps to reduce the risk of being infected and transmitting the virus on to others (even if the vaccine is not 100 percent effective).[2] This means vaccinated owners, operators, visitors and staff will be less likely to be infected by other members of the community at the businesses, activities and undertakings covered by the direction. Further, they are less likely to transmit the virus on to others. If they do contract COVID-19 at these businesses, activities or undertakings, their symptoms will be less severe and less likely to result in hospitalisation.

Requiring people to provide contact information and proof of vaccination when they enter a venue or an event, limiting the occupant density and requiring compliance with COVID Safe Checklist all help to limit the opportunities for transmission of COVID-19. Additionally, the requirement for businesses where vaccination is required for entry and visitors to use the Check In Qld app as the method for providing and collecting contact information (subject to some exceptions) will help to achieve the public health objective, by ensuring ready access to critical information for the purposes of contact tracing. The changes to the direction reduce the impacts on human rights by limiting use of the check in app only to those businesses, activities or undertaking where a vaccination requirement applies.

The rational connection is not undermined by providing exceptions for people with a contraindication or children under 16. Even with those exceptions, it is still the case that a greater proportion of owners, operators, visitors and staff at businesses covered by the direction will be vaccinated.

[2] Australian Technical Advisory Group on Immunisation (ATAGI), *Clinical guidance on use of COVID-19 vaccine in Australia in 2021 (v7.4)* (29 October 2021) 26-32.

When it comes to the age cut off of 16, it might be said that age is not a suitable proxy for maturity. Some children who are younger than 16 will have the maturity to make decisions about vaccination, and some children who are older will not have that maturity. Nonetheless, age is the best available proxy for maturity. Age-based distinctions of this kind 'are a common and necessary way of ordering our society' (*Gosselin v Quebec (Attorney General)* [2002] 4 SCR 429, 467 [31]).

Necessary (section 13(2)(d))

The following less restrictive alternatives were considered:

- applying the vaccination requirement to fewer businesses, activities and undertakings;
- allowing a wider range of exemptions (such as a genuine religious objection);
- requiring businesses and undertakings to adopt a range of control measures such as social distancing, face masks and improving ventilation;
- giving businesses a choice to address the health risk through either requiring patrons and staff to be vaccinated or operating with lower occupant density limits or patron caps; and,
- applying the direction to anyone over 12 years old (to reduce the limit on the right to non-discrimination) or applying the direction to anyone over 18 years old (to reduce the impact on the best interests of the child).

As to the first alternative of applying the direction to fewer venues, the Policy Rationale for the proposed direction explains that each of the categories of venues are included in the direction because they are high-risk. For example, prisons are included because the risks of COVID-19 to prisoners are higher. Prisoners typically have a lower health status and the enclosed environment of prisons gives rise to the risk of super-spreader events[3]. Hospitality and entertainment venues are included because they are sites where large numbers of people from many households and areas across a region attend at the same time in close proximity for prolonged periods of time. Theme parks and tourist settings are included because they often attract people from diverse geographical areas who gather together and then return to their communities, giving rise to risks of seeding.

Removing any of these categories of venues would not achieve the purpose of reducing the risks of COVID-19 transmission to the same extent as the direction in its current form. It should also be pointed out that the selection of venues is carefully tailored to the impact on human rights. Essential retail and public transport have not been included (other than to the extent that essential retail are required to collect contact information) to ensure that unvaccinated people can continue to meet their essential needs. Given that funerals are an important ritual which sometimes occur at short notice and often under difficult circumstances, unvaccinated people can still attend a funeral with other safeguards in place. Short-term rental and accommodation are not included because these venues provide the basic need of shelter. Access to government services – such as access to courts – are also specifically excluded. This carveout facilities the right of access to the courts, which is an aspect of the right to a fair trial in section 31 of the *Human Rights Act* (*Bare v IBAC* (2015) 48 VR 129, 250 [375]).

As to the second option of allowing a wider range of exemptions, any additional exemptions would come at greater risk of COVID-19 transmission. Accordingly, this option would not be as effective in achieving the public health objective. Further, assessing the genuineness of a person's religious or conscientious belief would be extremely difficult in each individual case

[3] https://www.aihw.gov.au/reports/australias-health/health-of-prisoners, https://nypost.com/2021/02/06/federal-executions-were-likely-covid-19-superspreader-events/>.

and resource-intensive given the scope of the direction. Accordingly, this alternative option would also not be reasonably practicable.

The third option is to require the businesses covered by the direction to implement an alternative suite of control measures, such as social distancing and face masks. However, these alternative control measures, alone or in combination, are unlikely to be equally as effective as a vaccination requirement. The Therapeutic Goods Administration advises that '[v]accination against COVID-19 is the most effective way to reduce deaths and severe illness from infection.'[4] Further, the precautionary principle applied by epidemiologists provides that, 'from a purely public health perspective, all reasonable and effective measures to mitigate th[e] risk should ideally be put in place', not merely some of those measures (*Palmer v Western Australia [No 4]* [2020] FCA 1221, [79]). In particular, vaccination and face masks are not mutually exclusive. It is true that face mask requirements were relaxed in South East Queensland in advance of the borders reopening, but they have now been reintroduced alongside vaccination requirements. Further, it is not clear that face masks would necessarily be less restrictive of human rights. A requirement to be vaccinated may be more intrusive of human rights for an individual in the short-term (as it involves medical treatment). However, a requirement to wear a face mask would impact all people – whether vaccinated or not – on a day-to-day basis.

The fourth alternative option is to give businesses a choice to address the health risk through either requiring patrons and staff to be vaccinated or operating with lower occupant density limits or patron caps. While occupant density limits and patron caps help reduce the risk of COVID-19 transmission, these measures combined with high vaccination rates significantly reduces the risk of transmission even further.

The final alternative option is to change the age range of the people who will be subject to the vaccination condition of entry. Changing the direction so that it applies to all people who are eligible for vaccination (currently those over 12 years of age) would impose a lesser limit on the right to non-discrimination. However, it would mean that children are held responsible for health decisions they do not necessarily have the maturity to make. That is, this option would impose a greater burden on the right of children to protection in their best interests. Another alternative is to change the direction so that it only applies to adults (anyone over 18). However, this would expose visitors and staff at businesses to a greater risk of COVID-19 transmission.

In considering whether the limits on human rights are the least restrictive means, it is relevant that a number of safeguards are built in.

- The direction includes safeguards on the collection of contact information, including limiting the purpose for which the information may be used, requiring it to be securely stored and disposed of after an appropriate period of time. This is reinforced by part 7A, division 6 of the *Public Health Act* which sets out safeguards for personal information collected, including protection against direct or derivative use of the information in criminal proceedings (thereby safeguarding the right not to testify against oneself in section 32(2)(k) of the *Human Rights Act*).
- There are exceptions to the requirement to provide contact information and proof of vaccination where it is not reasonable for a person to provide contact information such as emergency situations, if the person is conducting law enforcement activities (for example, police), or if the person is a child under the age of 16 and not accompanied by an adult. The exceptions based on risk to physical safety promote the right to security of the person in section 29(1) of the *Human Rights Act*. The direction now reduces the places where contact information is provided, reflecting the changed

[4] <https://www.tga.gov.au/periodic/covid-19-vaccine-weekly-safety-report-02-12-2021>.

circumstances in the community and referencing only those places where vaccination is a condition of entry.
- There are alternative ways of providing contact information and proof of vaccination for people who are unable to do so because of age, disability or language barriers, or because of a lack of Internet access by the business. These businesses are still required to transfer the information to an electronic format within 24 hours.
- The Check In Queensland app was developed taking human rights into account, including a complete human rights assessment.
- The direction is also in effect for a temporary period. The vaccination requirements within the direction will be regularly reassessed by the Chief Health Officer, and in particular once the population reaches 90 per cent double vaccination, with the opportunity to open up the community and economy further to everyone regardless of vaccination status.

There is no less restrictive, equally effective and practicable way to reduce the risk of COVID-19 transmission in the community. Accordingly, the limits on human rights are necessary to achieve the direction's public health objective.

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

The purpose of the Direction is to reduce the risk of COVID-19 spreading within the community and driving vaccination uptake. The benefits of achieving this purpose include reduced impacts on individuals and the health system as more COVID-19 circulates in the community. It also provides the opportunity to open up the Queensland community and economy further to everyone regardless of vaccination status. The benefit also translates to a reduced impact on the health care system by preventing the significant pressure on the health care system caused by the spread of COVID-19 in the community. Conversely, a failure to mitigate the risk of transmission would likely result in loss of life.

On the other side of the scales, these benefits come at the cost of deep and wide impacts on some people, especially people who are not vaccinated against COVID-19. Some people may be effectively locked out of the life of their community. While incentivising vaccination protects public health, it may interfere with a person's autonomy to make decisions about their bodies and their own health, and it may effectively force people to go against their deeply-held conscientious or religious beliefs.

When considering the weight of the impact on human rights, it should be emphasised that human rights come with responsibilities (reflected in clause 4 of the preamble to the *Human Rights Act*). As human rights cases overseas have held, individuals have a 'shared responsibility' or 'social duty' to vaccinate against communicable diseases 'in order to protect the health of the whole society' (*Pl ÚS 16/14* (Constitutional Court of the Czech Republic, 27 January 2015) 17 [102]; *Acmanne v Belgium* (1984) 40 Eur Comm HR 251, 265; *Boffa v San Marino* (1998) 92 Eur Comm HR 27, 35; *Solomakhin v Ukraine* [2012] ECHR 451, [36]; *Vavřička v The Czech Republic* (European Court of Human Rights, Grand Chamber, Applications nos. 47621/13 and 5 others, 8 April 2021) [279], [306] (majority), [2] (Judge Lemmens)). That is, people have a choice not to get vaccinated, but if they exercise that choice, they are putting the health, livelihoods and human rights of others in their community at risk. The right to exercise that choice carries less weight on the human rights side of the scales.

On balance, the importance of limiting the spread of COVID-19 within Queensland (taking into account the right to life) and reducing the impacts on individuals and the health system 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 within Queensland.