

**Public Health Directions –
Restrictions on Businesses, Activities and Undertakings Direction**

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction</i>
Date effective	1 June 2020

Background

The *Restrictions on Businesses, Activities and Undertakings Direction* was 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 *Restrictions on Businesses, Activities and Undertakings Direction* (Direction) is to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings are managed. Some businesses, such as nightclubs, which are considered to pose a larger public health risk in terms of potential COVID-19 transmission, are not allowed to operate.

The Direction revokes and replaces the *Non-Essential Business, Activity and Undertaking Closure (No. 10) Direction*.

The businesses listed in the Direction that may operate must comply with the restrictions outlined in the Direction, or in compliance with a relevant plan. The relevant plan will be either an *Industry COVID SAFE Plan*, a *Site Specific COVID SAFE Plan* or a *Professional Sporting Code COVID SAFE Plan*. The restrictions in the Direction relate to the maximum number of people allowed at a business or activity, the hygiene and social distancing requirements for a business to operate and requirements specific to individual businesses, for example, swimming pools.

Human rights engaged

The human rights engaged by the Direction are:

- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

Limitations

The right to freedom of movement in section 19 of the Human Rights Act may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in

public places in Queensland. For example, the Direction provides that retail food services may operate for up to 20 seated patrons while the Direction is in effect.

The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing a maximum of 20 people to attend a service at a place of worship. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice.

The right to peaceful assembly and freedom of association (section 22) upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for social distancing measures to be observed.

The right to property in section 24 of the Human Rights Act encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by forcing the closure or restricting the operation of certain businesses for the duration of the Direction, which is a limitation on the property rights of the owners and operators of these businesses.

The right to privacy in section 25 of the Human Rights Act is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues. The Direction may also limit a person's right to work by continuing to mandate the closure of certain businesses or restricting the way certain businesses operate and their capacity.

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 practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities, and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. The Direction may limit people's ability to engage with others who share their cultural background by requiring restricting places where people congregate for the purpose of worship and fellowship.

Justification

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

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

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

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

The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. This internal limitation may apply where the Direction authorises restrictions on movement pursuant to a lawful direction based on a reasonable belief that the restriction is necessary to assist in containing or responding to the spread of COVID-19 within the community. The Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally or from seeking alternative employment. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements are proportionate and necessary to the unprecedented threat to public health, including the pressing need for social distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in other ways. For example, through private prayer, online tools, or meetings at places of worship with a maximum of five people, with no more than one person per 4 square metres. The limitations on religious and cultural rights are considered justified.

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

The Direction revoked and replaced the *Non-Essential Business, Activity and Undertaking Closure (No. 10) Direction* after a review to ensure the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act. Easing of restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

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

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Subject: For approval by Dr Young: Restrictions on Businesses, Activities and Undertakings Direction No. 2
Date: Monday, 15 June 2020 5:20:38 PM
Attachments: [Restrictions on Businesses Activities and Undertakings Direction No.2.docx](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[QAs_Restriction Business_No2.docx](#)
[UD_Restriction on BusinessNo2.docx](#)

Hi Response Lead

Please find **attached** the *Restrictions on Businesses, Activities and Undertakings (No. 2)* and associated comms materials for approval by Dr Young and publication. Dr Young and the Premier announced today that from tomorrow, funerals will be able to have a maximum of 100 people.

Human Rights assessment

- The Public Health Direction may engage these rights under the *Human Rights Act 2019 (Qld)*:
 - freedom of movement (section 19)
 - freedom of thought, conscience, religion and belief (section 20)
 - peaceful assembly and freedom of association (section 22)
 - privacy and reputation (section 25)
 - cultural rights – generally (section 27)
 - cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- The purpose of the Restrictions on Businesses, Activities and Undertakings Direction (No. 2) is to reduce the spread of COVID-19 and protect the most vulnerable people within the community. The purpose of the Direction can only be achieved by limiting a number of rights, including freedom of movement, right to peaceful assembly and freedom of association, right to privacy and reputation and cultural rights. These rights are limited because the Directions restricts the number of people that can partake in businesses (eg. Restaurants) and activities (worship services, sports, cultural festivals), and by placing restrictions on the way certain businesses, activities and undertakings can operate. The Direction also requires businesses to keep a record of personal details in order to

effectively be able to undertake contract tracing.

- Containing and controlling the spread of COVID-19 provides a direct health benefit to the broader community and those most vulnerable.

[Redacted]

Thanks

Sally

Queensland Government



Sally Stubbington

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campaign image



Queensland Health acknowledges the Traditional Owners of the land, and pays respect to Elders past, present and future.

RTI RELEASED

Public Health Directions –
Restrictions on Businesses, Activities and Undertakings Direction (No. 4)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 3)</i>
Date effective	3 July 2020

Background

The *Restrictions on Businesses, Activities and Undertakings 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 *Restrictions on Businesses, Activities and Undertakings Direction (No. 3)* (Direction) is to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings are managed.

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 2)*.

The businesses listed in the Direction that may operate must comply with the restrictions outlined in the Direction and in accordance with the COVID Safe Framework. The COVID Safe Framework means:

- where there is an approved plan for the business, activity or undertaking, this must be complied with, or
- where there is no approved plan, a COVID Safe Checklist or COVID Safe Event Checklist must be complied with.

The restrictions in the Direction relate to the physical distancing and hygiene requirements for a businesses to operate, as well as requirements specific to individual businesses, for example, swimming pools.

Human rights engaged

The human rights engaged by the Direction are:

- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

Limitations

The right to freedom of movement in section 19 of the Human Rights Act may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that for venues or spaces of 80 square metres or less, only 20 people can be present.

The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing places of worship to have as many people as can be accommodated with one person per 4 square metres. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the social distancing measures in place.

The right to peaceful assembly and freedom of association (section 22) upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing measures to be observed.

The right to property in section 24 of the Human Rights Act encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (eg. nightclubs cannot use their dancefloors for dancing), which is a limitation on the property rights of the owners and operators of these businesses.

The right to privacy in section 25 of the Human Rights Act is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity.

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 practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities, and recognises that enjoying one's culture is intertwined with the capacity to do so in

connection with others from the same cultural background. The Direction may limit people's ability to engage with others who share their cultural background by requiring physical distancing where people congregate for the purpose of worship and fellowship.

Justification

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

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

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

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

The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. This internal limitation may apply where the Direction authorises restrictions on movement pursuant to a lawful direction based on a reasonable belief that the restriction is necessary to assist in containing or responding to the spread of COVID-19 within the community. The Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally or from seeking alternative employment. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements are proportionate and necessary to the unprecedented threat to public health, including the pressing need for social distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in other ways. For example, through private prayer, online tools, or meetings at places of worship, with no more than one person per 4 square metres. The limitations on religious and cultural rights are considered justified.

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

The Direction revoked and replaced the *Restrictions on Businesses, Activities and Undertakings Direction (No. 2)* after a review to ensure the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective

of the Human Rights Act. Easing of restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

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

RTI RELEASE

Public Health Directions –
Restrictions on Businesses, Activities and Undertakings Direction (No. 4)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 4)</i>
Date effective	X July 2020

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 4)* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis 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 *Restrictions on Businesses, Activities and Undertakings Direction (No. 4)* (Direction) is to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings are managed.

The businesses listed in the Direction that may operate must comply with the restrictions outlined in the Direction and in accordance with the COVID Safe Framework. The COVID Safe Framework means:

- where there is an approved plan for the business, activity or undertaking, this must be complied with, or
- where there is no approved plan, a COVID Safe Checklist or COVID Safe Event Checklist must be complied with.

The restrictions in the Direction relate to the physical distancing and hygiene requirements for a business to operate, as well as requirements specific to individual businesses and activities, for example, swimming pools.

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 3)*. The Direction has been updated to make the following minor changes, to:

- provide that despite the prohibition on restricted businesses operating dance floors, wedding venues may allow the couple getting married to dance with each other and/or their parents, for example, to perform a first dance for their guests;
- clarify that wedding ceremonies and funerals are limited to a maximum of 100 people.

Human rights engaged

- The human rights engaged by the Direction are: Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)

- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

Limitations

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings are managed.

In addition and in regard to the following specific human rights:

- The right to freedom of movement in section 19 of the Human Rights Act may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that for venues or spaces of 200 square metres or less, only 50 people can be present.
- The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing places of worship to have as many people as can be accommodated with one person per 4 square metres, or a maximum of 50 people for venues smaller than 200 square metres. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the social distancing measures in place.
- The right to peaceful assembly and freedom of association (section 22) upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing measures to be observed.
- The right to property in section 24 of the Human Rights Act encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. nightclubs cannot use their dancefloors for dancing), which is a limitation on the property rights of the owners and operators of these businesses.
- The right to privacy in section 25 of the Human Rights Act is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (ZZ

v Secretary, Department of Justice [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. The Direction also limits the right to privacy by requiring the collection of contact details for contact tracing purposes.

- 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 practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities, and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. 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 practice their culture. The Direction may limit people's ability to engage with others who share their cultural background by requiring physical distancing where people congregate for the purpose of worship and fellowship.

Justification

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

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

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as through private prayer, or in a gathering of people as permitted under the Direction, for example by adhering to the 2 or 4 square metre rule.

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

The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. This internal limitation may apply where the Direction authorises restrictions on movement pursuant to a lawful direction based on a reasonable belief that the restriction is necessary to assist in containing or responding to the spread of COVID-19 within the community. The Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally or from seeking alternative employment. The requirement to collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread

of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements are proportionate and necessary to the unprecedented threat to public health, including the pressing need for social distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in other ways. For example, through private prayer, online tools, or meetings at places of worship, with no more than one person per 4 square metres, or one person per 2 square metres for venues smaller than 200 square metres. The limitations on religious and cultural rights are considered justified.

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

Given the low number of COVID-19 cases in Queensland, these measures strike a fair balance between protecting human rights while continuing to protect the community from the impacts of the pandemic.

The Direction ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act. Easing of restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

Additionally, the recent outbreak in Victoria shows how quickly COVID-19 may spread and impact on communities. From a public health perspective, the preferred approach is to gradually increase the number of places where people may go, and the number of people that might gather. This reduces the likelihood of sudden outbreaks of the virus across the State, therefore reducing the risk to individuals and ensuring that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts.

Public Health Directions –
Restrictions on Businesses, Activities and Undertakings Direction (No. 5)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 5)</i>
Date effective	24 July 2020

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 5)* 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 *Restrictions on Businesses, Activities and Undertakings Direction (No. 5)* (Direction) is to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings are managed.

The businesses listed in the Direction may operate in compliance with the restrictions outlined in the Direction and in accordance with the COVID Safe Framework. The COVID Safe Framework means complying with:

- an approved plan for the business, activity or undertaking, if applicable, or
- a COVID Safe Checklist or COVID Safe Event Checklist if there is no approved plan; or
- an applicable COVID Safe Checklist if a business elects not to operate under an approved plan.

The restrictions in the Direction relate to density requirements (for example, 1 person per 4 square metres), physical distancing, collection of contact information for contact tracing and hygiene requirements a business must meet. Some businesses may also be required to meet additional requirements due to the higher potential risk posed by the specific business.

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 4)*. The Direction has been updated with changes to:

- require patrons in food and drink venues to be seated;
- contact tracing requirements;
- clarify that indoor and outdoor events may operate under an approved plan, other than a COVID Safe Event Plan, if applicable. Event organisers operating under an Industry Plan or Site Specific Plan will be required to notify the local public health unit of events over 500 people a minimum of 10 business days prior to the event. Otherwise, an event must operate in compliance with a COVID Safe Event Checklist (for events under 500 people) or a COVID Safe Event Plan (for events over 500 people).

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)

- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

Limitations

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

In addition and in regard to the following specific human rights:

- The right to freedom of movement in section 19 of the Human Rights Act may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that for venues or spaces of 200 square metres or less, only 50 people can be present.
- The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing places of worship to have as many people as can be accommodated with one person per 4 square metres, or a maximum of 50 people for venues smaller than 200 square metres. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the physical distancing measures in place.
- The right to peaceful assembly and freedom of association (section 22) upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing measures to be observed.
- The right to property in section 24 of the Human Rights Act encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. food and drink venues can only operate for seated patrons), which is a limitation on the property rights of the owners and operators of these businesses.

- The right to privacy in section 25 of the Human Rights Act is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. The Direction also limits the right to privacy by requiring the collection of contact details for contact tracing purposes.
- 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 practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities, and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. 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 practice their culture. The Direction may limit people's ability to engage with others who share their cultural background by requiring physical distancing where people congregate for the purpose of worship and fellowship.

Justification

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

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

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as through private prayer, or in a gathering of people as permitted under the Direction, for example by adhering to the 2 or 4 square metre rule.

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

The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. This internal limitation may apply where the Direction authorises restrictions on movement pursuant to a lawful direction based on a reasonable belief that the restriction is necessary to assist in containing or responding to the spread of COVID-19 within the community. The Direction does not prohibit people from

communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally or from seeking alternative employment. The requirement to collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in other ways. For example, through private prayer, online tools, or meetings at places of worship, with no more than one person per 4 square metres, or one person per 2 square metres for venues smaller than 200 square metres. The limitations on religious and cultural rights are considered justified.

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

Given the low number of COVID-19 cases in Queensland, these measures strike a fair balance between protecting human rights while continuing to protect the community from the impacts of the pandemic.

The Direction ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

Additionally, the recent outbreak in Victoria shows how quickly COVID-19 may spread and impact on communities. From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses. This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

Public Health Directions –
Restrictions on Businesses, Activities and Undertakings Direction (No. 6)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 6)</i>
Date effective	1 October 2020

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 6)* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis 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 *Restrictions on Businesses, Activities and Undertakings Direction (No. 6)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Framework. The COVID Safe Framework means complying with:

- an approved plan for the business, activity or undertaking, if applicable, or
- a COVID Safe Checklist or COVID Safe Event Checklist if there is no approved plan; or
- an applicable COVID Safe Checklist if a business elects not to operate under an approved plan.

The Direction also provides occupancy density requirements (for example, 1 person per 4 square metres), physical distancing, collection of contact information for contact tracing and hygiene requirements a business must meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the that business or activity

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 5)*. The Direction has been updated to:

- allow an occupant density of 1 person per 2 square metres for outdoor venues or spaces for example, beer gardens, theme parks and zoos
- provide that outdoor sports facilities such as stadiums may operate for up to 75 per cent of seated venue capacity
- allow outdoor concert venues/theatres/convention centres to operate for up to 75 per cent of seated venue capacity
- provide that outdoor events may operate under an event checklist if less than 1,000 people will be in attendance per event
- require the number of people attending an event to be determined per event rather than the number of people in attendance at any given time
- clarify that the overnight occupant density in non-residential accommodation such as short-term rentals/hotels/motels/holiday homes is limited to the number of people allowed under the booking or letting agreement.

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

Limitations

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

In addition, and in regard to the following specific human rights:

- The right to freedom of movement in section 19 of the Human Rights Act may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that for venues or spaces of 200 square metres or less, only 50 people can be present. It also limits the number of people who may attend events at stadiums.
- The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing places of worship to have as many people as can be accommodated with one person per 4 square metres, or one person per 2 square metres for outdoor venues. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.
- The right to peaceful assembly and freedom of association (section 22) upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.
- The right to property in section 24 of the Human Rights Act encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real

and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. food and drink venues can only operate for seated patrons), which is a limitation on the property rights of the owners and operators of these businesses.

- The right to privacy in section 25 of the Human Rights Act is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. The Direction also limits the right to privacy by requiring the collection of contact details for contact tracing purposes.
- 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 practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background.
- 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 practice their culture. The Direction may limit people's ability to engage with others who share their cultural background by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship.

Justification

The purpose of the public health direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by 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.

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

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as through private prayer, or in a gathering of people as permitted under the Direction, for example by adhering to the 2 or 4 square metre rule.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community through appropriate health measures.

Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

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

The Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally or from seeking alternative employment.

The requirement to collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in other ways. For example, through private prayer, online tools, or meetings at places of worship, with no more than one person per 4 square metres, or one person per 2 square metres for outdoor venues or venues smaller than 200 square metres. The limitations on religious and cultural rights are considered justified.

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

Additionally, the recent outbreak in Victoria shows how quickly COVID-19 may spread and impact on communities. From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses.

This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

Recent evidence also indicates the risk of transmission is lower in outdoor settings. Accordingly, the changes in this Direction seek to ease restrictions on businesses and activities operating in outdoor settings. Given the low number of COVID-19 cases in Queensland, these measures strike a fair balance between protecting human rights while continuing to protect the community from the impacts of the pandemic.

The Direction ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective

of the Human Rights Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

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

RTI RELEASE

**Public Health Directions –
Restrictions on Businesses, Activities and Undertakings Direction (No. 7)**

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 7)</i>
Date effective	2 October 2020

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 7)* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis 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 *Restrictions on Businesses, Activities and Undertakings Direction (No. 7)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Framework. The COVID Safe Framework means complying with:

- an approved plan for the business, activity or undertaking, if applicable, or
- a COVID Safe Checklist or COVID Safe Event Checklist if there is no approved plan; or
- an applicable COVID Safe Checklist if a business elects not to operate under an approved plan.

The Direction also provides occupancy density requirements (for example, 1 person per 4 square metres), physical distancing, collection of contact information for contact tracing and hygiene requirements a business must meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the that business or activity

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 6)*. The Direction has been updated to allow standing indoor and outdoor eating and drinking at venues with a COVID Safe Plan or Checklist.

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)

- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

Limitations

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

In addition, and in regard to the following specific human rights:

- The right to freedom of movement in section 19 of the Human Rights Act may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that for venues or spaces of 200 square metres or less, only 50 people can be present. It also limits the number of people who may attend events at stadiums.
- The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing places of worship to have as many people as can be accommodated with one person per 4 square metres, or one person per 2 square metres for outdoor venues. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.
- The right to peaceful assembly and freedom of association (section 22) upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.
- The right to property in section 24 of the Human Rights Act encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. venues cannot operate a dance floor for dancing, food and drink venues are not permitted to have buffet self-service), which is a limitation on the property rights of the owners and operators of these businesses.
- The right to privacy in section 25 of the Human Rights Act is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (ZZ

v Secretary, Department of Justice [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. The Direction also limits the right to privacy by requiring the collection of contact details for contact tracing purposes.

- 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 practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background.
- 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 practice their culture. The Direction may limit people's ability to engage with others who share their cultural background by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship.

Justification

The purpose of the public health direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by 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.

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

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as through private prayer, or in a gathering of people as permitted under the Direction, for example by adhering to the 2 or 4 square metre rule.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community through appropriate health measures.

Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

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

reasonable belief that the restriction is necessary to assist in containing or responding to the spread of COVID-19 within the community.

The Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally or from seeking alternative employment.

The requirement to collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in other ways. For example, through private prayer, online tools, or meetings at places of worship, with no more than one person per 4 square metres, or one person per 2 square metres for outdoor venues or venues smaller than 200 square metres. The limitations on religious and cultural rights are considered justified.

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

Additionally, the recent outbreak in Victoria shows how quickly COVID-19 may spread and impact on communities. From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses.

This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

Recent evidence also indicates the risk of transmission is lower in outdoor settings. Accordingly, the changes in this Direction seek to ease restrictions on businesses and activities operating in outdoor settings. Given the low number of COVID-19 cases in Queensland, these measures strike a fair balance between protecting human rights while continuing to protect the community from the impacts of the pandemic.

The Direction ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

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

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 8)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 8)</i>
Date effective	16 October 2020

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 8)* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis 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 *Restrictions on Businesses, Activities and Undertakings Direction (No. 8)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Framework. The COVID Safe Framework means complying with:

- an approved plan for the business, activity or undertaking, if applicable; or
- a COVID Safe Checklist or COVID Safe Event Checklist if there is no approved plan; or
- an applicable COVID Safe Checklist if a business elects not to operate under an approved plan.

The Direction also provides occupancy density requirements (for example, 1 person per 4 square metres), physical distancing, collection of contact information for contact tracing and hygiene requirements a business must meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the that business or activity.

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 7)*. The Direction has been updated to allow:

- up to 40 people to dance at a wedding,
- an unlimited number of attendees to dance at Year 12 school formals and end of Year 12 school events.

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)

- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

Limitations

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

In addition, and in regard to the following specific human rights:

- The right to freedom of movement in section 19 of the Human Rights Act may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that for venues or spaces of 200 square metres or less, only 50 people can be present. It also limits the number of people who may attend events at stadiums.
- The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing places of worship to have as many people as can be accommodated with one person per 4 square metres, or one person per 2 square metres for outdoor venues. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.
- The right to peaceful assembly and freedom of association (section 22) upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.
- The right to property in section 24 of the Human Rights Act encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. venues cannot operate a dance floor for dancing, with the exception of dancing at Year 12 school formals, end of Year 12 events and weddings, and food and drink venues are not permitted to have buffet self-service), which is a limitation on the property rights of the owners and operators of these businesses.

- The right to privacy in section 25 of the Human Rights Act is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. The Direction also limits the right to privacy by requiring the collection of contact details for contact tracing purposes.
- 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 practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background.
- 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 practice their culture. The Direction may limit people's ability to engage with others who share their cultural background by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship.

Justification

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by 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.

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

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as through private prayer, or in a gathering of people as permitted under the Direction, for example by adhering to the 2 or 4 square metre rule.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community through appropriate health measures.

Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

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

The Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally or from seeking alternative employment.

The requirement to collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in other ways. For example, through private prayer, online tools, or meetings at places of worship, with no more than one person per 4 square metres, or one person per 2 square metres for outdoor venues or venues smaller than 200 square metres. The limitations on religious and cultural rights are considered justified.

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

Additionally, the recent outbreak in Victoria shows how quickly COVID-19 may spread and the impact on communities. From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses.

This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

Recent evidence also indicates the risk of transmission is lower in outdoor settings. Accordingly, the Direction includes eased restrictions on businesses and activities operating in outdoor settings. Given the low number of COVID-19 cases in Queensland, these measures strike a fair balance between protecting human rights while continuing to protect the community from the impacts of the pandemic.

The Direction ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

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

RTI RELEASE

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 9)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 9)</i>
Date effective	17 November 2020

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 9)* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis 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 *Restrictions on Businesses, Activities and Undertakings Direction (No. 9)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Framework. The COVID Safe Framework means complying with:

- an Approved Plan for the business, activity or undertaking, if applicable; or
- a COVID Safe Checklist or COVID Safe Event Checklist if there is no approved plan; or
- an applicable COVID Safe Checklist if a business elects not to operate under an approved plan.

The Direction also provides occupancy density requirements (for example, 1 person per 2 square metres), physical distancing, collection of contact information for contact tracing and hygiene requirements a business must meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 8)*. The Direction has been updated to allow:

- an increase in indoor occupant density to one person per 2 square metres (previously 1 person per 4 square metres)
- an increase in attendance at wedding ceremonies and funerals to 200 people
- dancing in outdoor spaces, such as outdoor beer gardens and rooftop nightclubs
- all attendees at weddings can dance, including at indoor spaces
- an increase in capacity to 100% at stadiums, concert venues, theatres, auditoriums and cinemas
- increasing the number of people that can attend outdoor events that can operate with a COVID-Safe Checklist from 1000 people to 1500 people
- libraries can operate at one person per 2 square metres regardless of the size of the library and do not need an Approved Plan or COVID Safe Checklist

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

Limitations

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

In addition, and in regard to the following specific human rights:

- The right to freedom of movement in section 19 of the Human Rights Act may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that for outdoor concert venues, only 75% of seated venue capacity can be filled. It also limits the number of people who may attend events at indoor stadiums.
- The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing places of worship to have as many people as can be accommodated with one person per 2 square metres. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.
- The right to peaceful assembly and freedom of association (section 22) upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.
- The right to property in section 24 of the Human Rights Act encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real

and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. venues cannot operate a indoor dance floor for dancing, with the exception of dancing at Year 12 school formals, end of Year 12 events and weddings, and food and drink venues are not permitted to have buffet self-service), which is a limitation on the property rights of the owners and operators of these businesses.

- The right to privacy in section 25 of the Human Rights Act is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. The Direction also limits the right to privacy by requiring the collection of contact details for contact tracing purposes.
- 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 practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background.
- 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 practice their culture. The Direction may limit people's ability to engage with others who share their cultural background by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship.

Justification

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by 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.

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

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as through private prayer, or in a gathering of people as permitted under the Direction, for example by adhering to the 2 square metre rule.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced –

that is, to stop the spread of COVID-19 within the broader community through appropriate health measures.

Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

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

The Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally or from seeking alternative employment.

The requirement to collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in other ways. For example, through private prayer, online tools, or meetings at places of worship, with no more than one person per 2 square metres. The limitations on religious and cultural rights are considered justified.

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

Additionally, the outbreak in Victoria shows how quickly COVID-19 may spread and the impact on communities. From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses.

This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

Recent evidence also indicates the risk of transmission is lower in outdoor settings. Accordingly, the Direction includes eased restrictions on businesses and activities operating in outdoor settings such as outdoor dancing and outdoor stadiums. Given the low number of COVID-19 cases in Queensland, these measures strike a fair balance between protecting human rights while continuing to protect the community from the impacts of the pandemic.

The Direction ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

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

RTI RELEASE

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 10)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 10)</i>
Date effective	26 November 2020

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 9)* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis 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 *Restrictions on Businesses, Activities and Undertakings Direction (No. 10)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Framework. The COVID Safe Framework means complying with:

- an Approved Plan for the business, activity or undertaking, if applicable; or
- a COVID Safe Checklist or COVID Safe Event Checklist if there is no approved plan; or
- an applicable COVID Safe Checklist if a business elects not to operate under an approved plan.

The Direction also provides occupancy density requirements (for example, 1 person per 2 square metres), physical distancing, collection of contact information for contact tracing and hygiene requirements a business must meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 9)*. The Direction has been updated to:

- clarify that dancing in indoor and outdoor spaces is permitted by all attendees at all school events, on the basis that not more than one person per 2 square metres is in the dance area
- amend the definition of occupant density to mean no more than one person per 2 square metres or up to 100% of seated venue capacity provided patrons are in ticketed, allocated seating. It is intended this will operate to allow all restricted businesses to use up to 100% of seated venue capacity where patrons are in ticketed, allocated seating unless otherwise specified in the Direction.
- add in additional examples about school venues being hired for use by restricted businesses.

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

Limitations

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

In addition, and in regard to the following specific human rights:

- The right to freedom of movement in section 19 of the Human Rights Act may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that for outdoor concert venues, only 75% of seated venue capacity can be filled. It also limits the number of people who may attend events at indoor stadiums.
- The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing places of worship to have as many people as can be accommodated with one person per 2 square metres. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.
- The right to peaceful assembly and freedom of association (section 22) upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.
- The right to property in section 24 of the Human Rights Act encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain

businesses may operate for the duration of the Direction (e.g. venues cannot operate a indoor dance floor for dancing, with the exception of dancing at Year 12 school formals, end of Year 12 events and weddings, and food and drink venues are not permitted to have buffet self-service), which is a limitation on the property rights of the owners and operators of these businesses.

- The right to privacy in section 25 of the Human Rights Act is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. The Direction also limits the right to privacy by requiring the collection of contact details for contact tracing purposes.
- 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 practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background.
- 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 practice their culture. The Direction may limit people's ability to engage with others who share their cultural background by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship.

Justification

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by 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.

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

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as through private prayer, or in a gathering of people as permitted under the Direction, for example by adhering to the 2 square metre rule.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced –

that is, to stop the spread of COVID-19 within the broader community through appropriate health measures.

Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

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

The Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally or from seeking alternative employment.

The requirement to collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in other ways. For example, through private prayer, online tools, or meetings at places of worship, with no more than one person per 2 square metres. The limitations on religious and cultural rights are considered justified.

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

Additionally, the outbreak in Victoria shows how quickly COVID-19 may spread and the impact on communities. From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses.

This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

Recent evidence also indicates the risk of transmission is lower in outdoor settings. Accordingly, the Direction includes eased restrictions on businesses and activities operating in outdoor settings such as outdoor dancing and outdoor stadiums. Given the low number of COVID-19 cases in Queensland, these measures strike a fair balance between protecting human rights while continuing to protect the community from the impacts of the pandemic.

The Direction ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

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

RTI RELEASE

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 11)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 11)</i>
Date effective	14 December 2020

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 11)* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

This analysis 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 *Restrictions on Businesses, Activities and Undertakings Direction (No. 11)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Framework. The COVID Safe Framework means complying with:

- an Approved Plan for the business, activity or undertaking, if applicable; or
- a COVID Safe Checklist or COVID Safe Event Checklist if there is no approved plan; or
- an applicable COVID Safe Checklist if a business elects not to operate under an approved plan.

The Direction also provides occupancy density requirements (for example, 1 person per 2 square metres), physical distancing, collection of contact information for contact tracing and hygiene requirements a business must meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 10)*. The Direction has been updated to:

- allow for indoor dancing subject to the one person per 2 square metre rule
- add 'unattended children's rides and games in retail premises' into the Direction
- allow community facilities to be exempt from the requirement to operate for a maximum of 50 people where there is no applicable COVID-Safe Approved Plan or Checklist in place
- insert a definition of ticketed and allocated seating
- amend the requirement to retain contact information to allow people to retain contact information for a minimum of 30 days and a maximum of 56 days.

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

Limitations

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

In addition, and in regard to the following specific human rights:

- The right to freedom of movement in section 19 of the Human Rights Act may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that for outdoor concert venues, 100% or seated venue capacity can only be used if patrons are in ticketed and allocated seating. Patrons are required to remain in their seats to the extent possible.
- The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing places of worship to have as many people as can be accommodated with one person per 2 square metres. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.
- The right to peaceful assembly and freedom of association (section 22) upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.
- The right to property in section 24 of the Human Rights Act encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain

businesses may operate for the duration of the Direction (e.g. food and drink venues are not permitted to have buffet self-service), which is a limitation on the property rights of the owners and operators of these businesses.

- The right to privacy in section 25 of the Human Rights Act is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. The Direction also limits the right to privacy by requiring the collection of contact details for contact tracing purposes.
- 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 practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background.
- 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 practice their culture. The Direction may limit people's ability to engage with others who share their cultural background by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship.

Justification

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by 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.

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

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as through private prayer, or in a gathering of people as permitted under the Direction, for example by adhering to the 2 square metre rule.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community through appropriate health measures.

Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

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

The Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally or from seeking alternative employment.

The requirement to collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in other ways. For example, through private prayer, online tools, or meetings at places of worship, with no more than one person per 2 square metres. The limitations on religious and cultural rights are considered justified.

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

Additionally, the outbreak in Victoria shows how quickly COVID-19 may spread and the impact on communities. From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses.

This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

The Direction ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

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

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 12)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 12)</i>
Date effective	23 December 2020

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 12)* 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 *Restrictions on Businesses, Activities and Undertakings Direction (No. 12)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

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.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Framework. The COVID Safe Framework means complying with:

- an Approved Plan for the business, activity or undertaking, if applicable; or
- a COVID Safe Checklist or COVID Safe Event Checklist if there is no approved plan; or
- an applicable COVID Safe Checklist if a business elects not to operate under an approved plan.

The Direction also provides occupancy density requirements (for example, 1 person per 2 square metres), physical distancing, collection of contact information for contact tracing, and hygiene requirements a business must meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 11)*. The Direction has been updated to provide that restricted hospitality businesses such as pubs, cafes and restaurants listed in Schedule 1A are required to collect and keep contact information electronically, whether through a QR code app or other electronic means.

To support this requirement, the Direction has also been updated to provide:

- where a patron is unable to provide contact information electronically (such as an elderly person who does not own a smart phone), or the business is unable to collect contact information electronically due to unexpected circumstances (such as an internet outage), contact information must be collected using another method, and the business must transfer the information to an electronic system within 24 hours;
- if a restricted hospitality business is unable to collect contact information electronically, it must still be collected using another method, and the following restrictions apply, overriding other requirements in the Direction including the COVID Safe Framework:
 - the business must operate under an occupant density of one person per 4 square metres; and
 - the business must operate for seated patrons only. This will override the rules permitting dancing to occur.

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

Limitations

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

In addition, and in regard to the following specific human rights:

- The right to freedom of movement in section 19 of the Human Rights Act may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that for outdoor concert venues, 100% of seated venue capacity can only be used if patrons are in ticketed and allocated seating. Patrons are required to remain in their seats to the extent possible.
- The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing places

of worship to have as many people as can be accommodated with one person per 2 square metres. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.

- The right to peaceful assembly and freedom of association (section 22) upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.
- The right to property in section 24 of the Human Rights Act encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. hospitality venues are required to collect contact information electronically or will be required to operate to stricter restrictions), which is a limitation on the property rights of the owners and operators of these businesses.
- The right to privacy in section 25 of the Human Rights Act is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. The Direction also limits the right to privacy by requiring the collection of contact details for contact tracing purposes.
- 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 practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background.
- 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 practice their culture. The Direction may limit people's ability to engage with others who share their cultural background by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship.

Justification

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by 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.

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

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as through private prayer, or in a gathering of people as permitted under the Direction, for example by adhering to the 2 square metre rule.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community through appropriate health measures.

Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

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

The requirement to collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

Since the pandemic began, businesses have been required to collect and keep contact information. This has been required so that contact tracers can move quickly and contact trace anyone who might have come into contact with someone with COVID-19. As recent efforts have shown, the accuracy, completeness and readability of contact information held by businesses is vital to the effectiveness of contact tracing and the ability to identify and contain the spread of COVID-19 in the community.

The recent cluster in Sydney's Northern Beaches (also known as the Avalon cluster) is continuing to grow. On 16 December, a person had travelled to Queensland and dined at the Glen hotel in Brisbane. This person later tested positive to coronavirus. Following this incident, efforts to contact trace patrons from the Glen Hotel indicated that some:

- of the contact information lists were incomplete, or
- of the written contact information was indecipherable, or
- some people had not provided contact information at all.

The requirement for hospitality businesses to collect and keep their records electronically, and for all business to take reasonable steps to ensure the contact information collected is accurate, will support these aims. There are exceptions to the requirement to electronically collect contact information, including for persons who may not be able to use an electronic

sign-in system 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. With these exceptions, the limitations on human rights due to the electronic collection of contact information are reasonable and justified.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in other ways. For example, through private prayer, online tools, or meetings at places of worship, with no more than one person per 2 square metres. The limitations on religious and cultural rights are considered justified.

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

Additionally, the outbreak in NSW shows how quickly COVID-19 may spread and the impact on communities. From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses.

This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

The Direction ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

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

Public Health Directions – Human Rights Assessment

Restrictions on Businesses, Activities and Undertakings Direction (No. 13)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 13)</i>
Date effective	XX February 2021

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 13)* 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 *Restrictions on Businesses, Activities and Undertakings Direction (No. 13)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

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.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Framework. The COVID Safe Framework means complying with:

- an Approved Plan for the business, activity or undertaking, if applicable; or
- a COVID Safe Checklist or COVID Safe Event Checklist if there is no approved plan; or
- an applicable COVID Safe Checklist if a business elects not to operate under an approved plan.

The Direction also provides occupancy density requirements (for example, 1 person per 2 square metres), physical distancing, collection of contact information for contact tracing, and hygiene requirements a business must meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 12)*. The Direction has been updated to provide that:

- large lecture settings in universities and other higher education facilities may have 100 per cent capacity with ticketed and allocated seating;
- events of over 10,000 people must submit their COVID Safe Event Plan for the Chief Health Officer approval 20 business days before the event;

- multi-day events with onsite accommodation e.g. camping must have a COVID Safe Plan approved by the local public health unit or the Chief Health Officer regardless of how many people are attending.

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

Limitations

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

In addition, and in regard to the following specific human rights:

- The right to freedom of movement in section 19 of the Human Rights Act may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that for outdoor concert venues, 100% of seated venue capacity can only be used if patrons are in ticketed and allocated seating. Patrons are required to remain in their seats to the extent possible.
- The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing places of worship to have as many people as can be accommodated with one person per 2 square metres. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.
- The right to peaceful assembly and freedom of association (section 22) upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and

undertaking and the requirements for physical distancing and occupant density measures to be observed.

- The right to property in section 24 of the Human Rights Act encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. hospitality venues are required to collect contact information electronically or will be required to operate to stricter restrictions), which is a limitation on the property rights of the owners and operators of these businesses.
- The right to privacy in section 25 of the Human Rights Act is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. The Direction also limits the right to privacy by requiring the collection of contact details for contact tracing purposes.
- 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 practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background.
- 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 practice their culture. The Direction may limit people's ability to engage with others who share their cultural background by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship.

Justification

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by 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.

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

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as through private prayer, or in a gathering of people as permitted under the Direction, for example by adhering to the 2 square metre rule.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community through appropriate health measures.

Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

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

The requirement to collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

Since the pandemic began, businesses have been required to collect and keep contact information. This has been required so that contract tracers can move quickly and contact trace anyone who might have encountered someone with COVID-19. As recent efforts have shown, the accuracy, completeness and readability of contact information held by businesses is vital to the effectiveness of contact tracing and the ability to identify and contain the spread of COVID-19 in the community.

Hospitality businesses are required to collect and keep their records electronically. However, there are exceptions to the requirement to electronically collect contact information, including for persons who may not be able to use an electronic sign-in system 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. With these exceptions, the limitations on human rights due to the electronic collection of contact information are reasonable and justified.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in other ways. For example, through private prayer, online tools, or meetings at places of worship, with no more than one person per 2 square metres. The limitations on religious and cultural rights are considered justified.

Permitting universities and higher education facilities to have 100% capacity in large lecture settings with ticketed and allocated seating is consistent with the occupant density requirements under the Direction.

Larger events with over 10,000 people are more complex and the COVID Safe Event Plans for those events require detailed assessment. Allowing 20 business days to assess and approve the plan will support this detailed assessment. Similarly, multi day events with onsite

accommodation have a different risk profile. Requiring organisers to use a COVID Safe event plan approved by a local public health unit or Chief Health Officer will ensure these events are operating in line with the appropriate protocols.

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses.

This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

The Direction ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

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

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 14)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 14)</i>
Date effective	28 February 2021

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 14)* 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 *Restrictions on Businesses, Activities and Undertakings Direction (No. 14)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

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.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Framework. The COVID Safe Framework means complying with:

- an Approved Plan for the business, activity or undertaking, if applicable; or
- a COVID Safe Checklist or COVID Safe Event Checklist if there is no approved plan; or
- an applicable COVID Safe Checklist if a business elects not to operate under an approved plan.

The Direction also provides occupancy density requirements (for example, 1 person per 2 square metres), physical distancing, collection of contact information for contact tracing, and hygiene requirements a business must meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 13)*. The Direction has been updated to:

- provide that businesses may use the new Check in Qld app to collect contact information;
- clarify businesses using other methods (electronic and non-electronic) to collect contact information must comply with the requirements for collection and storage. This includes storing information securely and securely disposing the information after 30 to 56 days; and

- clarify the requirements for the collection of contact information.

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

Limitations

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

In addition, and in regard to the following specific human rights:

- The right to freedom of movement in section 19 of the Human Rights Act may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that for outdoor concert venues, 100% of seated venue capacity can only be used if patrons are in ticketed and allocated seating. Patrons are required to remain in their seats to the extent possible.
- The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing places of worship to have as many people as can be accommodated with one person per 2 square metres. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.
- The right to peaceful assembly and freedom of association (section 22) upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.

- The right to property in section 24 of the Human Rights Act encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. hospitality venues are required to collect contact information electronically or will be required to operate to stricter restrictions), which is a limitation on the property rights of the owners and operators of these businesses.
- The right to privacy in section 25 of the Human Rights Act is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. The Direction also limits the right to privacy by requiring the collection of contact details for contact tracing purposes.
- 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 practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background.
- 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 practice their culture. The Direction may limit people's ability to engage with others who share their cultural background by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship.

Justification

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by 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.

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

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as through private prayer, or in a gathering of people as permitted under the Direction, for example by adhering to the 2 square metre rule.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and

interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community through appropriate health measures.

Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

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

The requirement to collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

Since the pandemic began, businesses have been required to collect and keep contact information. This has been required so that contract tracers can move quickly and contact trace anyone who might have encountered someone with COVID-19. As recent efforts have shown, the accuracy, completeness and readability of contact information held by businesses is vital to the effectiveness of contact tracing and the ability to identify and contain the spread of COVID-19 in the community.

Hospitality businesses are required to collect and keep their records electronically. However, there are exceptions to the requirement to electronically collect contact information, including for persons who may not be able to use an electronic sign-in system 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. With these exceptions, the limitations on human rights due to the electronic collection of contact information are reasonable and justified.

The Check In Qld app will further support the collection of contact information for contact tracing by providing businesses with a free and contactless electronic method to collect information. As the information will be stored by the Queensland Government, businesses using the app will not be required to meet the requirements for storage and collection. The information may only be used for contact tracing purposes. The development process for the app included a complete human rights assessment.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in other ways. For example, through private prayer, online tools, or meetings at places of worship, with no more than one person per 2 square metres. The limitations on religious and cultural rights are considered justified.

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human

rights. The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses.

This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

The Direction ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

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

RTI RELEASED

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 15)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 15)</i>
Date effective	8 March 2021

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 15)* 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 *Restrictions on Businesses, Activities and Undertakings Direction (No. 14)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

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.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Framework. The COVID Safe Framework means complying with:

- an Approved Plan for the business, activity or undertaking, if applicable; or
- a COVID Safe Checklist or COVID Safe Event Checklist if there is no approved plan; or
- an applicable COVID Safe Checklist if a business elects not to operate under an approved plan.

The Direction also provides occupancy density requirements (for example, 1 person per 2 square metres), physical distancing, collection of contact information for contact tracing, and hygiene requirements a business must meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 14)*. The Direction has been updated to allow up to 200 people, or one person per 2 square metres (whichever is greater), to attend a wedding ceremony or funeral service.

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

Limitations

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

In addition, and in regard to the following specific human rights:

- The right to freedom of movement in section 19 of the Human Rights Act may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that for outdoor concert venues, 100% of seated venue capacity can only be used if patrons are in ticketed and allocated seating. Patrons are required to remain in their seats to the extent possible.
- The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing places of worship to have as many people as can be accommodated with one person per 2 square metres. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.
- The right to peaceful assembly and freedom of association (section 22) upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.

- The right to property in section 24 of the Human Rights Act encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. hospitality venues are required to collect contact information electronically or will be required to operate to stricter restrictions), which is a limitation on the property rights of the owners and operators of these businesses.
- The right to privacy in section 25 of the Human Rights Act is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. The Direction also limits the right to privacy by requiring the collection of contact details for contact tracing purposes.
- 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 practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background.
- 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 practice their culture. The Direction may limit people's ability to engage with others who share their cultural background by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship.

Justification

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by 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.

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

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as through private prayer, or in a gathering of people as permitted under the Direction, for example by adhering to the 2 square metre rule.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced –

that is, to stop the spread of COVID-19 within the broader community through appropriate health measures.

Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

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

The requirement to collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

Since the pandemic began, businesses have been required to collect and keep contact information. This has been required so that contract tracers can move quickly and contact trace anyone who might have encountered someone with COVID-19. As recent efforts have shown, the accuracy, completeness and readability of contact information held by businesses is vital to the effectiveness of contact tracing and the ability to identify and contain the spread of COVID-19 in the community.

Hospitality businesses are required to collect and keep their records electronically. However, there are exceptions to the requirement to electronically collect contact information, including for persons who may not be able to use an electronic sign-in system 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. With these exceptions, the limitations on human rights due to the electronic collection of contact information are reasonable and justified.

The Check In Qld app will further support the collection of contact information for contact tracing by providing businesses with a free and contactless electronic method to collect information. As the information will be stored by the Queensland Government, businesses using the app will not be required to meet the requirements for storage and collection. The information may only be used for contact tracing purposes. The development process for the app included a complete human rights assessment.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in other ways. For example, through private prayer, online tools, or meetings at places of worship, with no more than one person per 2 square metres. The limitations on religious and cultural rights are considered justified.

Similarly, easing the restrictions on funeral services and wedding ceremonies ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights

Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses.

This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

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

RTI RELEASED

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 16)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 16)</i>
Date effective	13 March 2021

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 16)* 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 *Restrictions on Businesses, Activities and Undertakings Direction (No. 16)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

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.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Framework. The COVID Safe Framework means complying with:

- an Approved Plan for the business, activity or undertaking, if applicable; or
- a COVID Safe Checklist or COVID Safe Event Checklist if there is no approved plan; or
- an applicable COVID Safe Checklist if a business elects not to operate under an approved plan.

The Direction also provides occupancy density requirements (for example, 1 person per 2 square metres), physical distancing, collection of contact information for contact tracing, and hygiene requirements a business must meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 15)*. The Direction has been updated to remove occupant density and industry and health management plan requirements for caravan and camping parks. These parks will continue to be required to collect contact information for their guests. Campgrounds will no longer be a restricted business under the Direction.

The Direction has also been updated to allow outdoor events to have up to 500 people in attendance without the requirement for a COVID Safe Event Checklist. These events will no longer have to comply with occupant density requirements or collect contact information. Outdoor events with between 500 and 1500 people will require a COVID Safe Event Checklist. The specific requirements for multi-day events have been removed from the Direction. Multi day events will be considered events and managed under the existing requirements for events.

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

Limitations

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

In addition, and in regard to the following specific human rights:

- The right to freedom of movement in section 19 of the Human Rights Act may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that for outdoor concert venues, 100% of seated venue capacity can only be used if patrons are in ticketed and allocated seating. Patrons are required to remain in their seats to the extent possible.
- The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing places of worship to have as many people as can be accommodated with one person per 2 square metres. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.

- The right to peaceful assembly and freedom of association (section 22) upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.
- The right to property in section 24 of the Human Rights Act encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. hospitality venues are required to collect contact information electronically or will be required to operate to stricter restrictions), which is a limitation on the property rights of the owners and operators of these businesses.
- The right to privacy in section 25 of the Human Rights Act is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. The Direction also limits the right to privacy by requiring the collection of contact details for contact tracing purposes.
- 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 practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background.
- 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 practice their culture. The Direction may limit people's ability to engage with others who share their cultural background by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship.

Justification

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by 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.

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

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not

prevented from practising their religion or beliefs at home, such as through private prayer, or in a gathering of people as permitted under the Direction, for example by adhering to the 2 square metre rule.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community through appropriate health measures.

Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

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

The requirement to collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

Since the pandemic began, businesses have been required to collect and keep contact information. This has been required so that contact tracers can move quickly and contact trace anyone who might have encountered someone with COVID-19. As recent efforts have shown, the accuracy, completeness and readability of contact information held by businesses is vital to the effectiveness of contact tracing and the ability to identify and contain the spread of COVID-19 in the community.

Hospitality businesses are required to collect and keep their records electronically. However, there are exceptions to the requirement to electronically collect contact information, including for persons who may not be able to use an electronic sign-in system 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. With these exceptions, the limitations on human rights due to the electronic collection of contact information are reasonable and justified.

The Check In Qld app will further support the collection of contact information for contact tracing by providing businesses with a free and contactless electronic method to collect information. As the information will be stored by the Queensland Government, businesses using the app will not be required to meet the requirements for storage and collection. The information may only be used for contact tracing purposes. The development process for the app included a complete human rights assessment.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit

the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in other ways. For example, through private prayer, online tools, or meetings at places of worship, with no more than one person per 2 square metres. The limitations on religious and cultural rights are considered justified.

Similarly, easing the restrictions on funeral services and wedding ceremonies ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses.

This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

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

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 17)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 17)</i>
Date effective	12 April 2021

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 17)* 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 *Restrictions on Businesses, Activities and Undertakings Direction (No. 17)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

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.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Framework. The COVID Safe Framework means complying with:

- an Approved Plan for the business, activity or undertaking, if applicable; or
- a COVID Safe Checklist or COVID Safe Event Checklist if there is no approved plan; or
- an applicable COVID Safe Checklist if a business elects not to operate under an approved plan.

The Direction also provides occupancy density requirements (for example, 1 person per 2 square metres), physical distancing, collection of contact information for contact tracing, and hygiene requirements a business must meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 16)*. The Direction has been updated to clarify that weddings and funerals can operate in accordance with the occupant density requirements of 1 person per 2 square metres, or 100 per cent seated venue capacity ticketed and allocated seating; or a maximum of 200 people, whichever is greater. For example, a funeral may have 100 per cent capacity of 500 people that are ticketed and seated, even if this exceeds the 1 person per 2 square metre rule.

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

Limitations

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

In addition, and in regard to the following specific human rights:

- The right to freedom of movement in section 19 of the Human Rights Act may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that for outdoor concert venues, 100% of seated venue capacity can only be used if patrons are in ticketed and allocated seating. Patrons are required to remain in their seats to the extent possible.
- The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing places of worship to have as many people as can be accommodated with one person per 2 square metres. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.
- The right to peaceful assembly and freedom of association (section 22) upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.

- The right to property in section 24 of the Human Rights Act encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. hospitality venues are required to collect contact information electronically or will be required to operate to stricter restrictions), which is a limitation on the property rights of the owners and operators of these businesses.
- The right to privacy in section 25 of the Human Rights Act is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. The Direction also limits the right to privacy by requiring the collection of contact details for contact tracing purposes.
- 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 practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background.
- 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 practice their culture. The Direction may limit people's ability to engage with others who share their cultural background by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship.

Justification

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by 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.

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

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as through private prayer, or in a gathering of people as permitted under the Direction, for example by adhering to the 2 square metre rule.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced –

that is, to stop the spread of COVID-19 within the broader community through appropriate health measures.

Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

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

The requirement to collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

Since the pandemic began, businesses have been required to collect and keep contact information. This has been required so that contact tracers can move quickly and contact trace anyone who might have encountered someone with COVID-19. As recent efforts have shown, the accuracy, completeness and readability of contact information held by businesses is vital to the effectiveness of contact tracing and the ability to identify and contain the spread of COVID-19 in the community.

Hospitality businesses are required to collect and keep their records electronically. However, there are exceptions to the requirement to electronically collect contact information, including for persons who may not be able to use an electronic sign-in system 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. With these exceptions, the limitations on human rights due to the electronic collection of contact information are reasonable and justified.

The Check In Qld app will further support the collection of contact information for contact tracing by providing businesses with a free and contactless electronic method to collect information. As the information will be stored by the Queensland Government, businesses using the app will not be required to meet the requirements for storage and collection. The information may only be used for contact tracing purposes. The development process for the app included a complete human rights assessment.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in other ways. For example, through private prayer, online tools, or meetings at places of worship, with no more than one person per 2 square metres. The limitations on religious and cultural rights are considered justified.

Similarly, easing the restrictions on funeral services and wedding ceremonies ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights

Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses.

This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

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

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Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 18)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 18)</i>
Date effective	15 April 2021

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 18)* 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 *Restrictions on Businesses, Activities and Undertakings Direction (No. 18)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

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.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Framework. The COVID Safe Framework means complying with:

- an Approved Plan for the business, activity or undertaking, if applicable; or
- a COVID Safe Checklist or COVID Safe Event Checklist if there is no approved plan; or
- an applicable COVID Safe Checklist if a business elects not to operate under an approved plan.

The Direction also provides occupancy density requirements (for example, 1 person per 2 square metres), physical distancing, collection of contact information for contact tracing, and hygiene requirements some businesses need to meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 17)*. The Direction has been updated to remove all occupant density restrictions for outdoor components of businesses, activities and undertakings, with the exception of dancing areas, outdoor music festivals and outdoor dance festivals. The Direction also provides that organisers of outdoor events with no dancing also no longer need to collect contact information nor have a COVID Safe Event Checklist or COVID Safe Event

Plan. The Direction completely removes restrictions for some activities that solely occur outdoors, for example outdoor social sporting activities and outdoor swimming pools.

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

Limitations

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

In addition, and in regard to the following specific human rights:

- The right to freedom of movement in section 19 of the Human Rights Act may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that outdoor music festivals are required to comply with a **COVID Safe Event Checklist**, which may limit the way patrons can move in and around the event.
- The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing indoor places of worship to have as many people as can be accommodated with one person per 2 square metres or 100 per cent seated venue capacity if the venue can have ticketed and allocated seating. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.
- The right to peaceful assembly and freedom of association (section 22) upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and

undertaking and the requirements for physical distancing and occupant density measures to be observed.

- The right to property in section 24 of the Human Rights Act encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. hospitality venues are required to collect contact information electronically or will be required to operate to stricter restrictions), which is a limitation on the property rights of the owners and operators of these businesses.
- The right to privacy in section 25 of the Human Rights Act is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. The Direction also limits the right to privacy by requiring the collection of contact details for contact tracing purposes.
- 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 practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background.
- 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 practice their culture. The Direction may limit people's ability to engage with others who share their cultural background by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship and other cultural or social events.

Justification

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by managing occupant density in certain indoor 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.

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

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as through private prayer, or in an indoor gathering of people as permitted under the Direction, for example by adhering to the 2 square metre rule.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community through appropriate health measures.

Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

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

The requirement to collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction also removes the requirement for contact information to be collected for many outdoor venues and events. The Direction is therefore compatible with the right to privacy.

Since the pandemic began, businesses have been required to collect and keep contact information. This has been required so that contract tracers can move quickly and contact trace anyone who might have encountered someone with COVID-19. As recent efforts have shown, the accuracy, completeness and readability of contact information held by businesses is vital to the effectiveness of contact tracing and the ability to identify and contain the spread of COVID-19 in the community.

Hospitality businesses are required to collect and keep their records electronically. However, there are exceptions to the requirement to electronically collect contact information, including for persons who may not be able to use an electronic sign-in system 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. With these exceptions, the limitations on human rights due to the electronic collection of contact information are reasonable and justified.

The Check In Qld app will further support the collection of contact information for contact tracing by providing businesses with a free and contactless electronic method to collect information. As the information will be stored by the Queensland Government, businesses using the app will not be required to meet the requirements for storage and collection. The information may only be used for contact tracing purposes. The development process for the app included a complete human rights assessment.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in other ways. For example, through private

prayer, online tools, or meetings at places of worship, with no more than one person per 2 square metres. The limitations on religious and cultural rights are considered justified.

The significant easing of restrictions for outdoor businesses, activities and undertakings ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses.

This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

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

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 19)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 19)</i>
Date effective	1 May 2021

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 19)* 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. On 8 March 2021, the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* extended the expiry date of the amendments to the end of the day on 30 September 2021.

Purpose of the Direction

The purpose of the *Restrictions on Businesses, Activities and Undertakings Direction (No. 19)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

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.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Framework. The COVID Safe Framework means complying with:

- an Approved Plan for the business, activity or undertaking, if applicable; or
- a COVID Safe Checklist or COVID Safe Event Checklist if there is no approved plan; or
- an applicable COVID Safe Checklist if a business elects not to operate under an approved plan.

The Direction also provides occupancy density requirements (for example, 1 person per 2 square metres), physical distancing, collection of contact information for contact tracing, and hygiene requirements some businesses need to meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 18)*. The Direction has been updated to:

- mandate the Check In Qld app as the required method for hospitality businesses to collect contact information;

- restructure schedule 1 to provide clarity of the requirements in the Direction for individual businesses, activities and undertakings. Three new columns have been inserted to refer to the specific requirements that apply for occupant density, the Covid Safe Framework and collecting contact information;
- remove the restriction for buffets for non-restricted businesses, activities or undertakings;
- provide a minor clarification of the occupant density requirements for music festivals and dance festivals to provide that occupant density includes the front of stage areas for live music performances;
- update requirements for outdoor events for music festivals and dance festivals to clarify the requirements for outdoor events with 1500-10,000 and more than 10,000 people;
- clarify physical distancing and public health controls for non-restricted businesses must be observed to the extent possible.

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

The right to life is protected under section 16 of the Human Rights Act. The right to life places a positive obligation on the State to take all necessary steps to protect the lives of individuals in a health emergency. This right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

Limitations

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

In addition, and in regard to the following specific human rights:

- The right to freedom of movement in section 19 of the Human Rights Act may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that outdoor music festivals, outdoor dance festivals or an outdoor event with a dance area are required to comply with a **COVID Safe Event Checklist**, which may limit the way patrons can move in and around the event.
- The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing indoor

places of worship to have as many people as can be accommodated with one person per 2 square metres or 100 per cent seated venue capacity if the venue can have ticketed and allocated seating. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.

- The right to peaceful assembly and freedom of association (section 22) upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.
- The right to property in section 24 of the Human Rights Act encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. hospitality venues are required to collect contact information from guests, patrons and staff using the Check In Qld app; hospitality venues are also restricted by having to comply with occupant density requirements for indoor spaces), which is a limitation on the property rights of the owners and operators of these businesses.
- The right to privacy in section 25 of the Human Rights Act is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. The Direction also limits the right to privacy by requiring the collection of contact details for contact tracing purposes.
- 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 practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background.
- 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 practice their culture. The Direction may limit people's ability to engage with others who share their cultural background by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship and other cultural or social events.

Justification

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by managing occupant density in certain

indoor 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.

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

The limitation on the freedom to demonstrate religion or belief as part of a community is considered justified, as the purpose is to limit the spread and impact of the virus on the community, which will also reduce the strain on the public health system. A person is not prevented from practising their religion or beliefs at home, such as through private prayer, or in an indoor gathering of people as permitted under the Direction, for example by adhering to the 2 square metre rule.

The right to property provides that a person has the right not be arbitrarily deprived of their property. 'Arbitrary' refers to conduct that is capricious, unpredictable or unjust, and interferences that are proportionate to a legitimate aim that is sought. The Direction will not operate arbitrarily and is sufficiently aligned with the purpose for which it has been enforced – that is, to stop the spread of COVID-19 within the broader community through appropriate health measures. The Direction eases restrictions for non-restricted businesses, activities, and undertakings by removing the restriction on offering self-service buffets. Buffets can now operate at places not included in the Direction, for instance at worksites, boarding schools and residential aged care facilities.

Additionally, a deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231). The limitation on property rights is limited to the duration of the Direction. The interference with property rights is therefore considered justified.

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

The requirement to collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

Since the pandemic began, businesses have been required to collect and keep contact information. This has been required so that contract tracers can move quickly and contact trace anyone who might have encountered someone with COVID-19. As recent efforts have shown, the accuracy, completeness and readability of contact information held by businesses is vital to the effectiveness of contact tracing and the ability to identify and contain the spread of COVID-19 in the community.

Hospitality businesses are required to collect contact information using the Check In Qld app. However, there are exceptions to this requirement, including for persons who may not be able to use in the Check In Qld app 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. With these exceptions, the limitations on human rights due to the electronic collection of contact information are reasonable and justified.

The Check In Qld app further supports the collection of contact information for contact tracing by providing businesses with a free and contactless electronic method to collect information. As the information will be stored by the Queensland Government, businesses using the app will not be required to meet the requirements for storage and collection. The information may only be used for contact tracing purposes. The development process for the app included a complete human rights assessment.

The Direction imposes a reasonable limitation on both religious and cultural rights. The requirements are proportionate and necessary to the unprecedented threat to public health, including the pressing need for physical distancing requirements. The Direction does not: limit the right to hold a religious belief; target any religious or cultural groups; or restrict people from engaging in their cultural or religious practices in other ways. For example, through private prayer, online tools, or meetings at places of worship, with no more than one person per 2 square metres. The limitations on religious and cultural rights are considered justified.

The significant easing of restrictions for outdoor businesses, activities and undertakings ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses.

This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

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

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 20)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 20)</i>
Date effective	25 June 2021

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 20)* 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. On 8 March 2021, the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* extended the expiry date of the amendments to the end of the day on 30 September 2021.

Purpose of the Direction

The purpose of the *Restrictions on Businesses, Activities and Undertakings Direction (No. 20)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

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 revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 19)*. The Direction has been updated to:

- Eases occupant density in all indoor settings to 1.5 people per 2 sq m (3 per 4sq m) or 100% capacity where ticketed and allocated seating (whichever is greater):
 - Wedding ceremonies and funerals may still have up to 200 attendees if this is greater than 1.5 people per 2 sq m;
- Requires the Check In Qld App to be used by almost all restricted businesses activities and undertakings to collect contact information:
 - There are some exceptions if not possible or unsafe to use the App – e.g. holiday accommodation or sole operator sex workers
- Imposes an obligation on a person entering a restricted businesses activities and undertakings to provide contact information using the Check in Qld App
- Adds public-facing government services to the Direction and requires them to use the Check In Qld App – no other restrictions apply:
 - There is an exception if unsafe or unsuitable to use the Check In Qld App;
- Removes restrictions on self-service buffets for all restricted businesses;
- Replaces COVID Safe Industry Plans, COVID Safe Event Plans, COVID Safe Event Checklists with a single COVID Safe Checklist to be used by all businesses:

- Venues with Site Specific Plans must still comply with those, but the Checklist will prevail to the extent of any inconsistency; and
- Organisers of large events no longer need to notify local public health units in advance;
- Removes requirements from the Direction for:
 - indoor pools in shared facilities such as hotels and apartment complexes from the Direction;
 - accommodation providers to only allow the guests on a booking or agreement to remain there overnight; and
 - accommodation settings to have health management plans.

How the Direction achieves the purpose

The restrictions for persons entering a restricted business, activity or undertaking are to limit and respond to the public health risk of the likely spread of COVID-19 within the community at these venues.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Checklist.

The Direction also provides occupancy density requirements (for example, 3 people per 4 square metres), physical distancing, collection of contact information for contact tracing, and hygiene requirements some businesses need to meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

The mandatory use of Check In Qld app has been extended to all restricted businesses, activities and undertakings in the Direction. In addition, some new businesses, including shopping centres, supermarkets, retail stores and public-facing government agencies, have been added to the Direction to require them to collect contact information. The Check In Qld app will 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 is required to be collected using another method and provided to a health official in the event of an outbreak.

The Direction imposes requirements for businesses operating an area for dancing by limiting the dance area to no more than 3 people per 4 square meters. The business should also undertake reasonable measures to ensure people are evenly distributed in dance areas or in front or performance stages.

The Direction also includes a recommendation for non-restricted businesses, activities or undertakings to observe physical distancing and public health controls to the extent possible. This recommendation extends the consistent message to all non-restricted businesses to reduce public health risks where possible in the overall response to COVID-19. These measures may include environmental cleaning, hygiene measures, regular washing of hands, availability of hand sanitiser and avoiding handshaking.

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)

- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- 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 which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.
- Right to freedom of movement (section 19): may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that outdoor music festivals, outdoor dance festivals or an outdoor event with a dance area are required to comply with occupant density and a **COVID Safe Checklist**, which may limit the way patrons can move in and around the event.
- Right to freedom of thought, conscience, religion and belief (section 20): includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing indoor places of worship to have as many people as can be accommodated with 3 people per 4 square metres or 100 per cent seated venue capacity, if the venue can have ticketed and allocated seating. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.
- Right to peaceful assembly and freedom of association (section 22): upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.
- Right to property (section 24): encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. all restricted businesses, activities and undertakings are required to collect contact information from guests, patrons and staff using the Check In Qld app; venues are also restricted by having to comply with occupant density requirements for indoor spaces), which is a limitation on the property rights of the owners and operators of these businesses.
- Right to privacy (section 25): The right is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses

such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. Interference with privacy may also occur by making a person provide personal details when entering a restricted business, activity or undertaking via the Check In Qld app, or by another method if permitted, for contact tracing purposes.

- Cultural rights – generally (section 27): protects the rights of all people with particular cultural, religion, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. The Direction may limit a person's ability to engage with others who share their cultural background by restricting the number of people that can congregate in an indoor space for the purpose of cultural expression.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (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 practice their culture. The Direction may limit people's ability to engage with others to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship and other cultural or social events in indoor spaces.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- limits on occupant density of people in indoor settings and for businesses and events operating a dance area; and
- requirement to comply with a COVID-19 Safe Checklist to operate a restricted business, activity or undertaking; and
- requirement for people to provide personal details when entering a restricted business, activity or undertaking by using the Check In Qld app, or if permitted by another method, for contact tracing.

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by managing occupant density in certain indoor 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.

Additionally, requiring most people entering restricted businesses, activities and undertakings to provide 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. The Direction is also in effect for a temporary period, and the restrictions only apply to people entering a restricted business captured under the Direction. 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. Protecting people in the community from the risk of COVID-19 also promotes their human rights to life (section 16) and health

(section 37). At international law, the right to health includes '[t]he prevention, treatment and control of epidemic, endemic, ... and other diseases': *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12(2)(c). The purpose of protecting and promoting human rights is necessarily consistent with a society 'based on human dignity, equality and freedom' (section 13(2)(b) of the Human Rights Act).

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring people to provide contact information when they enter a venue or an event, limiting the occupant density and requiring compliance with COVID Safe Checklist will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19.

Additionally, the requirement for businesses and patrons to use the Check In Qld app as the method for providing and collecting contact information. However, the Direction provides an exception where the use of the Check In Qld App would result in safety or liability issues, the business, activity or undertaking must collect and store contact information using another method. This approach balances any safety and liability issues with the potential public health risks of allowing certain people to provide their personal details directly to particular businesses when entering.

Necessary (s 13(2)(d))

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. In particular:

- the complete removal of the occupant density limits would not be the most practicable means to limit the risk of COVID-19 transmission within the community. The gradual increase of occupant density limits for all restricted businesses, activities and undertakings is the least restrictive measure because of the ongoing public health risk of COVID-19. Allowing more people to congregate or mingle in closer proximity potentially exposes Queensland to the risk of community transmission, or an outbreak, where occupant density limits are increased.
- the COVID Safe Framework has been replaced with a universal COVID Safe Checklist to be used by all restricted businesses, activities and undertakings. Some larger businesses and activities will retain their site-specific plans that provide clearly defined assistance in their management of the public health risks associated with COVID-19. The universal COVID Safe Checklist is the most reasonable and least restrictive method for easing restrictions on businesses. The checklist will include guidance on occupant density, collecting contact information, cleaning and wellness measures (eg staff health), which will support businesses to meet the requirements in the Direction.

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

The requirement to provide and collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

Since the pandemic began, businesses have been required to collect and keep contact information. This has been required so that contract tracers can move quickly and contact

trace anyone who might have encountered someone with COVID-19. As recent efforts have shown, the accuracy, completeness and readability of contact information held by businesses is vital to the effectiveness of contact tracing and the ability to identify and contain the spread of COVID-19 in the community.

Since 1 May 2021, hospitality businesses are required to collect contact information using the Check In Qld app. However, there are exceptions to this requirement, including for persons who may not be able to use in the Check In Qld app 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. With these exceptions, the limitations on human rights due to the electronic collection of contact information are reasonable and justified.

From 9 July 2021, the requirement to use the Check In Qld app to collect contact information will now be expanded for people attending all restricted businesses, activities and undertakings and expanded to other businesses including, shopping centres, supermarkets, retail stores and public-facing government agencies. However, no other restrictions will apply, such as, occupant density or having a COVID Safe Checklist. The only requirement that will apply to these extra businesses is collecting contact information.

The requirement to provide contact information via the Check in Qld App will also be imposed on individual patrons of restricted businesses, activities and undertakings for the first time. There are exceptions provided for situations where it isn't reasonable for a person to provide contact information such as emergency situations or if a child is under the age of 16 years old and not accompanied by an adult.

The Check In Qld app further supports the collection of contact information for contact tracing by providing businesses with a free and contactless electronic method to collect information. As the information will be stored by the Queensland Government, businesses using the app will not be required to meet the requirements for storage and collection. The information may only be used for contact tracing purposes. The development process for the app included a complete human rights assessment.

Contact information is most valuable in settings open to the public that have increased transmission potential (e.g. crowded or enclosed environments), where community members from varied cohorts and groups attend for an extended period and where they are likely to come into direct contact with other people during their visit. Most COVID-19 cases become infected from a close contact or by attending an exposure site at the same time as a COVID-19 case, there is also an increasing amount of transmission occurring after only fleeting contact. In many cases, this type of transmission has occurred in retail and public venues.

Due to the risks outlined above, the updated method for collecting contact information and expanding to other non-restricted businesses will further support Queensland's ability to rapidly contact trace. The change is the least restrictive measure as it also allows for the further easing of restrictions, such as, increasing occupant density limits and replacing the COVID Safe Framework with a universal COVID Safe Checklist.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception from using the Check In Qld app, if it will cause a safety or liability issue, protects the rights to security of person and life (ss 16 and 29(1)). These exceptions are designed to tailor the limits on human rights to those necessary.

The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

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

The purpose of the Direction is to reduce the spread of COVID-19 within the community. The benefit of achieving this purpose is that by reducing the risk of transmission of COVID-19 to the community the overall increase in the enjoyment of the right to life is measurable. Conversely, a failure to mitigate the risk of transmission is also measurable in loss of life. 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.

Many of the limits on human rights are incidental.

- As to the limitation on freedom of religion, a person is only prevented from practising their religion or belief in person in community with others. They are not prevented from practising their religion or beliefs in other ways such as from a place of worship following the occupant density requirements, or at their home or private residence, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the Direction does not require the person to provide any information other than what is necessary to support effective contact tracing.
- As to the limits on cultural rights, the Direction does not target any religious or cultural groups or restrict people from engaging in their cultural or religious practices in other ways.

The Direction significantly eases restrictions by increasing occupant density limits, removing restrictions on self-service buffets for all restricted businesses, replacing the COVID Safe Framework with a single COVID Safe Checklist to be used by all businesses, organisers of large events will no longer need to notify local public health units in advance, removing requirements from the Direction for: indoor pools in shared facilities such as hotels and apartment complexes from the Direction; accommodation providers to only allow the guests on a booking or agreement to remain there overnight; and accommodation settings to have health management plans.

These changes to ease restrictions ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. This is compatible with the objective of the Human Rights Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses. This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

The extent of the limitation on human rights is further reduced in other ways. For example, the Direction is only in force for a temporary period and there are exceptions for people providing

personal details via the Check In Qld app. Nonetheless, the impact on some human rights will be large, in particular, the right to privacy for people entering restricted businesses, and the freedom of movement being limited through occupant density.

However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) outweighs the impact on other human rights. Indeed, it is difficult to overstate the importance to society of addressing the risk posed by a pandemic. Ultimately, the Direction strikes a fair balance between the human rights it limits and the need to reduce the risk of COVID-19 spreading into Queensland.

RTI RELEASE

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 21)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 21)</i>
Date effective	28 June 2021

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 21)* 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. On 8 March 2021, the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* extended the expiry date of the amendments to the end of the day on 30 September 2021.

Purpose of the Direction

The purpose of the *Restrictions on Businesses, Activities and Undertakings Direction (No. 21)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

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 revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 20)*. The Direction has been updated to reduce occupant density in all indoor settings to 1 person per 2 sq m or 100% capacity where ticketed and allocated seating (whichever is greater).

How the Direction achieves the purpose

The restrictions for persons entering a restricted business, activity or undertaking are to limit and respond to the public health risk of the likely spread of COVID-19 within the community at these venues.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Checklist.

The Direction also provides occupancy density requirements (reduced to 1 person per 2 square metres), physical distancing, collection of contact information for contact tracing, and hygiene requirements some businesses need to meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

The mandatory use of Check In Qld app is has been extended to all restricted businesses, activities and undertakings in the Direction. In addition, some new businesses, including shopping centres, supermarkets, retail stores and public-facing government agencies, have been added to the Direction to require them to collect contact information. The Check In Qld app will 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 is required to be collected using another method and provided to a health official in the event of an outbreak.

The Direction imposes requirements for businesses operating an area for dancing by limiting the dance area to no more than 1 person per 2 square metres. The business should also undertake reasonable measures to ensure people are evenly distributed in dance areas or in front or performance stages.

The Direction also includes a recommendation for non-restricted businesses, activities or undertakings to observe physical distancing and public health controls to the extent possible. This recommendation extends the consistent message to all non-restricted businesses to reduce public health risks where possible in the overall response to COVID-19. These measures may include environmental cleaning, hygiene measures, regular washing of hands, availability of hand sanitiser and avoiding handshaking.

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- 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 which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.
- Right to freedom of movement (section 19): may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that outdoor music festivals, outdoor dance festivals or an outdoor event with a dance area are required to comply with occupant density and a **COVID Safe Checklist**, which may limit the way patrons can move in and around the event.
- Right to freedom of thought, conscience, religion and belief (section 20): includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to

hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing indoor places of worship to have as many people as can be accommodated with 1 person per 2 square metres or 100 per cent seated venue capacity, if the venue can have ticketed and allocated seating. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.

- Right to peaceful assembly and freedom of association (section 22): upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.
- Right to property (section 24): encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. all restricted businesses, activities and undertakings are required to collect contact information from guests, patrons and staff using the Check In Qld app; venues are also restricted by having to comply with occupant density requirements for indoor spaces), which is a limitation on the property rights of the owners and operators of these businesses.
- Right to privacy (section 25): The right is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. Interference with privacy may also occur by making a person provide personal details when entering a restricted business, activity or undertaking via the Check In Qld app, or by another method if permitted, for contact tracing purposes.
- Cultural rights – generally (section 27): protects the rights of all people with particular cultural, religion, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. The Direction may limit a person's ability to engage with others who share their cultural background by restricting the number of people that can congregate in an indoor space for the purpose of cultural expression.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (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 practice their culture. The Direction may limit people's ability to engage with others to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs by

requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship and other cultural or social events in indoor spaces.

Compatibility with Human Rights
Proper purpose (section 13(2)(b))

The limitations on the above human rights arise from the:

- limits on occupant density of people in indoor settings and for businesses and events operating a dance area; and
- requirement to comply with a COVID-19 Safe Checklist to operate a restricted business, activity or undertaking; and
- requirement for people to provide personal details when entering a restricted business, activity or undertaking by using the Check In Qld app, or if permitted by another method, for contact tracing.

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by managing occupant density in certain indoor 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.

Additionally, requiring most people entering restricted businesses, activities and undertakings to provide 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. The Direction is also in effect for a temporary period, and the restrictions only apply to people entering a restricted business captured under the Direction. 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. Protecting people in the community from the risk of COVID-19 also promotes their human rights to life (section 16) and health (section 37). At international law, the right to health includes '[t]he prevention, treatment and control of epidemic, endemic, ... and other diseases': *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12(2)(c). The purpose of protecting and promoting human rights is necessarily consistent with a society 'based on human dignity, equality and freedom' (section 13(2)(b) of the Human Rights Act).

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring people to provide contact information when they enter a venue or an event, limiting the occupant density and requiring compliance with COVID Safe Checklist will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19.

Additionally, the requirement for businesses and patrons to use the Check In Qld app as the method for providing and collecting contact information. However, the Direction provides an exception where the use of the Check In Qld App would result in safety or liability issues, the business, activity or undertaking must collect and store contact information using another method. This approach balances any safety and liability issues with the potential public health risks of allowing certain people to provide their personal details directly to particular businesses when entering.

Necessary (s 13(2)(d))

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. In particular:

- the complete removal of the occupant density limits would not be the most practicable means to limit the risk of COVID-19 transmission within the community. The approach of reducing or increasing occupant density limits for all restricted businesses, activities and undertakings in response to the public health risk is the least restrictive measure because it allows these businesses to continue to operate safely. Allowing more people to congregate or mingle in closer proximity potentially exposes Queensland to the risk of community transmission, or an outbreak.
- the COVID Safe Framework has been replaced with a universal COVID Safe Checklist to be used by all restricted businesses, activities and undertakings. Some larger businesses and activities will retain their site-specific plans that provide clearly defined assistance in their management of the public health risks associated with COVID-19. The universal COVID Safe Checklist is the most reasonable and least restrictive method for easing restrictions on businesses. The checklist will include guidance on occupant density, collecting contact information, cleaning and wellness measures (eg staff health), which will support businesses to meet the requirements in the Direction.

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

The requirement to provide and collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

Since the pandemic began, businesses have been required to collect and keep contact information. This has been required so that contract tracers can move quickly and contact trace anyone who might have encountered someone with COVID-19. As recent efforts have shown, the accuracy, completeness and readability of contact information held by businesses is vital to the effectiveness of contact tracing and the ability to identify and contain the spread of COVID-19 in the community.

Since 1 May 2021, hospitality businesses are required to collect contact information using the Check In Qld app. However, there are exceptions to this requirement, including for persons who may not be able to use in the Check In Qld app 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. With these exceptions, the limitations on human rights due to the electronic collection of contact information are reasonable and justified.

From 9 July 2021, the requirement to use the Check In Qld app to collect contact information will now be expanded for people attending all restricted businesses, activities and undertakings and expanded to other businesses including, shopping centres, supermarkets, retail stores and public-facing government agencies. However, no other restrictions will apply, such as, occupant density or having a COVID Safe Checklist. The only requirement that will apply to these extra businesses is collecting contact information.

The requirement to provide contact information via the Check in Qld App will also be imposed on individual patrons of restricted businesses, activities and undertakings for the first time. There are exceptions provided for situations where it isn't reasonable for a person to provide contact information such as emergency situations or if a child is under the age of 16 years old and not accompanied by an adult.

The Check In Qld app further supports the collection of contact information for contact tracing by providing businesses with a free and contactless electronic method to collect information. As the information will be stored by the Queensland Government, businesses using the app will not be required to meet the requirements for storage and collection. The information may only be used for contact tracing purposes. The development process for the app included a complete human rights assessment.

Contact information is most valuable in settings open to the public that have increased transmission potential (e.g. crowded or enclosed environments), where community members from varied cohorts and groups attend for an extended period and where they are likely to come into direct contact with other people during their visit. Most COVID-19 cases become infected from a close contact or by attending an exposure site at the same time as a COVID-19 case, there is also an increasing amount of transmission occurring after only fleeting contact. In many cases, this type of transmission has occurred in retail and public venues.

Due to the risks outlined above, the updated method for collecting contact information and expanding to other non-restricted businesses will further support Queensland's ability to rapidly contact trace. The change is the least restrictive measure as it also allows for the further easing of restrictions, such as replacing the COVID Safe Framework with a universal COVID Safe Checklist.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception from using the Check In Qld app, if it will cause a safety or liability issue, protects the rights to security of person and life (ss 16 and 29(1)). These exceptions are designed to tailor the limits on human rights to those necessary.

The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

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

The purpose of the Direction is to reduce the spread of COVID-19 within the community. The benefit of achieving this purpose is that by reducing the risk of transmission of COVID-19 to the community the overall increase in the enjoyment of the right to life is measurable. Conversely, a failure to mitigate the risk of transmission is also measurable in loss of life. 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.

Many of the limits on human rights are incidental.

- As to the limitation on freedom of religion, a person is only prevented from practising their religion or belief in person in community with others. They are not prevented from practising their religion or beliefs in other ways such as from a place of worship following the occupant density requirements, or at their home or private residence, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the Direction does not require the person to provide any information other than what is necessary to support effective contact tracing.
- As to the limits on cultural rights, the Direction does not target any religious or cultural groups or restrict people from engaging in their cultural or religious practices in other ways.

The Direction tightens restrictions by reducing occupant density limits to 1 person per 2 square metres. These changes to only reduce occupant density limits ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. All other restrictions in place under the Direction remain unchanged. This is compatible with the objective of the Human Rights Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses. However, certain restrictions may need to be tightened in response to an acute public health risk. This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

The extent of the limitation on human rights is further reduced in other ways. For example, the Direction is only in force for a temporary period and there are exceptions for people providing personal details via the Check In Qld app. Nonetheless, the impact on some human rights will be large, in particular, the right to privacy for people entering restricted businesses, and the freedom of movement being limited through occupant density.

However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) outweighs the impact on other human rights. Indeed, it is difficult to overstate the importance to society of addressing the risk posed by a pandemic. Ultimately, the Direction strikes a fair balance between the human rights it limits and the need to reduce the risk of COVID-19 spreading into Queensland.

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 22)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 22)</i>
Date effective	16 July 2021

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 22)* 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. On 8 March 2021, the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* extended the expiry date of the amendments to the end of the day on 30 September 2021.

Purpose of the Direction

The purpose of the *Restrictions on Businesses, Activities and Undertakings Direction (No. 22)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

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 revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 21)*. The Direction has been updated make minor clarifying changes to:

- clarify that occupant density requirements do not apply to:
 - tourism vehicles and vessels for up to 50 patrons – being added into the Direction because this was previously allowed under COVID Safe Plans that have now been superseded;
 - sleeping areas for Hostels, bed and breakfasts, backpackers, boarding houses and short-term accommodation – this is already reflected in the *Restrictions for Impacted Areas Direction* for SEQ, it was a drafting oversight that it was not included for the rest of QLD;
 - sleeping areas for Hostels, bed and breakfasts, backpackers, boarding houses – this is already reflected in the *Restrictions for Impacted Areas Direction* for SEQ, it was a drafting oversight that it was not included for the rest of QLD;
- sleeping areas for Hostels, bed and breakfasts, backpackers, boarding houses – this is already reflected in the *Restrictions for Impacted Areas Direction* for SEQ, it was a drafting oversight that it was not included for the rest of QLD;
- for storage and collection requirements, reinsert the end date of 56 days as the maximum period for data retention of contact details. This was an existing requirement that fell out during a previous update to the direction.

How the Direction achieves the purpose

The restrictions for persons entering a restricted business, activity or undertaking are to limit and respond to the public health risk of the likely spread of COVID-19 within the community at these venues.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Checklist, or for certain businesses, the COVID Safe Site Specific Plan or COVID Safe Professional Sporting Code Plan.

The Direction also provides occupancy density requirements (1 person per 2 square metres or 100 per cent ticketed and allocated seating), physical distancing, collection of contact information for contact tracing, and hygiene requirements some businesses need to meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

The mandatory use of Check In Qld app is has been extended to all restricted businesses, activities and undertakings in the Direction. In addition, some new businesses, including shopping centres, supermarkets, retail stores and public-facing government agencies, have been added to the Direction to require them to collect contact information. The Check In Qld app will 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 is required to be collected using another method and provided to a health official in the event of an outbreak.

The Direction imposes requirements for businesses operating an area for dancing by limiting the dance area to no more than 1 person per 2 square metres. The business should also undertake reasonable measures to ensure people are evenly distributed in dance areas or in front or performance stages.

The Direction also includes a recommendation for non-restricted businesses, activities or undertakings to observe physical distancing and public health controls to the extent possible. This recommendation extends the consistent message to all non-restricted businesses to reduce public health risks where possible in the overall response to COVID-19. These measures may include environmental cleaning, hygiene measures, regular washing of hands, availability of hand sanitiser and avoiding handshaking.

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
 - Freedom of movement (section 19)
 - Freedom of thought, conscience, religion and belief (section 20)
 - Peaceful assembly and freedom of association (section 22)
 - Property rights (section 24)
 - Privacy and reputation (section 25)
 - Cultural rights – generally (section 27)
 - Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- 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 which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the

health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

- Right to freedom of movement (section 19): may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that outdoor music festivals, outdoor dance festivals or an outdoor event with a dance area are required to comply with occupant density and a **COVID Safe Checklist**, which may limit the way patrons can move in and around the event.
- Right to freedom of thought, conscience, religion and belief (section 20): includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing indoor places of worship to have as many people as can be accommodated with 1 person per 2 square metres or 100 per cent seated venue capacity, if the venue can have ticketed and allocated seating. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.
- Right to peaceful assembly and freedom of association (section 22): upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.
- Right to property (section 24): encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. all restricted businesses, activities and undertakings are required to collect contact information from guests, patrons and staff using the Check In Qld app; venues are also restricted by having to comply with occupant density requirements for indoor spaces), which is a limitation on the property rights of the owners and operators of these businesses.
- Right to privacy (section 25): The right is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. Interference with privacy may also occur by making a person provide personal details when entering a restricted business, activity or undertaking via the Check In Qld app, or by another method if permitted, for contact tracing purposes.
- Cultural rights – generally (section 27): protects the rights of all people with particular cultural, religion, racial and linguistic backgrounds to enjoy their culture, declare and

practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. The Direction may limit a person's ability to engage with others who share their cultural background by restricting the number of people that can congregate in an indoor space for the purpose of cultural expression.

- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (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 practice their culture. The Direction may limit people's ability to engage with others to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship and other cultural or social events in indoor spaces.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- limits on occupant density of people in indoor settings and for businesses and events operating a dance area; and
- requirement to comply with a COVID-19 Safe Checklist to operate a restricted business, activity or undertaking; and
- requirement for people to provide personal details when entering a restricted business, activity or undertaking by using the Check In Qld app, or if permitted by another method, for contact tracing.

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by managing occupant density in certain indoor 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.

Additionally, requiring most people entering restricted businesses, activities and undertakings to provide 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. The Direction is also in effect for a temporary period, and the restrictions only apply to people entering a restricted business captured under the Direction. 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. Protecting people in the community from the risk of COVID-19 also promotes their human rights to life (section 16) and health (section 37). At international law, the right to health includes '[t]he prevention, treatment and control of epidemic, endemic, ... and other diseases': *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12(2)(c). The purpose of protecting and promoting human rights is necessarily consistent with a society 'based on human dignity, equality and freedom' (section 13(2)(b) of the Human Rights Act).

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring people to provide contact information when they enter a venue or an event, limiting the occupant density

and requiring compliance with COVID Safe Checklist will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19.

Additionally, the requirement for businesses and patrons to use the Check In Qld app as the method for providing and collecting contact information. However, the Direction provides an exception where the use of the Check In Qld App would result in safety or liability issues, the business, activity or undertaking must collect and store contact information using another method. This approach balances any safety and liability issues with the potential public health risks of allowing certain people to provide their personal details directly to particular businesses when entering.

Necessary (s 13(2)(d))

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. In particular:

- the complete removal of the occupant density limits would not be the most practicable means to limit the risk of COVID-19 transmission within the community. The approach of reducing or increasing occupant density limits for all restricted businesses, activities and undertakings in response to the public health risk is the least restrictive measure because it allows these businesses to continue to operate safely. Allowing more people to congregate or mingle in closer proximity potentially exposes Queensland to the risk of community transmission, or an outbreak.
- the COVID Safe Framework has been replaced with a universal COVID Safe Checklist to be used by all restricted businesses, activities and undertakings. Some larger businesses and activities will retain their site-specific plans that provide clearly defined assistance in their management of the public health risks associated with COVID-19. The universal COVID Safe Checklist is the most reasonable and least restrictive method for easing restrictions on businesses. The checklist will include guidance on occupant density, collecting contact information, cleaning and wellness measures (eg staff health), which will support businesses to meet the requirements in the Direction.

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

The requirement to provide and collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

Since the pandemic began, businesses have been required to collect and keep contact information. This has been required so that contract tracers can move quickly and contact trace anyone who might have encountered someone with COVID-19. As recent efforts have shown, the accuracy, completeness and readability of contact information held by businesses is vital to the effectiveness of contact tracing and the ability to identify and contain the spread of COVID-19 in the community.

Since 1 May 2021, hospitality businesses are required to collect contact information using the Check In Qld app. However, there are exceptions to this requirement, including for persons

who may not be able to use in the Check In Qld app 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. With these exceptions, the limitations on human rights due to the electronic collection of contact information are reasonable and justified.

From 9 July 2021, the requirement to use the Check In Qld app to collect contact information has been expanded for people attending all restricted businesses, activities and undertakings and expanded to other businesses including, shopping centres, supermarkets, retail stores and public-facing government agencies. However, no other restrictions will apply to shopping centres, supermarkets, retail stores and public-facing government agencies, such as, occupant density or having a COVID Safe Checklist. The only requirement that will apply to these extra businesses is collecting contact information.

The requirement to provide contact information via the Check in Qld App has been imposed on individual patrons of restricted businesses, activities and undertakings for the first time. There are exceptions provided for situations where it isn't reasonable for a person to provide contact information such as emergency situations or if a child is under the age of 16 years old and not accompanied by an adult.

The Check In Qld app further supports the collection of contact information for contact tracing by providing businesses with a free and contactless electronic method to collect information. As the information will be stored by the Queensland Government, businesses using the app will not be required to meet the requirements for storage and collection. The information may only be used for contact tracing purposes. The development process for the app included a complete human rights assessment.

Contact information is most valuable in settings open to the public that have increased transmission potential (e.g. crowded or enclosed environments), where community members from varied cohorts and groups attend for an extended period and where they are likely to come into direct contact with other people during their visit. Most COVID-19 cases become infected from a close contact or by attending an exposure site at the same time as a COVID-19 case, there is also an increasing amount of transmission occurring after only fleeting contact. In many cases, this type of transmission has occurred in retail and public venues.

Due to the risks outlined above, the updated method for collecting contact information and expanding to other non-restricted businesses will further support Queensland's ability to rapidly contact trace. The change is the least restrictive measure as it also allows for the further easing of restrictions, such as replacing the COVID Safe Framework with a universal COVID Safe Checklist.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception from using the Check In Qld app, if it will cause a safety or liability issue, protects the rights to security of person and life (ss 16 and 29(1)). These exceptions are designed to tailor the limits on human rights to those necessary.

The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

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

The purpose of the Direction is to reduce the spread of COVID-19 within the community. The benefit of achieving this purpose is that by reducing the risk of transmission of COVID-19 to the community the overall increase in the enjoyment of the right to life is measurable. Conversely, a failure to mitigate the risk of transmission is also measurable in loss of life. 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.

Many of the limits on human rights are incidental.

- As to the limitation on freedom of religion, a person is only prevented from practising their religion or belief in person in community with others. They are not prevented from practising their religion or beliefs in other ways such as from a place of worship following the occupant density requirements, or at their home or private residence, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the Direction does not require the person to provide any information other than what is necessary to support effective contact tracing.
- As to the limits on cultural rights, the Direction does not target any religious or cultural groups or restrict people from engaging in their cultural or religious practices in other ways.

The requirement to use the Check In Qld app has been clarified to include hospitality businesses that provide takeaway services. This requirement is being extended to takeaway services outside of impacted areas that are already required to collect contact information using the Check In Qld app. The Direction also allows for COVID Safe Site Specific Plans and COVID Safe Professional Sporting Code Plans to continue to be used by listed businesses to accommodate the

The Direction eases restrictions for certain businesses by allowing occupant density limits to not apply to tourism vehicles and vessels for up to 50 patrons, sleeping areas for Hostels, bed and breakfasts, backpackers, boarding houses and camp operators that provide short-term accommodation for school aged children on a school camp or community group etc. These changes to clarify occupant density limits ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. All other restrictions in place under the Direction remain unchanged. This is compatible with the objective of the Human Rights Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses. However, certain restrictions may need to be tightened in response to an acute public health risk. This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

The extent of the limitation on human rights is further reduced in other ways. For example, the Direction is only in force for a temporary period and there are exceptions for people providing personal details via the Check In Qld app. Nonetheless, the impact on some human rights will be large, in particular, the right to privacy for people entering restricted businesses, and the freedom of movement being limited through occupant density.

However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) outweighs the impact on other human rights. Indeed, it is difficult to overstate the importance to society of addressing the risk posed by a pandemic. Ultimately, the Direction strikes a fair balance between the human rights it limits and the need to reduce the risk of COVID-19 spreading into Queensland.

RTI RELEASE

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 23)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 23)</i>
Date effective	23 July 2021

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 23)* 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. On 8 March 2021, the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* extended the expiry date of the amendments to the end of the day on 30 September 2021.

Purpose of the Direction

The purpose of the *Restrictions on Businesses, Activities and Undertakings Direction (No. 22)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

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 revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 21)*. The Direction has been updated make minor clarifying changes to:

- clarify that occupant density requirements do not apply to:
 - tourism vehicles and vessels for up to 50 patrons – being added into the Direction because this was previously allowed under COVID Safe Plans that have now been superseded;
 - sleeping areas for Hostels, bed and breakfasts, backpackers, boarding houses and short-term accommodation – this is already reflected in the *Restrictions for Impacted Areas Direction* for SEQ, it was a drafting oversight that it was not included for the rest of QLD;
 - sleeping areas for Hostels, bed and breakfasts, backpackers, boarding houses – this is already reflected in the *Restrictions for Impacted Areas Direction* for SEQ, it was a drafting oversight that it was not included for the rest of QLD;
- sleeping areas for Hostels, bed and breakfasts, backpackers, boarding houses – this is already reflected in the *Restrictions for Impacted Areas Direction* for SEQ, it was a drafting oversight that it was not included for the rest of QLD;
- for storage and collection requirements, reinsert the end date of 56 days as the maximum period for data retention of contact details. This was an existing requirement that fell out during a previous update to the direction.

How the Direction achieves the purpose

The restrictions for persons entering a restricted business, activity or undertaking are to limit and respond to the public health risk of the likely spread of COVID-19 within the community at these venues.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Checklist, or for certain businesses, the COVID Safe Site Specific Plan or COVID Safe Professional Sporting Code Plan.

The Direction also provides occupancy density requirements (1 person per 2 square metres or 100 per cent ticketed and allocated seating or 75 per cent ticketed and allocated seating for large stadiums), physical distancing, collection of contact information for contact tracing, and hygiene requirements some businesses need to meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

The mandatory use of Check In Qld app is has been extended to all restricted businesses, activities and undertakings in the Direction. In addition, some new businesses, including shopping centres, supermarkets, retail stores and public-facing government agencies, have been added to the Direction to require them to collect contact information. The Check In Qld app will 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 is required to be collected using another method and provided to a health official in the event of an outbreak.

The Direction imposes requirements for businesses operating an area for dancing by limiting the dance area to no more than 1 person per 2 square metres. The business should also undertake reasonable measures to ensure people are evenly distributed in dance areas or in front or performance stages.

The Direction also includes a recommendation for non-restricted businesses, activities or undertakings to observe physical distancing and public health controls to the extent possible. This recommendation extends the consistent message to all non-restricted businesses to reduce public health risks where possible in the overall response to COVID-19. These measures may include environmental cleaning, hygiene measures, regular washing of hands, availability of hand sanitiser and avoiding handshaking.

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
 - Freedom of movement (section 19)
 - Freedom of thought, conscience, religion and belief (section 20)
 - Peaceful assembly and freedom of association (section 22)
 - Property rights (section 24)
 - Privacy and reputation (section 25)
 - Cultural rights – generally (section 27)
 - Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- 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 which must be realised and outweighs the potential impacts

on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.

- Right to freedom of movement (section 19): may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that outdoor music festivals, outdoor dance festivals or an outdoor event with a dance area are required to comply with occupant density and a **COVID Safe Checklist**, which may limit the way patrons can move in and around the event.
- Right to freedom of thought, conscience, religion and belief (section 20): includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing indoor places of worship to have as many people as can be accommodated with 1 person per 2 square metres or 100 per cent seated venue capacity or 75 per cent for large stadiums, if the venue can have ticketed and allocated seating. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.
- Right to peaceful assembly and freedom of association (section 22): upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.
- Right to property (section 24): encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. all restricted businesses, activities and undertakings are required to collect contact information from guests, patrons and staff using the Check In Qld app; venues are also restricted by having to comply with occupant density requirements for indoor spaces), which is a limitation on the property rights of the owners and operators of these businesses.
- Right to privacy (section 25): The right is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. Interference with privacy may also occur by making a person provide personal details when entering a restricted business, activity or undertaking via the Check In Qld app, or by another method if permitted, for contact tracing purposes.

- Cultural rights – generally (section 27): protects the rights of all people with particular cultural, religion, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. The Direction may limit a person's ability to engage with others who share their cultural background by restricting the number of people that can congregate in an indoor space for the purpose of cultural expression.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (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 practice their culture. The Direction may limit people's ability to engage with others to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship and other cultural or social events in indoor spaces.

Compatibility with Human Rights
Proper purpose (section 13(2)(b))

The limitations on the above human rights arise from the:

- limits on occupant density of people in indoor settings and for businesses and events operating a dance area; and
- requirement to comply with a COVID-19 Safe Checklist to operate a restricted business, activity or undertaking; and
- requirement for people to provide personal details when entering a restricted business, activity or undertaking by using the Check In Qld app, or if permitted by another method, for contact tracing.

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by managing occupant density in certain indoor 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.

Additionally, requiring most people entering restricted businesses, activities and undertakings to provide 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. The Direction is also in effect for a temporary period, and the restrictions only apply to people entering a restricted business captured under the Direction. 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. Protecting people in the community from the risk of COVID-19 also promotes their human rights to life (section 16) and health (section 37). At international law, the right to health includes '[t]he prevention, treatment and control of epidemic, endemic, ... and other diseases': *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12(2)(c). The purpose of protecting and promoting human rights is necessarily consistent with a society 'based on human dignity, equality and freedom' (section 13(2)(b) of the Human Rights Act).

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring people to provide contact information when they enter a venue or an event, limiting the occupant density and requiring compliance with COVID Safe Checklist will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19.

Additionally, the requirement for businesses and patrons to use the Check In Qld app as the method for providing and collecting contact information. However, the Direction provides an exception where the use of the Check In Qld App would result in safety or liability issues, the business, activity or undertaking must collect and store contact information using another method. This approach balances any safety and liability issues with the potential public health risks of allowing certain people to provide their personal details directly to particular businesses when entering.

Necessary (s 13(2)(d))

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. In particular:

- the complete removal of the occupant density limits would not be the most practicable means to limit the risk of COVID-19 transmission within the community. The approach of reducing or increasing occupant density limits for all restricted businesses, activities and undertakings in response to the public health risk is the least restrictive measure because it allows these businesses to continue to operate safely. Allowing more people to congregate or mingle in closer proximity potentially exposes Queensland to the risk of community transmission, or an outbreak.
- the COVID Safe Framework has been replaced with a universal COVID Safe Checklist to be used by all restricted businesses, activities and undertakings. Some larger businesses and activities will retain their site-specific plans that provide clearly defined assistance in their management of the public health risks associated with COVID-19. The universal COVID Safe Checklist is the most reasonable and least restrictive method for easing restrictions on businesses. The checklist will include guidance on occupant density, collecting contact information, cleaning and wellness measures (eg staff health), which will support businesses to meet the requirements in the Direction.

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

The requirement to provide and collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

Since the pandemic began, businesses have been required to collect and keep contact information. This has been required so that contract tracers can move quickly and contact trace anyone who might have encountered someone with COVID-19. As recent efforts have shown, the accuracy, completeness and readability of contact information held by businesses is vital to the effectiveness of contact tracing and the ability to identify and contain the spread of COVID-19 in the community.

Since 1 May 2021, hospitality businesses are required to collect contact information using the Check In Qld app. However, there are exceptions to this requirement, including for persons who may not be able to use in the Check In Qld app 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. With these exceptions, the limitations on human rights due to the electronic collection of contact information are reasonable and justified.

From 9 July 2021, the requirement to use the Check In Qld app to collect contact information has been expanded for people attending all restricted businesses, activities and undertakings and expanded to other businesses including, shopping centres, supermarkets, retail stores and public-facing government agencies (with some exceptions). However, no other restrictions will apply to shopping centres, supermarkets, retail stores and public-facing government agencies, such as, occupant density or having a COVID Safe Checklist. The only requirement that will apply to these extra businesses is collecting contact information.

The requirement to provide contact information via the Check in Qld App has been imposed on individual patrons of restricted businesses, activities and undertakings for the first time. There are exceptions provided for situations where it isn't reasonable for a person to provide contact information such as emergency situations, if a person is conducting law enforcement activities (for example, police), or if a child is under the age of 16 years old and not accompanied by an adult.

The Check In Qld app further supports the collection of contact information for contact tracing by providing businesses with a free and contactless electronic method to collect information. As the information will be stored by the Queensland Government, businesses using the app will not be required to meet the requirements for storage and collection. The information may only be used for contact tracing purposes. The development process for the app included a complete human rights assessment.

Contact information is most valuable in settings open to the public that have increased transmission potential (e.g. crowded or enclosed environments), where community members from varied cohorts and groups attend for an extended period and where they are likely to come into direct contact with other people during their visit. Most COVID-19 cases become infected from a close contact or by attending an exposure site at the same time as a COVID-19 case, there is also an increasing amount of transmission occurring after only fleeting contact. In many cases, this type of transmission has occurred in retail and public venues.

Due to the risks outlined above, the updated method for collecting contact information and expanding to other non-restricted businesses will further support Queensland's ability to rapidly contact trace. The change is the least restrictive measure as it also allows for the further easing of restrictions, such as replacing the COVID Safe Framework with a universal COVID Safe Checklist.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception from using the Check In Qld app, if it will cause a safety or liability issue, protects the rights to security of person and life (ss 16 and 29(1)). These exceptions are designed to tailor the limits on human rights to those necessary.

The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

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

The purpose of the Direction is to reduce the spread of COVID-19 within the community. The benefit of achieving this purpose is that by reducing the risk of transmission of COVID-19 to the community the overall increase in the enjoyment of the right to life is measurable. Conversely, a failure to mitigate the risk of transmission is also measurable in loss of life. 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.

Many of the limits on human rights are incidental.

- As to the limitation on freedom of religion, a person is only prevented from practising their religion or belief in person in community with others. They are not prevented from practising their religion or beliefs in other ways such as from a place of worship following the occupant density requirements, or at their home or private residence, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the Direction does not require the person to provide any information other than what is necessary to support effective contact tracing.
- As to the limits on cultural rights, the Direction does not target any religious or cultural groups or restrict people from engaging in their cultural or religious practices in other ways.

The requirement to use the Check In Qld app has been clarified to include hospitality businesses that provide takeaway services. This requirement is being extended to takeaway services outside of impacted areas that are already required to collect contact information using the Check In Qld app. The Direction also allows for COVID Safe Site Specific Plans and COVID Safe Professional Sporting Code Plans to continue to be used by listed businesses to accommodate the

The Direction eases restrictions for certain businesses by allowing occupant density limits to not apply to tourism vehicles and vessels for up to 50 patrons, sleeping areas for Hostels, bed and breakfasts, backpackers, boarding houses and camp operators that provide short-term accommodation for school aged children on a school camp or community group etc. These changes to clarify occupant density limits ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. All other restrictions in place under the Direction remain unchanged. This is compatible with the objective of the Human Rights Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses. However, certain restrictions may need to be tightened in response to an acute public health risk. This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

The extent of the limitation on human rights is further reduced in other ways. For example, the Direction is only in force for a temporary period and there are exceptions for people providing personal details via the Check In Qld app. Nonetheless, the impact on some human rights will be large, in particular, the right to privacy for people entering restricted businesses, and the freedom of movement being limited through occupant density.

However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) outweighs the impact on other human rights. Indeed, it is difficult to overstate the importance to society of addressing the risk posed by a pandemic. Ultimately, the Direction strikes a fair balance between the human rights it limits and the need to reduce the risk of COVID-19 spreading into Queensland.

RTI RELEASE

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 24)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 24)</i>
Date effective	8 August 2021

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 24)* 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. On 8 March 2021, the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* extended the expiry date of the amendments to the end of the day on 30 September 2021.

Purpose of the Direction

The purpose of the *Restrictions on Businesses, Activities and Undertakings Direction (No. 24)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

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 revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 23)*. The Direction has been updated to allow major stadiums with seating capacity of 20,000 or more, to operate with up to 100 per cent of seated venue capacity provided all guests or patrons are in ticketed and allocated seating.

How the Direction achieves the purpose

The restrictions for persons entering a restricted business, activity or undertaking are to limit and respond to the public health risk of the likely spread of COVID-19 within the community at these venues.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Checklist, or for certain businesses, the COVID Safe Site Specific Plan or COVID Safe Professional Sporting Code Plan.

The Direction also provides occupancy density requirements (1 person per 2 square metres or 100 per cent ticketed and allocated seating), physical distancing, collection of contact information for contact tracing, and hygiene requirements some businesses need to meet.

Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

The mandatory use of Check In Qld app is has been extended to all restricted businesses, activities and undertakings in the Direction. In addition, some new businesses, including shopping centres, supermarkets, retail stores and public-facing government agencies, have been added to the Direction to require them to collect contact information. The Check In Qld app will 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 is required to be collected using another method and provided to a health official in the event of an outbreak.

The Direction imposes requirements for businesses operating an area for dancing by limiting the dance area to no more than 1 person per 2 square metres. The business should also undertake reasonable measures to ensure people are evenly distributed in dance areas or in front or performance stages.

The Direction also includes a recommendation for non-restricted businesses, activities or undertakings to observe physical distancing and public health controls to the extent possible. This recommendation extends the consistent message to all non-restricted businesses to reduce public health risks where possible in the overall response to COVID-19. These measures may include environmental cleaning, hygiene measures, regular washing of hands, availability of hand sanitiser and avoiding handshaking.

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- 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 which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.
- Right to freedom of movement (section 19): may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that outdoor music festivals, outdoor dance festivals or an outdoor event with a dance area are required to comply with occupant density and a **COVID Safe Checklist**, which may limit the way patrons can move in and around the event.

- Right to freedom of thought, conscience, religion and belief (section 20): includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing indoor places of worship to have as many people as can be accommodated with 1 person per 2 square metres or 100 per cent seated venue capacity, if the venue can have ticketed and allocated seating. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.
- Right to peaceful assembly and freedom of association (section 22): upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.
- Right to property (section 24): encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. all restricted businesses, activities and undertakings are required to collect contact information from guests, patrons and staff using the Check In Qld app; venues are also restricted by having to comply with occupant density requirements for indoor spaces), which is a limitation on the property rights of the owners and operators of these businesses.
- Right to privacy (section 25): The right is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. Interference with privacy may also occur by making a person provide personal details when entering a restricted business, activity or undertaking via the Check In Qld app, or by another method if permitted, for contact tracing purposes.
- Cultural rights – generally (section 27): protects the rights of all people with particular cultural, religion, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. The Direction may limit a person's ability to engage with others who share their cultural background by restricting the number of people that can congregate in an indoor space for the purpose of cultural expression.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (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 practice their culture. The Direction may limit people's ability to engage with others to

maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship and other cultural or social events in indoor spaces.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- limits on occupant density of people in indoor settings and for businesses and events operating a dance area; and
- requirement to comply with a COVID-19 Safe Checklist to operate a restricted business, activity or undertaking; and
- requirement for people to provide personal details when entering a restricted business, activity or undertaking by using the Check In Qld app, or if permitted by another method, for contact tracing.

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by managing occupant density in certain indoor 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.

Additionally, requiring most people entering restricted businesses, activities and undertakings to provide 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. The Direction is also in effect for a temporary period, and the restrictions only apply to people entering a restricted business captured under the Direction. 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. Protecting people in the community from the risk of COVID-19 also promotes their human rights to life (section 16) and health (section 37). At international law, the right to health includes '[t]he prevention, treatment and control of epidemic, endemic, ... and other diseases': *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12(2)(c). The purpose of protecting and promoting human rights is necessarily consistent with a society 'based on human dignity, equality and freedom' (section 13(2)(b) of the Human Rights Act).

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring people to provide contact information when they enter a venue or an event, limiting the occupant density and requiring compliance with COVID Safe Checklist will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19.

Additionally, the requirement for businesses and patrons to use the Check In Qld app as the method for providing and collecting contact information. However, the Direction provides an exception where the use of the Check In Qld App would result in safety or liability issues, the business, activity or undertaking must collect and store contact information using another method. This approach balances any safety and liability issues with the potential public health risks of allowing certain people to provide their personal details directly to particular businesses when entering.

Necessary (s 13(2)(d))

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. In particular:

- the complete removal of the occupant density limits would not be the most practicable means to limit the risk of COVID-19 transmission within the community. The approach of reducing or increasing occupant density limits for all restricted businesses, activities and undertakings in response to the public health risk is the least restrictive measure because it allows these businesses to continue to operate safely. Allowing more people to congregate or mingle in closer proximity potentially exposes Queensland to the risk of community transmission, or an outbreak.
- the COVID Safe Framework has been replaced with a universal COVID Safe Checklist to be used by all restricted businesses, activities and undertakings. Some larger businesses and activities will retain their site-specific plans that provide clearly defined assistance in their management of the public health risks associated with COVID-19. The universal COVID Safe Checklist is the most reasonable and least restrictive method for easing restrictions on businesses. The checklist will include guidance on occupant density, collecting contact information, cleaning and wellness measures (eg staff health), which will support businesses to meet the requirements in the Direction.

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

The requirement to provide and collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

Since the pandemic began, businesses have been required to collect and keep contact information. This has been required so that contract tracers can move quickly and contact trace anyone who might have encountered someone with COVID-19. As recent efforts have shown, the accuracy, completeness and readability of contact information held by businesses is vital to the effectiveness of contact tracing and the ability to identify and contain the spread of COVID-19 in the community.

Since 1 May 2021, hospitality businesses are required to collect contact information using the Check In Qld app. However, there are exceptions to this requirement, including for persons who may not be able to use in the Check In Qld app 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. With these exceptions, the limitations on human rights due to the electronic collection of contact information are reasonable and justified.

From 9 July 2021, the requirement to use the Check In Qld app to collect contact information has been expanded for people attending all restricted businesses, activities and undertakings and expanded to other businesses including, shopping centres, supermarkets, retail stores and public-facing government agencies (with some exceptions). However, no other

restrictions will apply to shopping centres, supermarkets, retail stores and public-facing government agencies, such as, occupant density or having a COVID Safe Checklist. The only requirement that will apply to these extra businesses is collecting contact information.

The requirement to provide contact information via the Check in Qld App has been imposed on individual patrons of restricted businesses, activities and undertakings for the first time. There are exceptions provided for situations where it isn't reasonable for a person to provide contact information such as emergency situations, if a person is conducting law enforcement activities (for example, police), or if a child is under the age of 16 years old and not accompanied by an adult.

The Check In Qld app further supports the collection of contact information for contact tracing by providing businesses with a free and contactless electronic method to collect information. As the information will be stored by the Queensland Government, businesses using the app will not be required to meet the requirements for storage and collection. The information may only be used for contact tracing purposes. The development process for the app included a complete human rights assessment.

Contact information is most valuable in settings open to the public that have increased transmission potential (e.g. crowded or enclosed environments), where community members from varied cohorts and groups attend for an extended period and where they are likely to come into direct contact with other people during their visit. Most COVID-19 cases become infected from a close contact or by attending an exposure site at the same time as a COVID-19 case, there is also an increasing amount of transmission occurring after only fleeting contact. In many cases, this type of transmission has occurred in retail and public venues.

Due to the risks outlined above, the updated method for collecting contact information and expanding to other non-restricted businesses will further support Queensland's ability to rapidly contact trace. The change is the least restrictive measure as it also allows for the further easing of restrictions, such as replacing the COVID Safe Framework with a universal COVID Safe Checklist.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception from using the Check In Qld app, if it will cause a safety or liability issue, protects the rights to security of person and life (ss 16 and 29(1)). These exceptions are designed to tailor the limits on human rights to those necessary.

The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

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

The purpose of the Direction is to reduce the spread of COVID-19 within the community. The benefit of achieving this purpose is that by reducing the risk of transmission of COVID-19 to the community the overall increase in the enjoyment of the right to life is measurable. Conversely, a failure to mitigate the risk of transmission is also measurable in loss of life. 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.

Many of the limits on human rights are incidental.

- As to the limitation on freedom of religion, a person is only prevented from practising their religion or belief in person in community with others. They are not prevented from practising their religion or beliefs in other ways such as from a place of worship following the occupant density requirements, or at their home or private residence, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the Direction does not require the person to provide any information other than what is necessary to support effective contact tracing.
- As to the limits on cultural rights, the Direction does not target any religious or cultural groups or restrict people from engaging in their cultural or religious practices in other ways.

The requirement to use the Check In Qld app has been clarified to include hospitality businesses that provide takeaway services. This requirement is being extended to takeaway services outside of impacted areas that are already required to collect contact information using the Check In Qld app. The Direction also allows for COVID Safe Site Specific Plans and COVID Safe Professional Sporting Code Plans to continue to be used by listed businesses to accommodate the

The Direction eases restrictions for certain businesses by allowing occupant density limits to not apply to tourism vehicles and vessels for up to 50 patrons, sleeping areas for Hostels, bed and breakfasts, backpackers, boarding houses and camp operators that provide short-term accommodation for school aged children on a school camp or community group etc. These changes to clarify occupant density limits ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. All other restrictions in place under the Direction remain unchanged. This is compatible with the objective of the Human Rights Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses. However, certain restrictions may need to be tightened in response to an acute public health risk. This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

The extent of the limitation on human rights is further reduced in other ways. For example, the Direction is only in force for a temporary period and there are exceptions for people providing personal details via the Check In Qld app. Nonetheless, the impact on some human rights will be large, in particular, the right to privacy for people entering restricted businesses, and the freedom of movement being limited through occupant density.

However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) outweighs the impact on other human rights. Indeed, it is difficult to overstate the importance to society of addressing the risk posed by a pandemic. Ultimately, the Direction strikes a fair balance between the human rights it limits and the need to reduce the risk of COVID-19 spreading into Queensland.

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 25)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 25)</i>
Date effective	20 August 2021

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 25)* 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. On 8 March 2021, the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* extended the expiry date of the amendments to the end of the day on 30 September 2021.

Purpose of the Direction

The purpose of the *Restrictions on Businesses, Activities and Undertakings Direction (No. 25)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

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 revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 24)*. The Direction makes changes to:

- make the requirements consistent for major and smaller stadiums by applying the same mask wearing and seated eating and drinking requirements across all venues.
- Occupant density for stadiums has been updated to cover major and smaller venues:
 - Stadiums with fixed seating can have 100 per cent capacity with spectators in ticketed and allocated seating
 - Stadiums without fixed seating can have 1 person per 2 sqm indoors and no occupant density for outdoor spaces. Spectators will continue to be required to physically distance outdoors to the extent possible.

How the Direction achieves the purpose

The restrictions for persons entering a restricted business, activity or undertaking are to limit and respond to the public health risk of the likely spread of COVID-19 within the community at these venues.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Checklist, or for certain

businesses, the COVID Safe Site Specific Plan or COVID Safe Professional Sporting Code Plan.

The Direction also provides occupancy density requirements (1 person per 2 square metres or 100 per cent ticketed and allocated seating), physical distancing, collection of contact information for contact tracing, and hygiene requirements some businesses need to meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

The mandatory use of Check In Qld app is has been extended to all restricted businesses, activities and undertakings in the Direction. In addition, some new businesses, including shopping centres, supermarkets, retail stores and public-facing government agencies, have been added to the Direction to require them to collect contact information. The Check In Qld app will 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 is required to be collected using another method and provided to a health official in the event of an outbreak.

The Direction imposes requirements for businesses operating an area for dancing by limiting the dance area to no more than 1 person per 2 square metres. The business should also undertake reasonable measures to ensure people are evenly distributed in dance areas or in front or performance stages.

The Direction also includes a recommendation for non-restricted businesses, activities or undertakings to observe physical distancing and public health controls to the extent possible. This recommendation extends the consistent message to all non-restricted businesses to reduce public health risks where possible in the overall response to COVID-19. These measures may include environmental cleaning, hygiene measures, regular washing of hands, availability of hand sanitiser and avoiding handshaking.

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- 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 which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.
- Right to freedom of movement (section 19): may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that outdoor

music festivals, outdoor dance festivals or an outdoor event with a dance area are required to comply with occupant density and a **COVID Safe Checklist**, which may limit the way patrons can move in and around the event.

- Right to freedom of thought, conscience, religion and belief (section 20): includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing indoor places of worship to have as many people as can be accommodated with 1 person per 2 square metres or 100 per cent seated venue capacity, if the venue can have ticketed and allocated seating. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.
- Right to peaceful assembly and freedom of association (section 22): upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.
- Right to property (section 24): encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. all restricted businesses, activities and undertakings are required to collect contact information from guests, patrons and staff using the Check In Qld app; venues are also restricted by having to comply with occupant density requirements for indoor spaces), which is a limitation on the property rights of the owners and operators of these businesses.
- Right to privacy (section 25): The right is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. Interference with privacy may also occur by making a person provide personal details when entering a restricted business, activity or undertaking via the Check In Qld app, or by another method if permitted, for contact tracing purposes.
- Cultural rights – generally (section 27): protects the rights of all people with particular cultural, religion, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. The Direction may limit a person's ability to engage with others who share their cultural background by restricting the number of people that can congregate in an indoor space for the purpose of cultural expression.

- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (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 practice their culture. The Direction may limit people's ability to engage with others to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship and other cultural or social events in indoor spaces.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- limits on occupant density of people in indoor settings and for businesses and events operating a dance area; and
- requirement to comply with a COVID-19 Safe Checklist to operate a restricted business, activity or undertaking; and
- requirement for people to provide personal details when entering a restricted business, activity or undertaking by using the Check In Qld app, or if permitted by another method, for contact tracing.

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by managing occupant density in certain indoor 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.

Additionally, requiring most people entering restricted businesses, activities and undertakings to provide 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. The Direction is also in effect for a temporary period, and the restrictions only apply to people entering a restricted business captured under the Direction. 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. Protecting people in the community from the risk of COVID-19 also promotes their human rights to life (section 16) and health (section 37). At international law, the right to health includes '[t]he prevention, treatment and control of epidemic, endemic, ... and other diseases': *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12(2)(c). The purpose of protecting and promoting human rights is necessarily consistent with a society 'based on human dignity, equality and freedom' (section 13(2)(b) of the Human Rights Act).

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring people to provide contact information when they enter a venue or an event, limiting the occupant density and requiring compliance with COVID Safe Checklist will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19.

Additionally, the requirement for businesses and patrons to use the Check In Qld app as the method for providing and collecting contact information. However, the Direction provides an exception where the use of the Check In Qld App would result in safety or liability issues, the

business, activity or undertaking must collect and store contact information using another method. This approach balances any safety and liability issues with the potential public health risks of allowing certain people to provide their personal details directly to particular businesses when entering.

Necessary (s 13(2)(d))

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. In particular:

- the complete removal of the occupant density limits would not be the most practicable means to limit the risk of COVID-19 transmission within the community. The approach of reducing or increasing occupant density limits for all restricted businesses, activities and undertakings in response to the public health risk is the least restrictive measure because it allows these businesses to continue to operate safely. Allowing more people to congregate or mingle in closer proximity potentially exposes Queensland to the risk of community transmission, or an outbreak.
- the COVID Safe Framework has been replaced with a universal COVID Safe Checklist to be used by all restricted businesses, activities and undertakings. Some larger businesses and activities will retain their site-specific plans that provide clearly defined assistance in their management of the public health risks associated with COVID-19. The universal COVID Safe Checklist is the most reasonable and least restrictive method for easing restrictions on businesses. The checklist will include guidance on occupant density, collecting contact information, cleaning and wellness measures (eg staff health), which will support businesses to meet the requirements in the Direction.

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

The requirement to provide and collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

Since the pandemic began, businesses have been required to collect and keep contact information. This has been required so that contract tracers can move quickly and contact trace anyone who might have encountered someone with COVID-19. As recent efforts have shown, the accuracy, completeness and readability of contact information held by businesses is vital to the effectiveness of contact tracing and the ability to identify and contain the spread of COVID-19 in the community.

Since 1 May 2021, hospitality businesses are required to collect contact information using the Check In Qld app. However, there are exceptions to this requirement, including for persons who may not be able to use in the Check In Qld app 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. With these exceptions, the limitations on human rights due to the electronic collection of contact information are reasonable and justified.

From 9 July 2021, the requirement to use the Check In Qld app to collect contact information has been expanded for people attending all restricted businesses, activities and undertakings and expanded to other businesses including, shopping centres, supermarkets, retail stores and public-facing government agencies (with some exceptions). However, no other restrictions will apply to shopping centres, supermarkets, retail stores and public-facing government agencies, such as, occupant density or having a COVID Safe Checklist. The only requirement that will apply to these extra businesses is collecting contact information.

The requirement to provide contact information via the Check in Qld App has been imposed on individual patrons of restricted businesses, activities and undertakings for the first time. There are exceptions provided for situations where it isn't reasonable for a person to provide contact information such as emergency situations, if a person is conducting law enforcement activities (for example, police), or if a child is under the age of 16 years old and not accompanied by an adult.

The Check In Qld app further supports the collection of contact information for contact tracing by providing businesses with a free and contactless electronic method to collect information. As the information will be stored by the Queensland Government, businesses using the app will not be required to meet the requirements for storage and collection. The information may only be used for contact tracing purposes. The development process for the app included a complete human rights assessment.

Contact information is most valuable in settings open to the public that have increased transmission potential (e.g. crowded or enclosed environments), where community members from varied cohorts and groups attend for an extended period and where they are likely to come into direct contact with other people during their visit. Most COVID-19 cases become infected from a close contact or by attending an exposure site at the same time as a COVID-19 case, there is also an increasing amount of transmission occurring after only fleeting contact. In many cases, this type of transmission has occurred in retail and public venues.

Due to the risks outlined above, the updated method for collecting contact information and expanding to other non-restricted businesses will further support Queensland's ability to rapidly contact trace. The change is the least restrictive measure as it also allows for the further easing of restrictions, such as replacing the COVID Safe Framework with a universal COVID Safe Checklist.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception from using the Check In Qld app, if it will cause a safety or liability issue, protects the rights to security of person and life (ss 16 and 29(1)). These exceptions are designed to tailor the limits on human rights to those necessary.

The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

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

The purpose of the Direction is to reduce the spread of COVID-19 within the community. The benefit of achieving this purpose is that by reducing the risk of transmission of COVID-19 to the community the overall increase in the enjoyment of the right to life is measurable. Conversely, a failure to mitigate the risk of transmission is also measurable in loss of life. 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.

Many of the limits on human rights are incidental.

- As to the limitation on freedom of religion, a person is only prevented from practising their religion or belief in person in community with others. They are not prevented from practising their religion or beliefs in other ways such as from a place of worship following the occupant density requirements, or at their home or private residence, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the Direction does not require the person to provide any information other than what is necessary to support effective contact tracing.
- As to the limits on cultural rights, the Direction does not target any religious or cultural groups or restrict people from engaging in their cultural or religious practices in other ways.

The requirement to use the Check In Qld app has been clarified to include hospitality businesses that provide takeaway services. This requirement is being extended to takeaway services outside of impacted areas that are already required to collect contact information using the Check In Qld app. The Direction also allows for COVID Safe Site Specific Plans and COVID Safe Professional Sporting Code Plans to continue to be used by listed businesses to accommodate these businesses and activities that have complex and specific needs.

The Direction clarifies the stadium requirements apply to both major and small venues. This is to mitigate the risk for large gatherings by requiring spectators to follow the same requirements when visiting sporting events in Queensland. Spectators at all stadiums will now be required to wear masks at all times at the venue, with the general exceptions. Spectators must be seated to eat or drink. Making requirements for spectators consistent across all stadiums is compatible with the purpose of the Direction and human rights to reduce the public health risk of the spread of COVID-19 within the community.

The Direction continues to allow occupant density limits to not apply to tourism vehicles and vessels for up to 50 patrons, sleeping areas for Hostels, bed and breakfasts, backpackers, boarding houses and camp operators that provide short-term accommodation for school aged children on a school camp or community group etc. These eased occupant density requirements clarify occupant density limits ensures the least restrictive direction is in place to achieve the intent of limiting the risk of COVID-19 in light of changing circumstances. All other restrictions in place under the Direction remain unchanged. This is compatible with the objective of the Human Rights Act. The restrictions in Queensland are informed by the decisions of National Cabinet, as well as consideration of Queensland-specific circumstances.

From a public health perspective, the preferred approach is to gradually ease the restrictions on people and businesses. However, certain restrictions may need to be tightened in response to an acute public health risk. This reduces the likelihood of sudden outbreaks of the virus across the State, reduces the risk to individuals and ensures that the health system is able to mobilise a quick public health response to identify and isolate cases, and appropriately trace and manage contacts of identified cases.

The extent of the limitation on human rights is further reduced in other ways. For example, the Direction is only in force for a temporary period and there are exceptions for people providing

personal details via the Check In Qld app. Nonetheless, the impact on some human rights will be large, in particular, the right to privacy for people entering restricted businesses, and the freedom of movement being limited through occupant density.

However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) outweighs the impact on other human rights. Indeed, it is difficult to overstate the importance to society of addressing the risk posed by a pandemic. Ultimately, the Direction strikes a fair balance between the human rights it limits and the need to reduce the risk of COVID-19 spreading into Queensland.

RTI RELEASE

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 26)

Title	<i>Restrictions on Businesses, Activities and Undertakings Direction (No. 26)</i>
Date effective	23 August 2021

Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 26)* 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. On 8 March 2021, the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* extended the expiry date of the amendments to the end of the day on 30 September 2021.

Purpose of the Direction

The purpose of the *Restrictions on Businesses, Activities and Undertakings Direction (No. 26)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

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 revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 25)*. The Direction makes changes to:

- expand the Check In Qld app requirements to taxis, rideshares and limousines under schedule 1C.
- minor clarification to update references to the *Seasonal Workers International Quarantine Plans and Checklist Direction*.

How the Direction achieves the purpose

The restrictions for persons entering a restricted business, activity or undertaking are to limit and respond to the public health risk of the likely spread of COVID-19 within the community at these venues.

Restricted businesses listed in the Direction may operate in compliance with the requirements outlined in the Direction and in accordance with the COVID Safe Checklist, or for certain businesses, the COVID Safe Site Specific Plan or COVID Safe Professional Sporting Code Plan.

The Direction also provides occupancy density requirements (1 person per 2 square metres or 100 per cent ticketed and allocated seating), physical distancing, collection of contact information for contact tracing, and hygiene requirements some businesses need to meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

The mandatory use of Check In Qld app has been extended to all restricted businesses, activities and undertakings in the Direction. Additional non-restricted businesses, including shopping centres, supermarkets, retail stores and public-facing government agencies, have been added to the Direction to require them to collect contact information. From 30 August 2021, the Check In Qld app requirements will be expanded to include taxis, rideshares and limousines. The Check In Qld app will 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 is required to be collected using another method and provided to a health official in the event of an outbreak.

The Direction imposes requirements for businesses operating an area for dancing by limiting the dance area to no more than 1 person per 2 square metres. The business should also undertake reasonable measures to ensure people are evenly distributed in dance areas or in front or performance stages.

The Direction also includes a recommendation for non-restricted businesses, activities or undertakings to observe physical distancing and public health controls to the extent possible. This recommendation extends the consistent message to all non-restricted businesses to reduce public health risks where possible in the overall response to COVID-19. These measures may include environmental cleaning, hygiene measures, regular washing of hands, availability of hand sanitiser and avoiding handshaking.

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- 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 which must be realised and outweighs the potential impacts on any one individual's rights. The Direction promotes the right to life by protecting the health, safety and wellbeing of people in the Queensland, in particular vulnerable Queenslanders, by placing restrictions and physical distancing measures on the way certain businesses, activities and undertakings may operate.
- Right to freedom of movement (section 19): may be limited by directions that limit the public's ability to move through, remain in, or enter or depart from areas of public space. The Direction limits the freedom of movement by restricting contact between groups of people in public places in Queensland. For example, the Direction provides that outdoor music festivals, outdoor dance festivals or an outdoor event with a dance area are required

to comply with occupant density and a **COVID Safe Checklist**, which may limit the way patrons can move in and around the event.

- Right to freedom of thought, conscience, religion and belief (section 20): includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing indoor places of worship to have as many people as can be accommodated with 1 person per 2 square metres or 100 per cent seated venue capacity, if the venue can have ticketed and allocated seating. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.
- Right to peaceful assembly and freedom of association (section 22): upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.
- Right to property (section 24): encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. all restricted businesses, activities and undertakings are required to collect contact information from guests, patrons and staff using the Check In Qld app; venues are also restricted by having to comply with occupant density requirements for indoor spaces. Some non-restricted business must also comply with the collection of contact information requirements), which is a limitation on the property rights of the owners and operators of these businesses.
- Right to privacy (section 25): The right is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. Interference with privacy may also occur by making a person provide personal details when entering a restricted business, activity or undertaking or some non-restricted businesses via the Check In Qld app, or by another method if permitted, for contact tracing purposes.
- Cultural rights – generally (section 27): protects the rights of all people with particular cultural, religion, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. The Direction may limit a person's ability to engage with others who share their cultural background by restricting the number of people that can congregate in an indoor space for the purpose of cultural expression.

- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (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 practice their culture. The Direction may limit people's ability to engage with others to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship and other cultural or social events in indoor spaces.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- limits on occupant density of people in indoor settings and for businesses and events operating a dance area; and
- requirement to comply with a COVID-19 Safe Checklist to operate a restricted business, activity or undertaking; and
- requirement for people to provide personal details when entering a restricted business, activity or undertaking by using the Check In Qld app, or if permitted by another method, for contact tracing.

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by managing occupant density in certain indoor 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.

Additionally, requiring most people entering restricted businesses, activities and undertakings to provide 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. The Direction is also in effect for a temporary period, and the restrictions only apply to people entering a restricted business captured under the Direction. 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. Protecting people in the community from the risk of COVID-19 also promotes their human rights to life (section 16) and health (section 37). At international law, the right to health includes '[t]he prevention, treatment and control of epidemic, endemic, ... and other diseases': *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12(2)(c). The purpose of protecting and promoting human rights is necessarily consistent with a society 'based on human dignity, equality and freedom' (section 13(2)(b) of the Human Rights Act).

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring people to provide contact information when they enter a venue or an event, limiting the occupant density and requiring compliance with COVID Safe Checklist will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19.

Additionally, the requirement for businesses and patrons to use the Check In Qld app as the method for providing and collecting contact information. However, the Direction provides an exception where the use of the Check In Qld App would result in safety or liability issues, the

business, activity or undertaking must collect and store contact information using another method. This approach balances any safety and liability issues with the potential public health risks of allowing certain people to provide their personal details directly to particular businesses when entering.

Necessary (s 13(2)(d))

There is no alternative means to manage the risk of COVID-19 spreading in Queensland that would be (a) reasonably available (that is, as practicable), and (b) less restrictive of human rights. In particular:

- the complete removal of the occupant density limits would not be the most practicable means to limit the risk of COVID-19 transmission within the community. The approach of reducing or increasing occupant density limits for all restricted businesses, activities and undertakings in response to the public health risk is the least restrictive measure because it allows these businesses to continue to operate safely. Allowing more people to congregate or mingle in closer proximity potentially exposes Queensland to the risk of community transmission, or an outbreak.
- the COVID Safe Framework has been replaced with a universal COVID Safe Checklist to be used by all restricted businesses, activities and undertakings. Some larger businesses and activities will retain their site-specific plans that provide clearly defined assistance in their management of the public health risks associated with COVID-19. The universal COVID Safe Checklist is the most reasonable and least restrictive method for easing restrictions on businesses. The checklist will include guidance on occupant density, collecting contact information, cleaning and wellness measures (eg staff health), which will support businesses to meet the requirements in the Direction.

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

The requirement to provide and collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. 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. The Direction is therefore compatible with the right to privacy.

Since the pandemic began, businesses have been required to collect and keep contact information. This has been required so that contract tracers can move quickly and contact trace anyone who might have encountered someone with COVID-19. As recent efforts have shown, the accuracy, completeness and readability of contact information held by businesses is vital to the effectiveness of contact tracing and the ability to identify and contain the spread of COVID-19 in the community.

Since 1 May 2021, hospitality businesses are required to collect contact information using the Check In Qld app. However, there are exceptions to this requirement, including for persons who may not be able to use in the Check In Qld app 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. With these exceptions, the limitations on human rights due to the electronic collection of contact information are reasonable and justified.

From 9 July 2021, the requirement to use the Check In Qld app to collect contact information has been expanded for people attending all restricted businesses, activities and undertakings and expanded to other businesses including, shopping centres, supermarkets, retail stores and public-facing government agencies (with some exceptions). From 30 August 2021, in response to the recent case of a COVID positive taxi driver in Cairns, the Check In Qld app will be expanded to taxis, rideshares and limousines to assist contact tracing for people that use these transport services. However, no other restrictions will apply to shopping centres, supermarkets, retail stores and public-facing government agencies, such as, occupant density or having a COVID Safe Checklist. The only requirement that will apply to these extra businesses is collecting contact information.

The requirement to provide contact information via the Check in Qld App has been imposed on individual patrons of restricted businesses, activities and undertakings for the first time. There are exceptions provided for situations where it isn't reasonable for a person to provide contact information such as emergency situations, if a person is conducting law enforcement activities (for example, police), or if a child is under the age of 16 years old and not accompanied by an adult.

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Contact information is most valuable in settings open to the public that have increased transmission potential (e.g. crowded or enclosed environments), where community members from varied cohorts and groups attend for an extended period and where they are likely to come into direct contact with other people during their visit. Most COVID-19 cases become infected from a close contact or by attending an exposure site at the same time as a COVID-19 case, there is also an increasing amount of transmission occurring after only fleeting contact. In many cases, this type of transmission has occurred in retail and public venues.

Due to the risks outlined above, the updated method for collecting contact information and expanding to other non-restricted businesses will further support Queensland's ability to rapidly contact trace. The change is the least restrictive measure as it also allows for the further easing of restrictions, such as replacing the COVID Safe Framework with a universal COVID Safe Checklist.

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The alternative would be to remove the restrictions on businesses. However, this approach may potentially result in COVID-19 related public health risks and will be inconsistent with the other public health controls to manage the spread of COVID-19 such as public health messaging, physical distancing and hygiene measures.

The limitations on the rights listed above are considered to be justified as the Direction is reasonably necessary for the protection of public health, to slow the spread of COVID-19 by restricting the way certain businesses, activities and undertakings operate.

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- As to the limits on cultural rights, the Direction does not target any religious or cultural groups or restrict people from engaging in their cultural or religious practices in other ways.

The requirement to use the Check In Qld app has been clarified to include taxis, rideshares and limousines. There are nearly 20,000 taxis, rideshares and limousines across Queensland that provide public transport services. This additional precautionary requirement will assist in keeping drivers and the public safe. The requirement is being extended to these public transport services to assist contact tracers to quickly identify where positive cases have been in the community and to reduce the risk of further community transmission in the event of future outbreaks in Queensland.

The Direction also allows for COVID Safe Site Specific Plans and COVID Safe Professional Sporting Code Plans to continue to be used by listed businesses to accommodate these businesses and activities that have complex and specific needs.

The Direction clarifies the stadium requirements apply to both major and small venues. This is to mitigate the risk for large gatherings by requiring spectators to follow the same requirements when visiting sporting events in Queensland. Spectators at all stadiums will now be required to wear masks at all times at the venue, with the general exceptions. Spectators must be seated to eat or drink. Making requirements for spectators consistent across all stadiums is compatible with the purpose of the Direction and human rights to reduce the public health risk of the spread of COVID-19 within the community.

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