

Public Health Directions – Human Rights Assessment
Border Restrictions Direction

Title	<i>Border Restrictions Direction</i>
Date effective	25 March 2020

Background

The *Border Restriction Direction* (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 Direction is, in the absence of an effective vaccine for COVID-19, to minimise the spread of COVID-19 by preventing cases entering Queensland using boarder restrictions. A person entering Queensland from another State or Territory must self-quarantine for 14 days, unless they are an *exempt person*. However, any person entering Queensland must self-quarantine for 14 days if they have travelled in the last 14 days:

- overseas; or
- to particular areas in Australia as published on the Queensland Health website.

The Direction also requires that people arriving by aircraft to Queensland must provide additional information, such as, contact details, their intended address, 30 days of travel history, and other information required on the arrivals form.

How the direction achieves the purpose

A person is an exempt person if they fall in any of the following categories:

- people who are ordinarily a resident of Queensland;
- national and state security including police and the Australian Defence Force;
- national, state and local government employees or elected representatives and consular representatives;
- health and emergency services including fire, SES and ambulance;
- providing transport, freight and logistics;
- specialist skills critical for industry or business including commercial fishing, construction, manufacturing, mining, energy or agribusiness (provided a plan has been approved by the Chief Health Officer on how to manage transmission of COVID-19);
- people who reside in border communities and ordinarily work in Queensland or need to obtain essential goods and services and is entering by crossing a land border;
- legal requirements, for example, Court orders, parole and bail requirements;
- essential medical treatment or to obtain essential goods and services necessary to preserve life; and
- compassionate grounds such as attending a funeral, visiting a terminally ill relative or as a carer of a dependent.

For the purpose of the Direction, all travellers to Queensland including returning residents and workers should practise social distancing and risk mitigation measures such as remaining 1.5 metres away from other persons, regular washing of hands, and limiting travel outside of the home or place of accommodation except for the purpose of purchasing food or other necessities.

Human Rights Engaged

The Public Health Direction may engage the following rights under the *Human Rights Act 2019*:

- Right to equality and non-discrimination (section 15): The definition of ‘discrimination’ under the *Human Rights Act* is inclusive. This right may be limited as the Direction excludes certain persons from entering Queensland.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual’s rights.
- Freedom of movement (section 19): 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 Queensland border access to interstate travellers. For example, the Direction provides that persons arriving in Queensland must self-quarantine for 14 days, unless they are an exempt person.
- Freedom of thought, conscience, religion and belief (section 20): 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 exempt persons to travel into Queensland without quarantining. This limits the ability of interstate 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 in Queensland to perform their usual religious practice.
- Freedom of expression (section 21): Section 21 of the *Human Rights Act* provides that the right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds. It protects almost all kinds of expression, providing it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. The Direction limits this right by restricting a person from entering Queensland before expression can occur. For example, a person must self-quarantine for 14 days before going out into the community, if they are not an exempt person.
- Peaceful assembly and freedom of association (section 22): 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 restriction of people travelling into Queensland.
- Property rights (section 24): 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 travellers’ access into Queensland for the duration of the Direction, which is a limitation on the property rights of interstate owners of properties in Queensland.
- Privacy and reputation (section 25): The right to privacy in section 25 of the *Human Rights Act* is broadly construed. A person has the right to not have their privacy, family or home arbitrarily interfered with. The right encompasses an individual’s rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The

privacy right 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 interstate social and family connections. Interference with privacy may occur by making a person provide personal details, if they arrive by air or apply for a permit to enter Queensland. The Direction may also limit a person's right to work by requiring a person to already have employment in Queensland before applying for an exemption to enter Queensland.

- Protection of families and children (section 26): The Direction limits this right as it limits family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to self-quarantine for 14 days after entering Queensland before seeing their family, or if a person is not permitted to enter Queensland.
- Cultural rights – generally (section 27): The Direction may limit people's ability to engage with others who share their cultural background by preventing people from crossing the Queensland border without self-quarantining for 14 days to congregate for the purpose of worship and fellowship.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts a person from crossing the Queensland border without self-quarantining for 14 days for the purpose of cultural expression.
- Right to liberty (section 29): The requirement to self-quarantine may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to self-quarantine may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to self-quarantine in their home or other suitable premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance.

Compatibility with Human Rights

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

The limitations on the above human rights arise the requirements self-quarantine for some people entering Queensland. The purpose of restricting entry into Queensland unless a person has self-quarantined seeks to reduce the risk of COVID-19 cases arriving from interstate and spreading within the broader Queensland community.

The requirement to self-quarantine for 14 days is to confine potential outbreaks, enable appropriate support of self-quarantined individuals within resources, and to monitor and enforce the requirements of the Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is in effect for a temporary period, and the restrictions as applying to a person only last for 14-days, which is tied with the typical incubation period for COVID-19. Ultimately, the purpose of self-quarantine is to limit the opportunity for transmission of COVID-19 during the potential incubation period.

These purposes of protecting public health are proper purposes. The Direction promotes and protects the health, safety and wellbeing of people in the Queensland community from the risk of COVID-19, which is consistent with right to life (section 16) and health (section 37). As a result, this places a positive obligation on the State in relation to protecting the health and safety of its citizens. 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 limitation on human rights will help to achieve the purpose. Requiring certain people to self-quarantine when they enter Queensland will help to achieve the purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Necessary (s 13(2)(d))

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

This Direction was made at the beginning of the global pandemic, strict requirements around border restrictions were necessary to reduce the spread of COVID-19 and protect the community. As of 18 March 2020, there were approximately 414 confirmed cases of COVID-19 and five confirmed deaths in Australia, with 94 confirmed cases in Queensland.

At the time, experience abroad proved that voluntarily self-quarantine requirements and containment measures were inadequate to stop the spread of COVID-19 and that governments must proactively pursue more prescriptive approaches to respond effectively to this unprecedented public health emergency. As a result, relying on less restrictive measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from interstate with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative.

Clauses 24-30 of the Direction provide a broad exemption power enabling the Chief Health Officer to grant an exemption to allow a person to enter Queensland based on compassionate grounds. This broad power was included to protect against unintended consequences of the Direction, and to acknowledge that there may be circumstances where restricting a person from entering Queensland may not be reasonable or appropriate.

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

On balance, 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 at home, through private prayer, or participating in religious services in Queensland using remote means.
- Any limit on the right to property is confined to the duration of the Direction. A deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231).
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 extent of the limitation on human rights is reduced in other ways. The Direction is only in force for a temporary period. The Direction has been executed in the least restrictive way as it does not apply to every person arriving in Queensland (for example, there are a category of “exempt persons”). Further, the Direction provides a broad exemption power enabling the Chief Health Officer to grant an exemption to allow a person to enter Queensland based on compassionate grounds, which recognises circumstances where restricting a person from entering Queensland may not be reasonable or appropriate.

Nonetheless, the impact on some human rights will be large (in particular, the right to equality for interstate residents and others listed as exempt persons, and the freedom of movement).

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

RTI RELEASE

Public Health Directions – Human Rights Assessment
Border Restrictions Direction (No.2)

Title	<i>Border Restrictions Direction (No. 2)</i>
Date effective	31 March 2020

Background

The *Border Restriction Direction (No.2)* (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 Direction is, in the absence of an effective vaccine for COVID-19, to minimise the spread of COVID-19 by preventing cases entering Queensland using border restrictions. A person arriving in Queensland from another State or Territory of Australia must self-quarantine for a period of 14 days, unless they are an ‘exempt person’ or permitted by a Chief Health Officer exemption. The Direction imposes further self-quarantine requirements where an exempt person has travelled overseas in the last 14 days or to particular areas in Australia as published on the Queensland Health website.

The Direction also requires that people arriving by aircraft to Queensland must provide additional information, such as, contact details, their intended address, 30 days of travel history, and other information required on the arrivals form before entering Queensland.

The Direction amends the *Border Restrictions Direction* by clarifying:

- An exempt person is critical resources sector employees (for example, fly in fly out (FIFO) workers in mining, coal and petroleum);
- self-quarantine requirement for returning travellers must be in accordance with a public health order received on arrival or any Public Health Direction applicable to returning overseas travellers.

For the purpose of the Direction, all travellers to Queensland including returning residents and workers should practice social distancing and risk mitigation measures such as remaining 1.5 metres away from other persons, regular washing of hands, and limiting travel outside of the home or place of accommodation and work except for the purpose of purchasing food or other necessities.

How the direction achieves the purpose

A person who arrives in Queensland from another State or Territory of Australia must self-quarantine for a period of 14 days, unless they are an *exempt person*. A person is an *exempt person* if they fall in any of the following categories:

- a person who is ordinarily a resident of Queensland;
- national and state security including police and the Australian Defence Force;
- national, state and local government employees or elected representatives and consular representatives;
- health and emergency services including fire, SES and ambulance;
- providing transport, freight and logistics;

- specialist skills critical for industry or business including commercial fishing, construction, manufacturing, mining, energy or agribusiness (provided a plan has been approved by the Chief Health Officer on how to manage transmission of COVID-19);
- a critical resources sector employee (for example, fly in fly out (FIFO) workers in critical resources sector (mining, coal and petroleum) as appointed under the d under the *Coal Mining Safety and Health Act 1999*; the *Mining and Quarrying Safety and Health Act 1999*; or the *Petroleum and Gas (Production and Safety) Act 2004*) or approved by the Chief Health Officer as a critical resources sector employee).
- people who reside in border communities and ordinarily work in Queensland or need to obtain essential goods and services and is entering by crossing a land border;
- legal requirements, for example, Court orders, parole and bail requirements;
- essential medical treatment or to obtain essential goods and services necessary to preserve life; and
- compassionate grounds such as attending a funeral, visiting a terminally ill relative or as a carer of a dependent.

Human Rights Engaged

The Public Health Direction may engage the following rights under the *Human Rights Act 2019*:

- Right to equality and non-discrimination (section 15): The definition of ‘discrimination’ under the *Human Rights Act* is inclusive. This right may be limited as the Direction excludes certain persons from crossing the border and/or the requirements to self-quarantine.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual’s rights.
- Freedom of movement (section 19): The Direction may limit the freedom of movement (in particular the right to enter and leave Queensland) by interstate travellers are able to enter Queensland. For example, the Direction provides that persons arriving in Queensland must self-quarantine for 14 days, unless they are an exempt person.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring certain people to self-quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person interstate has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited in respect of people who are interstate and are not exempt persons.
- Freedom of expression (section 21): This right includes the freedom to seek, receive and impart information and ideas of all kinds. It protects almost all kinds of expression, providing it conveys or attempts to convey a meaning. The Direction may limit this right by requiring some people to self-quarantine before entering the community, unless they are an exempt person. This Direction may the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring certain people to self-quarantine, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one’s property. The right may be limited by restricting access of property-owners into Queensland for the duration of the Direction.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people’s right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details, if they apply for a permit or

exemption to enter Queensland. The Direction may limit this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may occur by making a person provide personal details, if they arrive by air or apply for a permit to enter Queensland. The Direction may also limit a person's right to work by requiring a person to already have employment in Queensland before applying for an exemption to enter Queensland.

- Protection of families and children (section 26): The Direction limits this right as it limits family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to self-quarantine for 14 days after entering Queensland before seeing their family, or if a person is not permitted to enter Queensland.
- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing people to cross the Queensland border from crossing the Queensland border without self-quarantining for 14 days for the purpose of cultural expression.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts a person from crossing the Queensland border without self-quarantining for 14 days for the purpose of cultural expression.
- Right to liberty (section 29): The requirement to self-quarantine may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to self-quarantine may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to self-quarantine in their home or other suitable premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance.

Compatibility with Human Rights

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

The limitations on the above human rights arise the requirements self-quarantine for some people entering Queensland. The purpose of restricting entry into Queensland unless a person has self-quarantined seeks to reduce the risk of COVID-19 cases arriving from interstate and spreading within the broader Queensland community.

The purpose of requiring self-quarantine for 14 days is to confine potential outbreaks, confine potential outbreaks, enable appropriate support of self-quarantined individuals within resources, and to monitor and enforce the requirements of the Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is in effect for a temporary period, and the restrictions as applying to a person only last for 14-days, which is tied with the typical incubation period for COVID-19. Ultimately, the purpose of self-quarantine is to limit the opportunity for transmission of COVID-19 during the potential incubation period.

These purposes of protecting public health are proper purposes. The Direction promotes and protects the health, safety and wellbeing of people in the Queensland community from the risk of COVID-19, which is consistent with right to life (section 16) and health (section 37). As a result, this places a positive obligation on the State in relation to protecting the health and safety of its citizens. 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).

A 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).

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Suitability (section 13(2)(c))

The limitation on human rights will help to achieve the purpose. Requiring certain people to self-quarantine when they enter Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Necessary (s 13(2)(d))

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

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

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 at home, through private prayer, or participating in religious services in Queensland using remote means.
- The limit on the right to property is confined to the duration of the Direction. A deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231).
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 extent of the limitation on human rights is reduced in other ways. The Direction is only in force for a temporary period. The Direction has been executed in the least restrictive way as it does not apply to for person arriving in Queensland (for example, there are a category of "exempt persons"). Compared to the previous direction, as it broadens the definition of exempt persons to apply to critical resources sector employees such as, fly in fly out workers. Further, the Direction provides a broad exemption power enabling the Chief Health Officer to grant an exemption to allow a person to enter Queensland based on compassionate grounds, which recognises circumstances where restricting a person from entering Queensland may not be reasonable or appropriate.

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

This change does not raise any further human rights implications, refer to the consideration of human rights relevant to the making of the *Border Restrictions Direction* for the full assessment.

RTI RELEASE

Public Health Directions – Human Rights Assessment
Border Restrictions Direction (No.3)

Title	<i>Border Restrictions Direction (No. 3)</i>
Date effective	2 April 2020

Background

The *Border Restriction Direction (No.3)* (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 Direction is, in the absence of an effective vaccine for COVID-19, to minimise the spread of COVID-19 by preventing cases entering Queensland using boarder restrictions. A person who arrives in Queensland from another State or Territory of Australia *prior* to 12.01 am on Friday 3 April 2020 must self-quarantine for a period of 14 days, unless they are an 'exempt person'.

A person who arrives in Queensland from another State or Territory of Australia *from* 12.01 am on Friday 3 April 2020 will not be allowed to enter Queensland unless they are an 'exempt person'.

An exempt person entering Queensland must self-quarantine for 14 days if they have:

- been outside of Australia in the last 14 days
- travelled in the last 14 days to a COVID-19 hotspot, as published on the Queensland Health website; or
- are moving to Queensland to make Queensland their permanent place of residence.

The Direction imposes quarantine requirements for person's entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known COVID-19 cases.

For the purpose of these directions, all travellers to Queensland including returning residents and workers should practice social distancing and risk mitigation measures such as remaining 1.5 metres away from other persons, regular washing of hands, and limiting travel outside of the home or place of accommodation and work except for the purpose of purchasing food or other necessities.

How the direction achieves the purpose

From 12.01am on Friday 3 April 2020, a person may not enter Queensland unless they are an 'exempt person'.

A person is an *exempt person* if they fall in any of the following categories:

- a person who are ordinarily a Queensland resident or are relocating to Queensland;
- a person travelling by air into Queensland from another State or Territory in order to transfer to another flight is exempt if they remain in the airport until the time of transfer, self-quarantine in a hotel until the other flight or are directed to self-quarantine by a relevant authority;
- national and state security including police and the Australian Defence Force;
- health and emergency services including fire, SES and ambulance;

- transport, freight and logistics
- specialist skills critical for industry or business including commercial fishing and mining (provided a plan has been approved by the Chief Health Officer on how to manage transmission of COVID-19);
- people who reside in border communities and ordinarily work in Queensland or need to obtain essential goods and services;
- legal requirements, for example, Family Court orders, parole and bail requirements; and
- compassionate grounds such as visiting a terminally ill relative, as a carer of a dependent, or a child under 18 years to continue existing care arrangements with parents or siblings.

The Direction amends the *Border Restrictions Direction (No. 2)* to further clarify that:

- provide that only an exempt person can enter Queensland from 12.01am on 3 April 2020;
- ship crew are not a category of exempt persons under transport, freight and logistics; and
- update exempt persons to include a person travelling by air into Queensland from another State or Territory in order to transfer to another flight.

Human Rights Engaged

The Public Health Direction may engage the following rights under the *Human Rights Act 2019*:

- Right to equality and non-discrimination (section 15): The definition of ‘discrimination’ under the *Human Rights Act* is inclusive. This right may be limited due the Direction excludes certain persons from entering Queensland.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual’s rights.
- Freedom of movement (section 19): The Direction may limit the freedom of movement by restricting Queensland border access to interstate travellers. For example, the Direction provides that only exempt persons and people with a Chief Health Officer exemption can enter Queensland and may need to self-quarantine if they have been to a COVID-19 hotspot, overseas or a moving to Queensland.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring certain people to self-quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person interstate has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited in respect of people who are interstate and are not exempt persons.
- Freedom of expression (section 21): This right includes the freedom to seek, receive and impart information and ideas of all kinds. It protects almost all kinds of expression, providing it conveys or attempts to convey a meaning. The Direction limits this right by restricting a person from entering Queensland before expression can occur.
- Peaceful assembly and freedom of association (section 22): The Direction may limit the right to peaceful assembly through the restriction of people travelling into Queensland.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one’s property. The right may be limited by restricting access of property-owners into Queensland for the duration of the Direction.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people’s right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details, if they apply for a permit or

exemption to enter Queensland. The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may occur by making a person provide personal details, if they apply for a permit to enter Queensland.

- Protection of families and children (section 26): The Direction limits this right as it limits family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to self-quarantine for 14 days after entering Queensland before seeing their family, or if a person is not permitted to enter Queensland.
- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing people to cross the Queensland border to congregate for the purpose of cultural expression.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts a person from crossing the Queensland border unless they are an exempt person or the Chief Health Officer grants an exemption.
- Right to liberty (section 29): The requirement to self-quarantine may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to self-quarantine may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to self-quarantine in their home or other suitable premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance.

Compatibility with Human Rights

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

The limits on the above human rights arise from two aspects of the Direction: restrictions on entering Queensland, and the requirement self-quarantine for some people entering Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate and spreading within the broader Queensland community.

The purpose of requiring self-quarantine for 14 days is to confine potential outbreaks, enable appropriate support of self-quarantined individuals within resources, and to monitor and enforce the requirements of the Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is in effect for a temporary period, and the self-quarantine restrictions as applying to a person only last for 14-days, which is tied with the typical incubation period for COVID-19. Ultimately, the purpose of self-quarantine is to limit the opportunity for transmission of COVID-19 during the potential incubation period.

These purposes of protecting public health are proper purposes. Moreover, 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).

A 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 two sets of limits on human rights will help to achieve their purpose. Restricting people from entering Queensland will help achieve the purpose of reducing the risk of COVID-19 spreading into Queensland from interstate. Requiring certain people to self-quarantine when they enter Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Necessary (s 13(2)(d))

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

In Queensland, 79 per cent of cases are related to overseas or interstate travel compared to 63 per cent nationally. This indicates a significantly lower proportion of community transmission, likely as a result of Queensland's domestic border measures and effective monitoring of individuals in self-quarantine. While there are currently few instances of community transmission in Queensland, there is a demonstrable need for border controls to mitigate against the risk of COVID-19 being introduced and spread by persons travelling to Queensland from other national and international jurisdictions.

Applying a self-quarantine period for anyone wishing to enter Queensland (so that non-residents are treated equally, reducing the limits on sections 15 and 19) would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation.

Furthermore, relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from interstate with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative.

Clauses 27-34 of the Direction allow the Chief Health Officer to grant an exemption where refusal of entry or self-quarantine would lead to unusual or disproportionate hardship. This allows the Chief Health Officer to tailor the limit on human rights only to what is reasonable necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 at home, through private prayer, or participating in religious services in Queensland using remote means.
- The limit on the right to property is confined to the duration of the Direction. A deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231).
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.

- 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 extent of the limitation on human rights is reduced in other ways. The Direction is only in force for a temporary period. The Direction has been executed in the least restrictive way as it does not apply to every person arriving in Queensland (for example, there are a category of “exempt persons”). Further, compared to the previous Direction, the restrictions have been eased to allow a person travelling into Queensland by air from another State or Territory in order to transfer to another flight.

Nonetheless, the impact on some human rights will be large (in particular, the right to equality for interstate residents and others listed as exempt persons, and the freedom of movement).

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

Public Health Directions – Human Rights Assessment
Border Restrictions Direction (No.4)

Title	<i>Border Restrictions Direction (No. 4)</i>
Date effective	10 April 2020

Background

The *Border Restriction Direction (No.4)* (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 Direction is, in the absence of an effective vaccine for COVID-19, to minimise the spread of COVID-19 by preventing cases entering Queensland using border restrictions. A person who arrives in Queensland from another State or Territory of Australia *before* 12.01am Saturday 11 April 2020 will not be allowed to enter Queensland, unless they are an ‘exempt resident’ or ‘exempt person’.

A person who arrives in Queensland from another State or Territory of Australia *from* 12.01 am on Saturday 11 April 2020 will not be allowed to enter Queensland, unless they are an exempt resident or exempt person. The Direction imposes additional self-quarantine requirements for exempt persons or exempt residents if in the last 14 days they have been to a COVID-19 hotspot (unless they were in the COVID-19 hotspot for an essential purpose and enters Queensland for an essential purpose) or they are moving to Queensland to make Queensland their permanent place of residence.

How the direction achieves the purpose

A person may not enter Queensland from another State or Territory unless they are an *exempt resident or exempt person*.

A person is an *exempt resident* if they fall in any of the following categories:

- a person who ordinarily resides in Queensland or is moving to Queensland to make Queensland their principal place of residence;
- People living and working close to the border of New South Wales, South Australia or the Northern Territory. This includes:
 - a) is ordinarily a resident of a State or Territory that shares a border with Queensland, being New South Wales, South Australia and the Northern Territory; and
 - b) travels to Queensland to obtain *essential goods or services* or for a *permitted purpose*; and
 - c) enters Queensland, by crossing a land border; and
 - d) does not propose to stay in Queensland for longer than reasonably necessary for the permitted purpose or to obtain essential goods or services.
 - e) Any person who is ordinarily a resident of Queensland who works in New South Wales, South Australia or the Northern Territory or who travels outside of Queensland to obtain essential goods or services.

A person is an *exempt person* if they fall in any of the following categories:

- People in transit through an airport;
- National and state security including police and the Australian Defence Force;
- Health and emergency services, including St John Ambulance Australia, RACQ Lifeflight crew, Royal Flying Doctor Service crew or other aeromedical services crew who are providing medical care or transport to a patient in Queensland;
- Transport, freight and logistics;
- Specialist skills critical to maintaining key government services, industries or businesses and fly in fly out workers;
- people who reside in border communities and ordinarily work in Queensland or need to obtain essential goods and services;
- legal requirements, for example, Family Court orders, parole and bail requirements; and
- compassionate grounds such as attending a funeral, visiting a terminally ill relative or as a carer of a dependent.

This Direction amends the *Border Restrictions Direction (No. 3)*. The Direction makes a change to include a Queensland resident or cross-border resident entering Queensland from 12.01am on 11 April 2020 that has been in a hotspot in the last 14 days is required to self-quarantine, unless they meet an exemption category.

Human rights engaged

The Public Health Direction may engage the following rights under the *Human Rights Act 2019*:

- Right to equality and non-discrimination (section 15): Right to equality and non-discrimination (section 15): This right may be limited as the Direction excludes certain persons from crossing the boarder. The definition of ‘discrimination’ under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual’s rights.
- Freedom of movement (section 19): The Direction limits the freedom of movement (in particular the right to enter and leave Queensland). For example, the Direction provides that only exempt residents, exempt persons and people with a Chief Health Officer exemption can enter Queensland and may need to self-quarantine if they have been to a COVID-19 hotspot or are moving to Queensland to make Queensland their principal place of residence.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring certain people to self-quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person interstate has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited in respect of people who are interstate and are not exempt residents or exempt persons.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to self-quarantine and others not to enter Queensland, thereby restricting the ways way in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to self-quarantine, the Direction may limit the ability of people to engage in peaceful assembly and to

associate freely. By preventing some people from entering Queensland, the Direction may also limit the ability of people to associate freely.

- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by restricting access of property-owners into Queensland for the duration of the Direction.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details, if they apply for a permit or exemption to enter Queensland.
- Protection of families and children (section 26): The Direction limits this right as it limits family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to self-quarantine for 14 days after entering Queensland before seeing their family, or if a person is not permitted to enter Queensland.
- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing people to cross the Queensland border to congregate for the purpose of cultural expression.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland unless a person is classified as an exempt person.
- Right to liberty (section 29): The requirement to self-quarantine may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to self-quarantine may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to self-quarantine limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance.

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

Compatibility with Human Rights

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

The limits on the above human rights arise from two aspects of the Direction: restrictions on entering Queensland, and the requirement to self-quarantine for some people entering Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate and spreading within the broader Queensland community.

The purpose of requiring self-quarantine is to confine potential outbreaks, enable appropriate support of self-quarantined individuals within resources, and to monitor and enforce the requirements of the Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is in effect for a temporary period, and the restrictions as applying to a person only last for 14-days, which is tied with the typical incubation period for COVID-19. Ultimately, the purpose of self-quarantine or certain persons is to limit the opportunity for transmission of COVID-19 during the potential incubation period.

These purposes of protecting public health are proper purposes. Moreover, 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).

A 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 two sets of limits on human rights will help to achieve their purpose. Restricting people from entering Queensland will help to achieve the purpose of reducing the risk of COVID-19 spreading into Queensland from interstate. Requiring certain people to self-quarantine when they enter Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Necessary (s 13(2)(d))

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

In Queensland, 79 per cent of cases are related to overseas or interstate travel compared to 63 per cent nationally. This indicates a significantly lower proportion of community transmission, likely as a result of Queensland's domestic border measures and effective monitoring of individuals in self-quarantine. While there are currently few instances of community transmission in Queensland, there is a demonstrable need for border controls to mitigate against the risk of COVID-19 being introduced and spread by persons travelling to Queensland from other national and international jurisdictions.

In particular allowing access into Queensland by persons travelling from States and Territories where there has not community transmission or the prevalence of COVID-19, would not be as effective in limiting the spread of COVID-19 because if a person is asymptomatic or presymptomatic and arrives in Queensland from another State or Territory for recreation, for example, and then leaves to return to their jurisdiction, it will be challenging to conduct proper contact tracing.

Furthermore, relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from interstate with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative.

Clauses 7 and 8 of the Direction allow the Chief Health Officer to grant an exemption where refusal of entry or self-quarantine would lead to unusual or disproportionate hardship. This allows the Chief Health Officer to tailor the limit on human rights only to what is reasonable necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 at home, through private prayer, or participating in religious services in Queensland using remote means.

- The limit on the right to property is confined to the duration of the Direction. A deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231).
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 extent of the limitation on human rights is reduced in other ways. The Direction is only in force for a temporary period. Furthermore, the Chief Health Officer may grant an exemption where refusal of entry or self-quarantine would lead to unusual or disproportionate hardship. This allows the Chief Health Officer to tailor the limit on human rights only to what is reasonable necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

Nonetheless, the impact on some human rights will be large (in particular, the right to equality and non-discrimination for interstate residents, and the freedom of movement).

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

Public Health Directions – Human Rights Assessment
Border Restrictions Direction

Title	<i>Border Restrictions Direction (No. 5)</i>
Date effective	1 May 2020

Background

The *Border Restriction Direction* (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.

The Direction amends the *Border Restrictions Direction (No. 4)*. The Direction makes amendments to:

- introduce self-quarantine requirements for seasonal workers;
- implement National Cabinet decision on non-cruise maritime crew to ensure a nationally consistent approach;
- clarify a Federal, State or local government employee, worker or contractor may enter Queensland to work in Queensland.

Purpose of the Direction

The purpose of the Direction has been implemented as part of unprecedented action to protect Queenslanders. The purpose of the Direction is to slow the spread of COVID-19 by tightening Queensland's border restrictions. A person can only enter Queensland if they are a Queensland resident, cross-border resident or an 'exempt person'. However, a person entering Queensland may have to self-quarantine for 14 days if they are:

- a Queensland or cross-border resident that has:
 - travelled overseas in the last 14 days;
 - are non-cruise maritime crew; or
 - in the last 14 days, been to a declared COVID-19 hotspot in Australia.
- an exempt person that has:
 - travelled overseas in the last 14 days; or
 - are non-cruise maritime crew; or
 - are an agribusiness or commercial fishing employee or contractor; and
 - in the last 14 days, they have been in a COVID-19 hotspot; and
 - they cannot produce adequate documentation from an interstate health authority to demonstrate self-quarantine was completed at a place in the COVID-19 hotspot.

A further exception allows, a person to enter Queensland from another State or Territory by a plane in order to transfer to another flight, but must remain in the airport until the time of a transfer to another flight, or follow the direction of the relevant authorities and self-quarantine at a nominated premise. For example, if a return flight is not available on the same day.

For the purpose of the Direction, all travellers to Queensland including returning residents and workers should practise social distancing and risk mitigation measures such as remaining 1.5 metres away from other persons, regular washing of hands, and limiting travel outside of the home or place of accommodation and work except for permitted purposes.

Human rights engaged

The Public Health Direction may engage the following rights under the *Human Rights Act 2019*:

- Right to equality and non-discrimination (section 15): The Direction treats exempt residents and exempt persons of Queensland and residents/persons of other States and Territories differently. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296.
- Right to life (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. Under international law, 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, including vulnerable Queenslanders in hospital, by limiting the number of people that enter and remain in hospitals.
- Freedom of movement (section 19): The Direction may limit the freedom of movement (in particular the right to enter and leave Queensland) by interstate travellers are able to enter Queensland. The Direction limits the freedom of movement by closing the border to interstate travellers being able to enter Queensland. For example, the Direction provides that only exempt residents and exempt persons can enter Queensland and may need to self-quarantine while the Direction is in effect.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring certain people to self-quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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 Direction limits this right by only allowing exempt residents and exempt persons to travel into Queensland. This limits the ability of interstate 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 in Queensland to perform their usual religious practice.
- Freedom of expression (section 21): This right includes the freedom to seek, receive and impart information and ideas of all kinds. It protects almost all kinds of expression, providing it conveys or attempts to convey a meaning. The Direction limits this right by restricting a person from entering Queensland before expression can occur. For example, a person must first seek approval to enter Queensland or may be prohibited access, if they are not an exempt resident or person.
- Peaceful assembly and freedom of association (section 22): The Direction may limit the right to peaceful assembly through the restriction of people travelling into Queensland.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by restricting access to travellers into Queensland for the duration of the Direction, which is a limitation on the property rights of interstate owners of properties in Queensland.
- Privacy and reputation (section 25): The right to privacy in section 25 of the Human Rights Act is broadly construed. A person has the right to not have their privacy, family or home arbitrarily interfered with. Determining a person's principal place of residence must be established by a person demonstrating their 'sufficient and continuous links with a place'. The right 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 privacy right 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 interstate social and family connections. Interference with privacy may occur by making a person provide personal details, if they apply for a permit to enter

Queensland. The Direction may also limit a person's right to work by requiring a person to already have employment in Queensland before applying for an exemption to enter Queensland.

- Protection of families and children (section 26): The right to protection of families and children under section 26, recognises that families and children are a fundamental unit of society and encompasses aspects of non-interference with family units and a guarantee of institutional protection of families and children. The Direction may limit this right as it limits family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to self-quarantine for 14 days after entering Queensland.
- Cultural rights – generally (section 27): The Direction may limit people's ability to engage with others who share their cultural background by preventing people to cross the Queensland border to congregate for the purpose of worship and fellowship.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts a person from crossing the Queensland border for the purpose of cultural expression.
- Right to liberty (section 29): The requirement to self-quarantine may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to self-quarantine may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to self-quarantine in their home or other suitable premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance.

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

Compatibility with Human Rights

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

The limits on the above human rights arise from two aspects of the Direction: restrictions on entering Queensland, and the requirement to self-quarantine for some people entering Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate and spreading within the broader Queensland community.

The purpose of requiring self-quarantine is to confine potential outbreaks, enable appropriate support of self-quarantined individuals within resources, and to monitor and enforce the requirements of the Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is in effect for a temporary period, and the restrictions as applying to a person only last for 14-days, which is tied with the typical incubation period for COVID-19. Ultimately, the purpose of self-quarantine or certain persons is to limit the opportunity for transmission of COVID-19 during the potential incubation period.

These purposes of protecting public health are proper purposes. Moreover, 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).

A 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 two sets of limits on human rights will help to achieve their purpose. Restricting people from entering Queensland will help to achieve the purpose of reducing the risk of COVID-19 spreading into Queensland from interstate. Requiring certain people to self-quarantine when they enter Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Necessary (s 13(2)(d))

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

In Queensland, 79 per cent of cases are related to overseas or interstate travel compared to 63 per cent nationally. This indicates a significantly lower proportion of community transmission, likely as a result of Queensland's domestic border measures and effective monitoring of individuals in self-quarantine. While there are currently few instances of community transmission in Queensland, there is a demonstrable need for border controls to mitigate against the risk of COVID-19 being introduced and spread by persons travelling to Queensland from other national and international jurisdictions.

In particular allowing access into Queensland by persons travelling from States and Territories where there has not community transmission or the prevalence of COVID-19, would not be as effective in limiting the spread of COVID-19 because if a person is asymptomatic or presymptomatic and arrives in Queensland from another State or Territory for recreation, for example, and then leaves to return to their jurisdiction, it will be challenging to conduct proper contact tracing.

Furthermore, relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from interstate with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative.

Clauses 7 and 8 of the Direction allow the Chief Health Officer to grant an exemption where refusal of entry or self-quarantine would lead to unusual or disproportionate hardship. This allows the Chief Health Officer to tailor the limit on human rights only to what is reasonable necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

Many of the limits on human rights are incidental.

- To the extent that the Direction limits the right to freedom of movement, this is considered justified in order to allow emergency officers across Queensland to respond quickly and effectively to local public health needs, including by taking immediate action to restrict access to public places to minimise the spread of COVID-19 to other members of the community.
- 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 at home, through private prayer, or participating in religious services in Queensland using remote means.

- The limit on the right to property is confined to the duration of the Direction. A deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231).
- 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.
- 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 extent of the limitation on human rights is reduced in other ways. The Direction is only in force for a temporary period. Furthermore, the Chief Health Officer may grant an exemption where refusal of entry or self-quarantine would lead to unusual or disproportionate hardship. This allows the Chief Health Officer to tailor the limit on human rights only to what is reasonable necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

Nonetheless, the impact on some human rights will be large (in particular, the right to equality and non-discrimination for interstate residents, and the freedom of movement).

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

Public Health Directions – Human Rights Assessment
Border Restrictions Direction (No. 6)

Title	<i>Border Restrictions Direction (No. 6)</i>
Date effective	3 July 2020

Background

The *Border Restriction Direction (No.6)* (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 Direction is, in the absence of an effective vaccine for COVID-19, to minimise the spread of COVID-19 by preventing cases entering Queensland using border restrictions.

The last confirmed case in Queensland that has no epidemiology link to interstate or overseas transmission or another confirmed case was notified on 26 May, with symptom onset on 2 May.

In Queensland, 79 per cent of cases are related to overseas or interstate travel compared to 63 per cent nationally. This indicates a significantly lower proportion of community transmission, likely as a result of Queensland's domestic border measures and effective monitoring of individuals in self-quarantine.

While there are currently few instances of community transmission in Queensland, there is a demonstrable need for border controls to mitigate against the risk of COVID-19 being introduced and spread by persons travelling to Queensland from other national and international jurisdictions.

From 3 July 2020, a person can only enter Queensland if they are an exempt person such as a person entering in the course of specific employment or a person entering on limited compassionate grounds. The only other people permitted to enter Queensland are those people who have been granted an exemption by the Chief Health Officer. The Direction imposes additional quarantine requirements for persons permitted to enter who pose a higher risk to the community, including a person who has COVID-19, a person who has had known contact with a confirmed case of COVID-19, a person with symptoms or a person who has been in a declared COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from persons more likely to have the virus.

A person can only enter Queensland from a declared COVID-19 hotspot if they quarantine for 14 days, unless they are a specialist worker. The entire state of Victoria will be declared as a COVID-19 hotspot. The Direction imposes quarantine requirements for persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19.

The quarantine requirements for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in Victoria. It was based on the unacceptably high number of new cases identified in Victoria in June.

As of 1 July 2020, the total number of coronavirus (COVID-19) cases in Victoria is 2,231 an increase of 72 since yesterday's report.

- Of the 73 new cases, nine cases are linked to outbreaks, 19 were identified through routine testing, and 42 remain under investigation. One previous case has been reclassified.
- 301 cases have been acquired in Australia where the source of infection is unknown.

As at 1 July 2020, Victoria has reported 2,231 total confirmed cases, 301 cases have been acquired in Australia where the source of infection is unknown. In the last week, Victoria has had a steep increase in newly confirmed cases, and a total 306 active cases. The increase in locally acquired cases in Victoria is driven by multiple epidemiologically linked outbreaks, across a range of settings including between and within households, hotels providing quarantine services, retail businesses, schools, childcare centres, health care practices and an aged care facility.

This is a significant public health concern to Queensland because of the risk of transmission of a case from Victoria to Queensland if appropriate public health controls are not put in place. Requiring a person travelling from Victoria to Queensland to undertake 14 days of mandatory quarantine reduces this risk.

Persons entering Queensland who are required to undergo mandatory quarantine will do so in government nominated premises, such as a hotel, for 14 days. The period of 14 days was based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

How the direction achieves the purpose

From 3 July 2020, the Direction will achieve this purpose by restricting entry to Queensland to exempt persons and those people granted an exemption by the Chief Health Officer. Persons who are permitted to enter Queensland who have been in a declared COVID-19 hotspot in a last 14 days will have to complete mandatory quarantine in a hotel unless they are a specialist worker or entering for exceptional circumstances such as being compelled to by a Court or a law enforcement agency. Persons permitted to enter Queensland who have COVID-19, have been overseas, in contact with a confirmed case, or have had symptoms in the last 14 days will also need to complete mandatory quarantine at a government nominated premises.

A person is an *exempt person* if they fall in any of the following categories:

- Queensland Ambulance Service employee, paramedic, an officer of St John Ambulance Australia, RACQ Lifeflight crew, Royal Flying Doctor Service crew or other aeromedical services crew providing medical care or transport to a patient in Queensland
- A person responsible for the retrieval, delivery or transportation of organs or tissue
- A person responsible for providing health support services or for the maintenance, resupply or repair of health services infrastructure critical to Queensland e.g. Australian Red Cross Lifeblood
- Emergency Services worker
- national and state security including police and the Australian Defence Force
- Federal, State or local government elected representatives who is travelling to Queensland to perform official duties in Queensland

- consular employees as defined in the Consular Privileges and Immunities Act 1972 (Cth) travelling to Queensland to perform official duties in Queensland
- Transport and logistics worker
- Specialist worker critical to key infrastructure, services, utilities, industries or businesses
- FIFO worker for the critical resources sector
- Agribusiness or commercial fishing worker
- compassionate grounds such as attending a funeral, visiting a terminally ill relative or as a carer of a dependent.
- higher Education students and staff
- people in transit through an airport;
- people who have been ordinarily a resident of Queensland since 29 January 2020 (the start of the declared public health emergency)
- a person moving to Queensland to make it their principal place of residence
- people who reside in border communities and ordinarily work in Queensland or need to obtain essential goods and services and is entering by crossing a land border.

From 3 July, the Direction:

- requires that an *exempt person* who arrives in Queensland will be required to self-quarantine if in the last 14 days:
 - the person has been diagnosed with COVID-19
 - the person has had known contact with a person who is a confirmed case of COVID-19; or
 - the person has had symptoms consistent with COVID-19; or
 - the person has been in a COVID-10 hotspot, unless they are a *specialist worker*, complying with a court order or law enforcement, or in transit.
- includes higher education students and staff and organ retrieval teams as additional *exempt persons*;
- provides exceptions from the self-quarantine requirement for people that have entered from a COVID-19 hotspot for:
 - an exempt person who enters Queensland to perform specialist work; or
 - a person who is required to enter Queensland under Court orders or participate in a law enforcement investigation or action; or
 - a person who enters by a domestic flight and transfers directly to another flight or mode of transport to leave Queensland;
- provides that people who have been in a COVID-19 hotspot but do not have to quarantine must keep and retain records of close contacts for 14 days after arriving in Queensland.

Human Rights Engaged

From 3 July, the Public Health Direction may engage the following rights under the *Human Rights Act 2019*:

- Right to equality and non-discrimination (section 15): The definition of ‘exempt person’ includes people who were residents of Queensland at the time the public health emergency was declared. Because those people are more likely to be Queensland residents now, the definition indirectly discriminates between Queensland residents and residents of other States and Territories. The definition of ‘discrimination’ under the *Human Rights Act* is inclusive. Discrimination may include

discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296.

- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Freedom of movement (section 19): The Direction limits the freedom of movement (in particular the right to enter Queensland) by restricting which interstate travellers are able to enter Queensland. For example, the Direction provides that only exempt persons and people with a Chief Health Officer exemption can enter Queensland and may need to quarantine on arrival.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring certain people to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person interstate has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited in respect of people who are interstate and are not exempt residents or exempt persons.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine and others not to enter Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely. By preventing some people from entering Queensland, the Direction may also limit the ability of people to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by restricting access of property-owners into Queensland for the duration of the Direction.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by only allowing certain people with certain occupations to enter Queensland.
- Protection of families and children (section 26): The Direction limits this right as it limits family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family, or if a person is not permitted to enter Queensland.
- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing people to cross the Queensland border to congregate for the purpose of cultural expression.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland unless a person is an exempt person.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.

- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises or other suitable premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance.

Compatibility with Human Rights

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

From 3 July, the limits on the above human rights arise from two aspects of the Direction: restrictions on entering Queensland, and the requirement to quarantine for some people entering Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate and spreading within the broader Queensland community.

The purpose of requiring self-quarantine in nominated premises is to confine potential outbreaks, enable appropriate support of self-quarantined individuals within resources, and to monitor and enforce the requirements of the Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is in effect for a temporary period, and the restrictions as applying to a person only last for 14-days, which is tied with the typical incubation period for COVID-19. Ultimately, the purpose of quarantine is to limit the opportunity for transmission of COVID-19 during the potential incubation period.

These purposes of protecting public health are proper purposes. Moreover, 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).

A 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 two sets of limits on human rights will help to achieve their purpose. Restricting people from entering Queensland will help to achieve the purpose of reducing the risk of COVID-19 spreading into Queensland from interstate. Requiring certain people to quarantine when they enter Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Necessary (s 13(2)(d))

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

In particular:

- Restricting access into Queensland by Queensland residents (so that non-residents are treated equally, reducing the limit on section 15) would result in far greater impacts on the human rights of more people (given that Queensland residents will be unable to exercise their human rights in Queensland where most of their connections are based).
- Applying a quarantine period for anyone wishing to enter Queensland (so that non-residents are treated equally, reducing the limits on sections 15 and 19) would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from interstate with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Restricting access into Queensland only for people who have visited a hotspot in the previous 14 days would not be as effective in reducing the risk posed by COVID-19, due to the possibility that people will not comply with the requirement to declare that they have visited a hotspot, and because of the possibility of undetected community transmission in other States and Territories. As the time since the last reported case of community transmission in other States and Territories lengthens, this may become a viable alternative. In any event, the direction falls within the range of reasonable alternatives.

There are exceptions built into the definition of 'exempt person' in clause 16(10)(5) which are designed to protect human rights. For example, the exception for people entering Queensland for essential medical treatment protects the right to life (s 16) and the right to access health services (s 37). The exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Further, the Direction allows the Chief Health Officer to grant an exemption from refusal of entry or a requirement to quarantine. This allows the Chief Health Officer to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 at home, through private prayer, or participating in religious services in Queensland using remote means.

- The limit on the right to property is confined to the duration of the Direction. A deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231).
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 extent of the limitation on human rights is reduced in other ways. The Direction is only in force for a temporary period. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for interstate residents and people from a hotspot, and the freedom of movement.

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

Public Health Directions – Human Rights Assessment
Border Restrictions Direction (No. 7)

Title	<i>Border Restrictions Direction (No. 7)</i>
Date effective	8 July 2020

Background

The *Border Restriction Direction (No.7)* (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 Direction is, in the absence of an effective vaccine for COVID-19, to minimise the spread of COVID-19 by preventing cases entering Queensland using border restrictions.

The last confirmed case in Queensland that has no epidemiology link to interstate or overseas transmission or another confirmed case was notified on 26 May, with symptom onset on 2 May.

In Queensland, 79 per cent of cases are related to overseas or interstate travel compared to 63 per cent nationally. This indicates a significantly lower proportion of community transmission, likely as a result of Queensland's domestic border measures and effective monitoring of individuals in self-quarantine.

While there are currently few instances of community transmission in Queensland, there is a demonstrable need for border controls to mitigate against the risk of COVID-19 being introduced and spread by persons travelling to Queensland from other national and international jurisdictions.

From 8 July 2020, a person can only enter Queensland if they are an exempt person such as a person entering in the course of specific employment or a person entering on limited compassionate grounds. The only other people permitted to enter Queensland are those people who have been granted an exemption by the Chief Health Officer. The Direction imposes additional quarantine requirements for persons permitted to enter who pose a higher risk to the community, including a person who has COVID-19, a person who has had known contact with a confirmed case of COVID-19, a person with symptoms or a person who has been in a declared COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from persons more likely to have the virus.

A person can only enter Queensland from a declared COVID-19 hotspot if they quarantine for 14 days, unless they are a specialist worker. The entire state of Victoria has been declared as a COVID-19 hotspot. The Direction imposes quarantine requirements for persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19.

The quarantine requirements for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in Victoria. It was based on the unacceptably high number of new cases identified in Victoria in June.

As of 6 July 2020, the total number of coronavirus (COVID-19) cases in Victoria is 2,660, an increase of 127 since yesterday's report.

- Of the 124 new cases, 34 cases are linked to outbreaks, 40 were identified through routine testing, and 53 remain under investigation. Three previous cases have been reclassified.
- 416 cases have been acquired in Australia where the source of infection is unknown.

In the last week, Victoria has had a steep increase in newly confirmed cases, and a total 645 active cases. The increase in locally acquired cases in Victoria is driven by multiple epidemiologically linked outbreaks, across a range of settings including between and within households, hotels providing quarantine services, retail businesses, schools, childcare centres, health care practices and an aged care facility.

This is a significant public health concern to Queensland because of the risk of transmission of a case from Victoria to Queensland if appropriate public health controls are not put in place. Requiring a person travelling from Victoria to Queensland to undertake 14 days of mandatory quarantine reduces this risk.

Persons entering Queensland who are required to undergo mandatory quarantine will do so in government nominated premises, such as a hotel, for 14 days. The period of 14 days was based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

How the direction achieves the purpose

From 8 July 2020, the Direction will achieve this purpose by restricting entry to Queensland to exempt persons and those people granted an exemption by the Chief Health Officer. Persons who are permitted to enter Queensland who have been in a declared COVID-19 hotspot in a last 14 days will have to complete mandatory quarantine in a hotel unless they are a specialist worker or entering for exceptional circumstances such as being compelled to by a Court or a law enforcement agency. Persons permitted to enter Queensland who have COVID-19, have been overseas, in contact with a confirmed case, or have had symptoms in the last 14 days will also need to complete mandatory quarantine at a government nominated premises.

A person is an *exempt person* if they fall in any of the following categories:

- Queensland Ambulance Service employee, paramedic, an officer of St John Ambulance Australia, RACQ Lifeflight crew, Royal Flying Doctor Service crew or other aeromedical services crew providing medical care or transport to a patient in Queensland
- A person responsible for the retrieval, delivery or transportation of organs or tissue
- A person responsible for providing health support services or for the maintenance, resupply or repair of health services infrastructure critical to Queensland e.g. Australian Red Cross Lifeblood
- Emergency Services worker
- National and state security including police and the Australian Defence Force
- Federal, State or local government elected representatives who is travelling to Queensland to perform official duties in Queensland
- Consular employees as defined in the *Consular Privileges and Immunities Act 1972 (Cth)* travelling to Queensland to perform official duties in Queensland
- Transport and logistics worker

- Specialist worker critical to key infrastructure, services, utilities, industries or businesses
- FIFO worker for the critical resources sector
- Agribusiness or commercial fishing worker
- Compassionate grounds such as attending a funeral, visiting a terminally ill relative or as a carer of a dependent.
- Higher education and boarding school students and staff
- People in transit through an airport;
- People who have been ordinarily a resident of Queensland since 29 January 2020 (the start of the declared public health emergency)
- A person moving to Queensland to make it their principal place of residence
- People who reside in border communities and ordinarily work in Queensland or need to obtain essential goods and services and is entering by crossing a land border.

From 8 July, the Direction:

- requires that an *exempt person* who arrives in Queensland will be required to self-quarantine if in the last 14 days:
 - the person has been diagnosed with COVID-19
 - the person has had known contact with a person who is a confirmed case of COVID-19; or
 - the person has had symptoms consistent with COVID-19; or
 - the person has been in a COVID-19 hotspot, unless they are a *specialist worker*, complying with a court order or law enforcement, or in transit.
- includes higher education students and staff and organ retrieval teams as additional *exempt persons*;
- provides exceptions from the self-quarantine requirement for people that have entered from a COVID-19 hotspot for:
 - an exempt person who enters Queensland to perform specialist work; or
 - a person who is required to enter Queensland under Court orders or participate in a law enforcement investigation or action; or
 - a person who enters by a domestic flight and transfers directly to another flight to leave Queensland;
- provides that people who have been in a COVID-19 hotspot but do not have to quarantine must keep and retain records of close contacts for 14 days after arriving in Queensland.

Human Rights Engaged

From 8 July, the Public Health Direction may engage the following rights under the *Human Rights Act 2019*:

- Right to equality and non-discrimination (section 15): The definition of ‘exempt person’ includes people who were residents of Queensland at the time the public health emergency was declared. Because those people are more likely to be Queensland residents now, the definition indirectly discriminates between Queensland residents and residents of other States and Territories. The definition of ‘discrimination’ under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296.

- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Freedom of movement (section 19): The Direction limits the freedom of movement (in particular the right to enter Queensland) by restricting which interstate travellers are able to enter Queensland. For example, the Direction provides that only exempt persons and people with a Chief Health Officer exemption can enter Queensland and may need to quarantine on arrival.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring certain people to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person interstate has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited in respect of people who are interstate and are not exempt residents or exempt persons.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine and others not to enter Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely. By preventing some people from entering Queensland, the Direction may also limit the ability of people to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by restricting access of property-owners into Queensland for the duration of the Direction.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by only allowing certain people with certain occupations to enter Queensland.
- Protection of families and children (section 26): The Direction limits this right as it limits family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family, or if a person is not permitted to enter Queensland.
- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing people to cross the Queensland border to congregate for the purpose of cultural expression.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland unless a person is an exempt person.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises or other suitable premises limits these rights by restricting their movements and their

ability to engage with community and, if the detained person is a school aged child, restricting school attendance.

Compatibility with Human Rights

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

From 8 July, the limits on the above human rights arise from two aspects of the Direction: restrictions on entering Queensland, and the requirement to quarantine for some people entering Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate and spreading within the broader Queensland community.

The purpose of requiring self-quarantine in nominated premises is to confine potential outbreaks, enable appropriate support of self-quarantined individuals within resources, and to monitor and enforce the requirements of the Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is in effect for a temporary period, and the restrictions as applying to a person only last for 14-days, which is tied with the typical incubation period for COVID-19. Ultimately, the purpose of quarantine is to limit the opportunity for transmission of COVID-19 during the potential incubation period.

These purposes of protecting public health are proper purposes. Moreover, 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).

A 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 two sets of limits on human rights will help to achieve their purpose. Restricting people from entering Queensland will help to achieve the purpose of reducing the risk of COVID-19 spreading into Queensland from interstate. Requiring certain people to quarantine when they enter Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Necessary (s 13(2)(d))

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

In particular:

- Restricting access into Queensland by Queensland residents (so that non-residents are treated equally, reducing the limit on section 15) would result in far greater impacts on the human rights

of more people (given that Queensland residents will be unable to exercise their human rights in Queensland where most of their connections are based).

- Applying a quarantine period for anyone wishing to enter Queensland (so that non-residents are treated equally, reducing the limits on sections 15 and 19) would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from interstate with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Restricting access into Queensland only for people who have visited a hotspot in the previous 14 days would not be as effective in reducing the risk posed by COVID-19, due to the possibility that people will not comply with the requirement to declare that they have visited a hotspot, and because of the possibility of undetected community transmission in other States and Territories. As the time since the last reported case of community transmission in other States and Territories lengthens, this may become a viable alternative. In any event, the direction falls within the range of reasonable alternatives.

There are exceptions built into the definition of 'exempt person' in clause 16(10)(5) which are designed to protect human rights. For example, the exception for people entering Queensland for essential medical treatment protects the right to life (s 16) and the right to access health services (s 37). The exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Further, the Direction allows the Chief Health Officer to grant an exemption from refusal of entry or a requirement to quarantine. This allows the Chief Health Officer to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 at home, through private prayer, or participating in religious services in Queensland using remote means.
- The limit on the right to property is confined to the duration of the Direction. A deprivation of property will generally not occur where the measure is provisional or temporary (*Poiss v Austria* (1988) 10 EHRR 231).
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by

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

- 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 extent of the limitation on human rights is reduced in other ways. The Direction is only in force for a temporary period. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for interstate residents and people from a hotspot, and the freedom of movement.

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

**Public Health Directions –
Border Restrictions Direction (No. 8)**

Title	<i>Border Restrictions Direction (No. 8)</i>
Date effective	10 July 2020

Background

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

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 into Queensland from travellers arriving from COVID-19 hotspots.

The last confirmed case in Queensland that has no epidemiology link to interstate or overseas transmission or another confirmed case was notified on 26 May, with symptom onset on 2 May.

In Queensland, 79 per cent of cases are related to overseas or interstate travel compared to 63 per cent nationally. This indicates a significantly lower proportion of community transmission, likely as a result of Queensland's domestic border measures and effective monitoring of individuals in quarantine who enter from COVID-19 hotspots or overseas.

The Direction revokes and replaces the *Borders Direction (No. 7)*.

How the direction achieves the purpose

From 10 July 2020, the Direction will achieve this purpose by restricting entry to Queensland to people who have been in a declared COVID-19 hotspot in last 14 days preceding entry. Entry to Queensland from COVID-19 hotspots will be restricted to a narrow range of people including, but not limited to, returning Queensland residents, a person performing an essential activity in Queensland or a person fulfilling a legal obligation relating to shared parenting or child access.

Returning Queensland residents who have been in a hotspot in the last 14 days will be permitted to enter Queensland. However, they will have to complete mandatory quarantine in a hotel unless they were in a hotspot for an essential activity.

A person will be performing an *essential activity* if they fall in any of the following categories:

- National defence and state security including police and the Australian Defence Force
- Federal, State or local government elected representatives travelling to Queensland to perform official duties in Queensland
- consular employees as defined in the *Consular Privileges and Immunities Act 1972 (Cth)*
- Queensland Ambulance Service employee, paramedic, an officer of St John Ambulance Australia, RACQ Lifeflight crew, Royal Flying Doctor Service crew or other aeromedical services crew providing medical care or transport to a patient in Queensland
- A person responsible for the retrieval, delivery or transportation of organs or tissue

- A person responsible for providing critical health support services or for the maintenance, resupply or repair of health services infrastructure critical to Queensland e.g. Australian Red Cross Lifeblood
- Fire and emergency service workers
- A person transporting freight and logistics
- Specialist workers providing time critical services to maintain critical government services and infrastructure that cannot be provided by anyone in Queensland
- Aircrew and maritime crew
- A person granted an exemption by the Chief Health Officer because they are essential to the proper functioning of the State, or because of exceptional circumstances.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. The entire state of Victoria has been declared as a COVID-19 hotspot.

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in Victoria. It was based on the unacceptably high number of new cases identified in Victoria in June and July.

As of 6 July 2020, the total number of coronavirus (COVID-19) cases in Victoria is 2,660. Of these cases, 416 have been acquired in Australia where the source of infection is unknown. To date, there have been 2,307 in metropolitan Melbourne and 260 in regional Victoria.

In the last week, Victoria has had a steep increase in newly confirmed cases. The increase in locally acquired cases in Victoria is driven by multiple epidemiologically linked outbreaks, across a range of settings including between and within households, hotels providing quarantine services, retail businesses, schools, childcare centres, health care practices and an aged care facility.

This is a significant public health concern to Queensland because of the risk of transmission of a case from Victoria to Queensland if appropriate public health controls are not put in place. Preventing a person from Victoria to enter Queensland reduces this risk.

From 10 July 2020, any person from New South Wales, South Australia, Western Australia, Northern Territory, Australian Capital Territory or Tasmania may enter Queensland.

All people entering Queensland will be required to complete a Queensland Border Declaration Pass. The only exceptions of people not required to complete the declaration are:

- maritime crew arriving in Queensland and not disembarking their vessel while in Queensland; and
- emergency services workers entering for an emergency, for example an ambulance transporting a patient across the border with a life threatening condition.

The Queensland Border Declaration Pass will include an undertaking that the person must have a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland. A fine of \$4,004 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass.

The Direction imposes additional quarantine requirements for persons permitted to enter who pose a higher risk to the community, including a person who has COVID-19, a person who has had known contact with a confirmed case of COVID-19, a person with symptoms or a person permitted to enter from a declared COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from persons more likely to have the virus.

Persons entering Queensland who are required to undergo mandatory quarantine will do so in government nominated premises, such as a hotel, for 14 days. The period of 14 days was based on the

median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

All persons arriving into Queensland are required to travel directly to the quarantine premises, and may not leave during the 14-day period except for the purpose of obtaining essential medical care or supplies, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

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

Most people required to self-quarantine need to do so in a hotel or other place nominated by the Chief Health Officer or a relevant authority. Some persons may self-quarantine in other suitable premises, such as their residence. These include unaccompanied minors arriving in Queensland, people requiring regular support to live independently, and airline crew (who may also leave for their next work voyage prior to the expiry of the 14-day quarantine period).

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

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

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of other States and Territories. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to get tested for COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots to enter Queensland. For example, the Direction provides that only people performing an essential activity and other very limited categories of people can enter Queensland from a hotspot. The Direction also requires specific individuals from other states and

territories to quarantine at a government nominated premises prior to being able to move freely in Queensland, for example if the individual has symptoms consistent with COVID-19. Everyone entering Queensland is also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to be tested.

- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring certain people to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by only allowing certain specialist workers to enter Queensland from a COVID-19 hotspot without the need to quarantine (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction may also limit a person's right to work by requiring a person to self-quarantine for 14 days before they can return to work.
- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599) and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine, or be subjected to an additional 10 days of quarantine.¹ Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.
- Persons who develop symptoms while in Queensland will be required to submit to a COVID-19 test as per the undertaking in the Queensland Border Declaration Pass. This will limit their right to bodily integrity and personal autonomy.
- Protection of families and children (section 26): The Direction limits this right as it limits family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing entry into Queensland or requiring

certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.

- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty. Additionally, requiring a person to agree to undertake a COVID-19 test if they develop symptoms while in Queensland restricts a person's liberty by only allowing them to enter Queensland subject to conditions.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction recognises that individuals with particular health needs should be able to self-quarantine in their residence with their carers because of the unique strain that detention in another setting may pose. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises or other suitable premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

From 10 July, the limits on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland; and
- requirement for people entering Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland; and.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly Victoria which is currently experiencing a surge in COVID-19 cases related to community transmission, and prevent the spread of COVID-19 within the broader Queensland community.

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

These purposes of protecting public health are proper purposes. Moreover, 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).

A 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 their purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for anyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.

Additionally, section 362L of the *Public Health Act 2005* expressly authorises an emergency officer (public health) to take action to enforce a requirement or direction, using reasonable and necessary force. The provisions indicate that Parliament has considered liberty interests and decided to curtail those rights to address public health risks. Requiring a person who enters Queensland to agree to undergo a COVID-19 test if they develop symptoms is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence

situation) 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 Direction recognises the hardship that certain persons would face in quarantine, including unaccompanied minors and persons with particular health needs, and allows them to quarantine outside of a nominated premises.

Further, the Direction allows the Chief Health Officer to grant an exemption from refusal of entry or a requirement to quarantine. This allows the Chief Health Officer to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 extent of the limitation on human rights is reduced in other ways. The Direction is only in force for a temporary period. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

**Public Health Directions –
Border Restrictions Direction (No. 9)**

Title	<i>Border Restrictions Direction (No. 9)</i>
Date effective	27 July 2020

Background

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

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 into Queensland from travellers arriving from COVID-19 hotspots.

The last confirmed case in Queensland that has no epidemiology link to interstate or overseas transmission or another confirmed case was notified on 26 May, with symptom onset on 2 May.

In Queensland, 79 per cent of cases are related to overseas or interstate travel compared to 63 per cent nationally. This indicates a significantly lower proportion of community transmission, likely as a result of Queensland's domestic border measures and effective monitoring of individuals in quarantine who enter from COVID-19 hotspots or overseas.

The Direction revokes and replaces the *Borders Direction (No. 8)*.

How the direction achieves the purpose

The Direction achieves this purpose by restricting entry to Queensland to people who have been in a declared COVID-19 hotspot in last 14 days preceding entry. Entry to Queensland by people who have been in COVID-19 hotspots is restricted to a narrow range of people including, but not limited to, returning Queensland residents, a person performing an essential activity in Queensland, a person fulfilling a legal obligation relating to shared parenting or child access or a person who was in a hotspot for the sole purpose of transiting through via road or through an airport.

Returning Queensland residents who have been in a hotspot in the last 14 days will be permitted to enter Queensland. However, they will have to complete mandatory quarantine in a hotel on their return. There are only very limited exceptions to Queensland residents having to complete mandatory hotel quarantine including Queensland residents who were in a hotspot for an essential activity, returning unaccompanied minors, residents unable to live independently due to significant health needs, and people who have already completed government mandated quarantine in another State and travelled directly to Queensland.

A person will be performing an *essential activity* if they fall in any of the following categories:

- National defence and state security including police and the Australian Defence Force
- Federal, State or local government elected representatives travelling to Queensland to perform official duties in Queensland

- consular employees as defined in the *Consular Privileges and Immunities Act 1972 (Cth)*
- Queensland Ambulance Service employee, paramedic, an officer of St John Ambulance Australia, RACQ Lifeflight crew, Royal Flying Doctor Service crew or other aeromedical services crew providing medical care or transport to a patient in Queensland
- A person responsible for the retrieval, delivery or transportation of organs or tissue
- A person responsible for providing critical health support services or for the maintenance, resupply or repair of health services infrastructure critical to Queensland e.g. Australian Red Cross Lifeblood
- Fire and emergency service workers
- A person transporting freight under a commercial freight operation or passengers under a commercial passenger or public transport operation
- A person providing logistics and support for transport operations which require the person to be physically present in Queensland
- Specialist workers providing emergency services or continuity of government services, infrastructure or utilities that are time critical and cannot be provided by anyone in Queensland
- Aircrew and maritime crew
- A person granted an exemption by the Chief Health Officer because they are essential to the proper functioning of the State, or because of exceptional circumstances.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. The entire state of Victoria has been declared as a COVID-19 hotspot as well as a number of local government areas in New South Wales.

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations.

Since mid-June, there has been a sustained and substantial week-on-week increase in cases driven by locally acquired cases in Victoria. As at 22 July 2020, an average of 300 new cases have been reported daily for the previous week, with the majority of these (2,306 cases; 95 per cent) from Victoria and the remainder (97 cases; 5 per cent) from New South Wales. Forecasts for Victoria and New South Wales are highly uncertain at this time with both, substantial increases or decreases in new cases into August being possible given the unique local context and different control measures in place in these jurisdictions.

This is a significant public health concern to Queensland because of the risk of transmission of a case from Victoria or New South Wales to Queensland if appropriate public health controls are not put in place. Preventing a person from declared hotspots in Victoria or New South Wales from entering Queensland reduces this risk.

Under the Direction, any person from South Australia, Western Australia, Northern Territory, Australian Capital Territory or Tasmania may enter Queensland.

All people entering Queensland will be required to complete a Queensland Border Declaration Pass. The only exceptions of people not required to complete the declaration are:

- maritime crew who are not required to complete a Queensland Border Declaration Pass under the Protocol for Maritime Crew approved by the Chief Health Officer; and
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency.

The Queensland Border Declaration Pass includes an undertaking that the person must have a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland. A fine of \$4,004 will apply to anyone who provides false or misleading information in their Queensland Border Declaration

Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction imposes additional quarantine requirements for persons permitted to enter who pose a higher risk to the community, including a person who has COVID-19, a person who has had known contact with a confirmed case of COVID-19, a person with symptoms or a person permitted to enter from a declared COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from persons more likely to have the virus.

Persons entering Queensland who are required to undergo mandatory quarantine will do so in government nominated premises, such as a hotel, for 14 days. The period of 14 days was based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

A person who is permitted to enter Queensland will be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from the health authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland within 12 hours of leaving the premises of government mandated quarantine.

All persons arriving into Queensland are required to travel directly to the quarantine premises, and may not leave during the 14-day period except for the purpose of obtaining essential medical care or supplies, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

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

Most people required to self-quarantine need to do so in a hotel or other place nominated by the Chief Health Officer or a relevant authority. Some persons may self-quarantine in other suitable premises, such as their residence. These include unaccompanied minors arriving in Queensland, people requiring regular support to live independently, and airline crew (who may also leave for their next work voyage prior to the expiry of the 14-day quarantine period).

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

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

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of other States and Territories. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also

contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.

- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to get tested for COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. For example, the Direction provides that only people performing an essential activity and other very limited categories of people can enter Queensland from a hotspot. The Direction also requires specific individuals from other states and territories to quarantine at a government nominated premises prior to being able to move freely in Queensland, for example if the individual has symptoms consistent with COVID-19. Everyone entering Queensland is also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to be tested.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring certain people to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by only allowing certain specialist workers to enter Queensland from a COVID-19 hotspot without the need to quarantine (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction may also limit a person's right to work by requiring a person to self-quarantine for 14 days before they can return to work.

- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and ‘personal inviolability’ in the sense of ‘the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.’ See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine, or be subjected to an additional 10 days of quarantine.¹ Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.
- Persons who develop symptoms while in Queensland will be required to submit to a COVID-19 test as per the undertaking in the Queensland Border Declaration Pass. This will limit their right to bodily integrity and personal autonomy.
- Protection of families and children (section 26): The Direction limits this right as it limits family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
- Cultural rights – generally (section 27): The Direction limits a person’s ability to engage with others who share their cultural background by preventing entry into Queensland or requiring certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty. Additionally, requiring a person to agree to undertake a COVID-19 test if they develop symptoms while in Queensland restricts a person’s liberty by only allowing them to enter Queensland subject to conditions.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction recognises that individuals with particular health needs should be able to self-quarantine in their residence with their carers because of the unique strain that detention in another setting may pose. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises or other suitable premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limits on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland; and
- requirement for people entering Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly Victoria and New South Wales which are currently experiencing a surge in COVID-19 cases related to community transmission, and prevent the spread of COVID-19 within the broader Queensland community.

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

These purposes of protecting public health are proper purposes. Moreover, 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).

A 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 their purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for anyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.

- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.

Additionally, section 362L of the *Public Health Act 2005* expressly authorises an emergency officer (public health) to take action to enforce a requirement or direction, using reasonable and necessary force. The provisions indicate that Parliament has considered liberty interests and decided to curtail those rights to address public health risks. Requiring a person who enters Queensland to agree to undergo a COVID-19 test if they develop symptoms is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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 Direction recognises the hardship that certain persons would face in quarantine, including unaccompanied minors and persons with particular health needs, and allows them to quarantine outside of a nominated premises.

Further, the Direction allows the Chief Health Officer to grant an exemption from refusal of entry or a requirement to quarantine. This allows the Chief Health Officer to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 extent of the limitation on human rights is reduced in other ways. The Direction is only in force for a temporary period. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

RTI RELEASE

**Public Health Directions –
Border Restrictions Direction (No. 10)**

Title	<i>Border Restrictions Direction (No. 10)</i>
Date effective	31 July 2020

Background

The *Borders Direction (No. 10)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 into Queensland from travellers arriving from COVID-19 hotspots.

Between 28 to 31 July 2020, four Queensland residents have tested positive for COVID-19. Two of the cases tested positive after traveling from Melbourne via Sydney, arriving in Brisbane, on 21 July 2020. During this period these persons did not quarantine or isolate before being tested on 28 July 2020 and continued to move freely throughout the community. The third person is known to the other two cases, while the fourth case have acquired COVID-19 at a venue where the two-young woman who travelled from Melbourne have been, therefore also believed to be linked to these two cases.

Prior to 29 July 2020, the last confirmed case of community transmission in Queensland was notified on 26 May 2020, with symptom onset on 2 May 2020. In Queensland, the majority of the cases to date (79 per cent) are related to overseas and interstate travel.

This indicates a low proportion of community transmission, likely as a result of Queensland's domestic border measures and effective monitoring of individuals in quarantine who enter from COVID-19 hotspots or overseas.

The Direction revokes and replaces the *Borders Direction (No. 9)*.

How the direction achieves the purpose

The Direction achieves this purpose by restricting entry to Queensland to people who have been in a declared COVID-19 hotspot in last 14 days preceding entry. Entry to Queensland by people who have been in COVID-19 hotspots is restricted to a narrow range of people including, but not limited to, returning Queensland residents, a person relocating to Queensland, a person performing an essential activity in Queensland, a person fulfilling a legal obligation relating to shared parenting or child access or a person who was in a hotspot for the sole purpose of transiting through via road, transiting through a hotspot to enter an airport or transiting through an airport.

Returning Queensland residents or new residents relocating to Queensland who have been in a hotspot in the last 14 days will be permitted to enter Queensland. However, they will have to complete mandatory quarantine in a hotel on their return. There are only very limited exceptions to Queensland residents having to complete mandatory hotel quarantine including Queensland residents who were

in a hotspot for an essential activity, returning unaccompanied minors, residents unable to live independently due to significant health needs, and people who have already completed government mandated quarantine in another State and travelled directly to Queensland.

A person will be performing an *essential activity* if they fall in any of the following categories:

- National defence and state security including police and the Australian Defence Force
- Federal, State or local government elected representatives travelling to Queensland to perform official duties in Queensland
- consular employees as defined in the *Consular Privileges and Immunities Act 1972 (Cth)*
- Queensland Ambulance Service employee, paramedic, an officer of St John Ambulance Australia, RACQ Lifeflight crew, Royal Flying Doctor Service crew or other aeromedical services crew providing medical care or transport to a patient in Queensland
- A person responsible for the retrieval, delivery or transportation of organs or tissue
- A person responsible for providing critical health support services or for the maintenance, resupply or repair of health services infrastructure critical to Queensland e.g. Australian Red Cross Lifeblood
- Fire and emergency service workers
- A person transporting freight under a commercial freight operation or passengers under a commercial passenger or public transport operation
- A person providing logistics and support for transport operations which require the person to be physically present in Queensland
- Specialist workers providing emergency services or continuity of government services, infrastructure or utilities that are time critical and cannot be provided by anyone in Queensland
- Aircrew and maritime crew
- A person granted an exemption by the Chief Health Officer because they are essential to the proper functioning of the State, or because of exceptional circumstances.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. The entire state of Victoria has been declared as a COVID-19 hotspot as well as a number of local government areas in New South Wales including Greater Sydney.

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations.

Since mid-June, there has been a sustained and substantial week-on-week increase in cases driven by locally acquired cases in Victoria. As at 30 July 2020, Victoria has 5385 active cases with 877 active cases relating to outbreaks in more than 60 aged care facilities. There have been 40 fatalities in Victorian aged care facilities, more than a third of all fatalities in the state.

As at 31 July, New South Wales has 219 active cases. Since the outbreak emerged in the Casula Crossroads Hotel in early July, there have been eight outbreaks associated with licenced venues, religious gatherings, workplaces and indoor fitness centres. None of the cases to date have been in residential aged care facilities.

This is a significant public health concern to Queensland because of the risk of transmission of a case from Victoria or New South Wales to Queensland if appropriate public health controls are not put in place. Preventing a person from declared hotspots in Victoria or New South Wales from entering Queensland reduces this risk.

Under the Direction, any person from South Australia, Western Australia, Northern Territory, Australian Capital Territory or Tasmania may enter Queensland.

All people entering Queensland will be required to complete a Queensland Border Declaration Pass. The only exceptions of people not required to complete the declaration are:

- maritime crew who are not required to complete a Queensland Border Declaration Pass under the Protocol for Maritime Crew approved by the Chief Health Officer; and
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency; and
- a person remanded in custody of a state or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency.

The Queensland Border Declaration Pass includes an undertaking that the person must have a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland. A fine of \$4,004 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction imposes additional quarantine requirements for persons permitted to enter who pose a higher risk to the community, including a person who has COVID-19, a person who has had known contact with a confirmed case of COVID-19, a person with symptoms or a person permitted to enter from a declared COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from persons more likely to have the virus.

Persons entering Queensland who are required to undergo mandatory quarantine will do so in government nominated premises, such as a hotel, for 14 days. The period of 14 days was based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

A person who is permitted to enter Queensland will be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

All persons arriving into Queensland are required to travel directly to the quarantine premises, and may not leave during the 14-day period except for the purpose of obtaining essential medical care or supplies, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

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

Most people required to self-quarantine need to do so in a hotel or other place nominated by the Chief Health Officer or a relevant authority. Some persons may self-quarantine in other suitable premises, such as their residence. These include unaccompanied minors arriving in Queensland,

people requiring regular support to live independently, and airline crew (who may also leave for their next work voyage prior to the expiry of the 14-day quarantine period).

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

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

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of other States and Territories. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to get tested for COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. For example, the Direction provides that only people performing an essential activity and other very limited categories of people can enter Queensland from a hotspot. The Direction also requires specific individuals from other states and territories to quarantine at a government nominated premises prior to being able to move freely in Queensland, for example if the individual has symptoms consistent with COVID-19. Everyone entering Queensland is also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to be tested.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring certain people to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).

- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by only allowing certain specialist workers to enter Queensland from a COVID-19 hotspot without the need to quarantine (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction may also limit a person's right to work by requiring a person to self-quarantine for 14 days before they can return to work.
- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine, or be subjected to an additional 10 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.
- Persons who develop symptoms while in Queensland will be required to submit to a COVID-19 test as per the undertaking in the Queensland Border Declaration Pass. This will limit their right to bodily integrity and personal autonomy.
- Protection of families and children (section 26): The Direction limits this right as it limits family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing entry into Queensland or requiring certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty. Additionally, requiring a person to agree to undertake a COVID-19 test if they develop symptoms while in Queensland restricts a person's liberty by only allowing them to enter Queensland subject to conditions.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction recognises that individuals with particular health needs should be able to self-quarantine in their residence with their carers because of the unique strain that detention in another setting may pose. Additionally, the restriction against visitors to the

nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.

- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises or other suitable premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limits on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland; and
- requirement for people entering Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly Victoria and New South Wales which are currently experiencing a surge in COVID-19 cases related to community transmission, and prevent the spread of COVID-19 within the broader Queensland community.

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

These purposes of protecting public health are proper purposes. Moreover, 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).

A 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 their purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for anyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.

Additionally, section 362L of the *Public Health Act 2005* expressly authorises an emergency officer (public health) to take action to enforce a requirement or direction, using reasonable and necessary force. The provisions indicate that Parliament has considered liberty interests and decided to curtail those rights to address public health risks. Requiring a person who enters Queensland to agree to undergo a COVID-19 test if they develop symptoms is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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 Direction recognises the hardship that certain persons would face in quarantine, including unaccompanied minors and persons with particular health needs, and allows them to quarantine outside of a nominated premises.

Further, the Direction allows the Chief Health Officer to grant an exemption from refusal of entry or a requirement to quarantine. This allows the Chief Health Officer to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises

such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.

- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 extent of the limitation on human rights is reduced in other ways. The Direction is only in force for a temporary period. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

**Public Health Directions –
Border Restrictions Direction (No. 11)**

Title	<i>Border Restrictions Direction (No. 11)</i>
Date effective	8 August 2020

Background

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

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 into Queensland from travellers arriving from COVID-19 hotspots.

Between 28 July and 4 August 2020, there have been 9 cases of COVID-19 in Queensland. Five of these cases are linked to a cluster associated with Queenslanders returning from Melbourne, a declared hotspot, via Sydney and making false declarations on their border pass, and two cases were associated with NSW clusters in an area not declared a hotspot for the purposes of border restrictions.

Prior to 29 July 2020, the last confirmed case of community transmission in Queensland was notified on 26 May 2020, with symptom onset on 2 May 2020.

Despite overall low numbers in Queensland, this does represent a sharp increase in new cases. While Queensland's domestic border measures and effective monitoring of individuals in quarantine who enter from COVID-19 hotspots or overseas have been effective; the recent increase in cases, particularly those linked to deliberate breaches of border restrictions, and those linked to interstate travel to a location not declared a hotspot, necessitate a review of current public health measures at the border.

The Direction revokes and replaces the *Borders Direction (No. 10)*.

How the Direction achieves the purpose

The Direction achieves this purpose by restricting entry to Queensland to people who have been in a declared COVID-19 hotspot in last 14 days preceding entry. Entry to Queensland by people who have been in COVID-19 hotspots is restricted to a narrow range of people including, but not limited to, returning Queensland residents, a person relocating to Queensland, a person performing an essential activity in Queensland or a person fulfilling a legal obligation relating to shared parenting or child access.

Returning Queensland residents or new residents relocating to Queensland who have been in a hotspot in the last 14 days will be permitted to enter Queensland. However, they will have to complete mandatory quarantine in a hotel on their return. There are only very limited exceptions to Queensland residents having to complete mandatory hotel quarantine including Queensland residents who were

in a hotspot for an essential activity and people who have already completed government mandated quarantine in another State and travelled directly to Queensland.

A person will be performing an *essential activity* if they fall in any of the following categories:

- National defence and state security including police and the Australian Defence Force
- Federal, State or local government elected representatives travelling to Queensland to perform official duties in Queensland
- Queensland Ambulance Service employee, paramedic, an officer of St John Ambulance Australia, RACQ Lifeflight crew, Royal Flying Doctor Service crew or other aeromedical services crew providing medical care or transport to a patient in Queensland
- A person responsible for the retrieval, delivery or transportation of organs or tissue
- A person responsible for providing critical health support services or for the maintenance, resupply or repair of health services infrastructure critical to Queensland e.g. Australian Red Cross Lifeblood
- Fire and emergency service workers
- A person transporting freight under a commercial freight operation or passengers under a commercial passenger or public transport operation
- A person providing logistics and support for transport operations which require the person to be physically present in Queensland
- Specialist workers providing emergency services or continuity of government services or government funded services, industry, infrastructure or utilities that are time critical and cannot be provided by anyone in Queensland. Specialist workers must meet certain requirements to be permitted to enter Queensland.
- Aircrew and maritime crew.

Border zone residents are permitted to enter and remain in the border zone between Queensland and New South Wales. However, a border resident must not travel outside the border zone within Queensland and must not enter Queensland if the person had travelled to a hotspot outside the border zone within the 14 days prior to entering Queensland.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. Victoria, New South Wales and the Australian Capital Territory have been declared as COVID-19 hotspots.

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations.

Since mid-June, there has been a week-on-week increase in cases in Victoria in particular but also New South Wales. Over the past week Victoria has reported 3,760 new cases of COVID-19 and New South Wales has reported 103 cases. Of concern is the increasing number of locally acquired cases – either contacts of confirmed cases or cluster, but increasingly with no known contact.

This is a significant public health concern to Queensland because of the risk of transmission of a case from Victoria or New South Wales to Queensland if appropriate public health controls are not put in place. Preventing a person from declared hotspots of Victoria, New South Wales and Australian Capital Territory from entering Queensland reduces this risk.

Under the Direction, any person from South Australia, Western Australia, Northern Territory or Tasmania may enter Queensland.

All people entering Queensland will be required to complete a Queensland Border Declaration Pass and provide evidence of their identity. The only exceptions of people not required to complete the declaration pass are:

- maritime crew who are not required to complete a Queensland Border Declaration Pass under the Protocol for Maritime Crew approved by the Chief Health Officer; and
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency; and
- a person remanded in custody of a state or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency.

The Queensland Border Declaration Pass includes an undertaking that the person must have a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland. A fine of \$4,004 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction imposes additional quarantine requirements for persons permitted to enter who pose a higher risk to the community, including a person who has COVID-19, a person who has had known contact with a confirmed case of COVID-19, a person with symptoms or a person permitted to enter from a declared COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from persons more likely to have the virus.

Persons entering Queensland who are required to undergo mandatory quarantine will do so in government nominated premises, such as a hotel, for 14 days. The period of 14 days was based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

A person who is permitted to enter Queensland will be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

All persons arriving into Queensland are required to travel directly to the quarantine premises, and may not leave during the 14-day period except for the purpose of obtaining essential medical care or supplies, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

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

Most people required to self-quarantine need to do so in a hotel or other place nominated by the Chief Health Officer or a relevant authority. Some persons may self-quarantine in other suitable premises, such as their residence. These include unaccompanied minors arriving in Queensland, people requiring regular support to live independently, and airline crew (who may also leave for their next work voyage prior to the expiry of the 14-day quarantine period).

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

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

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of other States and Territories. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to get tested for COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. For example, the Direction provides that only people performing an essential activity and other very limited categories of people can enter Queensland from a hotspot. The Direction also requires specific individuals from other states and territories to quarantine at a government nominated premises prior to being able to move freely in Queensland, for example if the individual has symptoms consistent with COVID-19. The Direction limits the freedom of movement of border zone residents by preventing these people from entering Queensland if they have travelled to any other part of New South Wales not included in the border zone within the 14 days prior to entering Queensland. The Direction may also limit a border zone resident's right to work by limiting their movement within New South Wales.
- Everyone entering Queensland is also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to be tested.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.

- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to self-quarantine for 14 days before they can return to work.
- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine, or be subjected to an additional 10 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.
- Persons who develop symptoms while in Queensland will be required to submit to a COVID-19 test as per the undertaking in the Queensland Border Declaration Pass. This will limit their right to bodily integrity and personal autonomy.
- Protection of families and children (section 26): The Direction limits this right as it limits family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing entry into Queensland or requiring certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty. Additionally, requiring a person to agree to undertake a COVID-19 test if they develop symptoms while in Queensland restricts a person's liberty by only allowing them to enter Queensland subject to conditions.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in exceptional circumstances. Additionally, the restriction against visitors to the

nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.

- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limits on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland; and
- requirement for people entering Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly Victoria and New South Wales which are currently experiencing a surge in COVID-19 cases related to community transmission, and prevent the spread of COVID-19 within the broader Queensland community.

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

These purposes of protecting public health are proper purposes. Moreover, 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).

A 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 their purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or

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regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or supplies or in an emergency.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Declaring parts of New South Wales to be a COVID-19 hotspot rather than the whole state has proved ineffective in containing the spread of COVID-19 from Victoria into New South Wales. The outbreaks in New South Wales has resulted in community transmission within the central and south-west Sydney region, with cases now extending along the New South Wales coast north and south of Sydney. The unrestricted movement across New South Wales has also led to new cases presenting in regional areas well outside of the current declared areas, such as Albury, Byron and Orange. Limiting COVID-19 hotspots to parts of New South Wales will not address the public health risk. This risk is potentially increased due to unrestricted movement of people within New South Wales. The outbreak in Victoria and community transmission in New South Wales indicates seeding can occur outside of a hotspot and potentially spread interstate, before the full extent of the outbreak can be quantified due to the lag time in the onset of symptoms. Declaring the state of New South Wales a COVID-19 hotspot will address the public health risks and pre-emptively reduce the risk of COVID-19 entering Queensland.
- Similarly, the Australian Capital Territory has to be declared a COVID-19 hotspot not due to its current COVID-19 activity, but because of the risk associated with its geographical location. The Australian Capital Territory is geographically located within New South Wales, and there is unrestricted movement between the two jurisdictions. It poses a similar risk to the areas surrounding previously declared hotspots in New South Wales. Declaring the Australian Capital Territory as COVID-19 hotspots will assist in controlling the potential influx of COVID-19 cases and protect the Queensland community and enable Queensland to continue functioning as it is. Additionally, there have been circumstances of people seeking to enter

Queensland from New South Wales via the Australian Capital Territory. This approach will mitigate that risk.

Additionally, section 362L of the *Public Health Act 2005* expressly authorises an emergency officer (public health) to take action to enforce a requirement or direction, using reasonable and necessary force. The provisions indicate that Parliament has considered liberty interests and decided to curtail those rights to address public health risks. Requiring a person who enters Queensland to agree to undergo a COVID-19 test if they develop symptoms is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Further, the Direction allows the Chief Health Officer to grant an exemption from refusal of entry or a requirement to quarantine. This allows the Chief Health Officer to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 extent of the limitation on human rights is reduced in other ways. The Direction is only in force for a temporary period. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

**Public Health Directions –
Border Restrictions Direction (No. 12)**

Title	<i>Border Restrictions Direction (No. 12)</i>
Date effective	XX August 2020

Background

The *Borders Direction (No. 12)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 into Queensland from travellers arriving from COVID-19 hotspots.

In the past fortnight (ending 16 August 2020), Queensland had 2 new cases of COVID-19.

By comparison, in the previous fortnight (ending 2 August 2020) Queensland had 12 new COVID-19 cases. Five of these cases are linked to a cluster associated with Queenslanders returning from Melbourne, a declared hotspot, via Sydney and making false declarations on their border pass, and two cases were associated with NSW clusters in an area not declared a hotspot for the purposes of border restrictions. Prior to 29 July 2020, the last confirmed case of community transmission in Queensland was notified on 26 May 2020, with symptom onset on 2 May 2020.

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The overall low numbers in Queensland, indicates that Queensland's domestic border measures and monitoring of individuals in quarantine who enter from COVID-19 hotspots or overseas have been effective. However, minor changes to the Direction are needed to ensure the public health measures continue to be effective in managing the COVID-19 risks presented by COVID-19 hotspots.

The Direction revokes and replaces the *Borders Direction (No. 11)*.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations.

Since mid-June, there has been a week-on-week increase in cases in Victoria in particular but also New South Wales. Over the past week (from 6 to 12 August 2020) Victoria reported 2,587 new cases of COVID-19. In the last week, New South Wales reported 61 cases that were locally acquired.

Although the cases numbers from those jurisdictions is slowly declining, the significant public health concern to Queensland remains due to the risk of transmission of a case from Victoria or New South Wales to Queensland if appropriate public health controls are not put in place. Preventing a person from declared hotspots of Victoria, New South Wales and Australian Capital Territory from entering Queensland reduces this risk.

Under the Direction, any person from South Australia, Western Australia, Northern Territory or Tasmania may enter Queensland.

All people entering Queensland will be required to complete a Queensland Border Declaration Pass and provide evidence of their identity. The only exceptions of people not required to complete the declaration pass are:

- maritime crew who are not required to complete a Queensland Border Declaration Pass under the Protocol for Maritime Crew approved by the Chief Health Officer; and
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency; and
- a person remanded in custody of a state or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency.

The Queensland Border Declaration Pass includes an undertaking that the person must have a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland. A fine of \$4,004 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction imposes additional quarantine requirements for persons permitted to enter who pose a higher risk to the community, including a person who has COVID-19, a person who has had known contact with a confirmed case of COVID-19, a person with symptoms or a person permitted to enter from a declared COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from persons more likely to have the virus.

The Direction also restricts people from entering Queensland if they have been in a declared COVID-19 hotspot in last 14 days preceding entry. However, a limited category of people will still be permitted to enter Queensland subject to meeting the relevant entry requirements. This includes, but not limited to, returning Queensland residents or a person performing an essential activity in Queensland such as seasonal workers or critical resources sector employees.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. To date, Victoria, New South Wales and the Australian Capital Territory have been declared as COVID-19 hotspots.

Persons entering Queensland who are required to undergo mandatory quarantine will do so in government nominated premises, such as a hotel, for 14 days. The period of 14 days was based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care or supplies, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

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

Some persons may self-quarantine in other suitable premises. For example, a person coming to Queensland for in patient health care may quarantine at the health facility.

A person will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

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

From 20 August 2020, new residents who are relocating to Queensland from a COVID-19 hotspot will no longer be permitted to enter Queensland.

Additionally, from 20 August 2020, the Direction will:

- define essential health care that people from a COVID-19 hotspot can enter Queensland for;
- enable people coming from a COVID-19 hotspot to attend in patient appointments to quarantine at the health facility;
- enable greater movement for workers between Queensland and the New South Wales border zone;
- enable a emergency officer discretion to allow a person to enter Queensland by road in exceptional circumstances.

Border zone residents are permitted to enter and remain in the border zone between Queensland and New South Wales. However, a border resident who resides in New South Wales must not travel outside the border zone within Queensland and must not enter Queensland if the person had travelled to a hotspot outside the border zone within the 14 days prior to entering Queensland.

Similarly, a border resident who resides in Queensland may enter and remain in the border zone between Queensland and New South Wales. However, the person will be required to quarantine in accordance with the Direction if they enter a COVID-19 hotspot outside the border zone.

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

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of other States and Territories. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement

for persons entering Queensland to agree to get tested for COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.

- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. For example, the Direction does not permit people to relocate to Queensland if they are coming from a COVID-19 hotspot. The Direction also requires specific individuals from other states and territories to quarantine at a government nominated premises prior to being able to move freely in Queensland, for example if the individual has symptoms consistent with COVID-19. The Direction limits the freedom of movement of border zone residents by preventing these people from entering Queensland if they have travelled to any other part of New South Wales not included in the border zone within the 14 days prior to entering Queensland. The Direction may also limit a border zone resident's right to work by limiting their movement within New South Wales.
- Everyone entering Queensland is also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to be tested.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to self-quarantine for 14 days before they can return to work.
- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine, or be subjected to an additional 10

days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.

- Persons who develop symptoms while in Queensland will be required to submit to a COVID-19 test as per the undertaking in the Queensland Border Declaration Pass. This will limit their right to bodily integrity and personal autonomy.
- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot. The Direction also prevents persons from relocating to Queensland to be with their family members.
- Cultural rights – generally (section 27): The Direction limits a person’s ability to engage with others who share their cultural background by preventing entry into Queensland or requiring certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty. Additionally, requiring a person to agree to undertake a COVID-19 test if they develop symptoms while in Queensland restricts a person’s liberty by only allowing them to enter Queensland subject to conditions.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly Victoria and New South Wales, which are currently experiencing a surge in

COVID-19 cases related to community transmission. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community.

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

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense.

Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or supplies or in an emergency.

In some circumstances, it may not be practical to require a person to only enter Queensland by air, for example if a person is escaping from domestic violence. An emergency officer may permit a person to enter Queensland by road in exceptional circumstances. However, the person will still be required to undergo mandatory quarantine in government nominated premises. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Declaring parts of New South Wales to be a COVID-19 hotspot rather than the whole state has proved ineffective in containing the spread of COVID-19 from Victoria into New South Wales. The outbreaks in New South Wales has resulted in community transmission within the central and south-west Sydney region, with cases now extending along the New South Wales coast north and south of Sydney. The unrestricted movement across New South Wales has also led to new cases presenting in regional areas well outside of the current declared areas, such as Albury, Byron and Orange. Limiting COVID-19 hotspots to parts of New South Wales will not address the public health risk. This risk is potentially increased due to unrestricted movement of people within New South Wales. The outbreak in Victoria and community transmission in New South Wales indicates seeding can occur outside of a hotspot and potentially spread interstate, before the full extent of the outbreak can be quantified due to the lag time in the onset of symptoms. Declaring the state of New South Wales a COVID-19 hotspot will address the public health risks and pre-emptively reduce the risk of COVID-19 entering Queensland.
- Similarly, the Australian Capital Territory has to be declared a COVID-19 hotspot not due to its current COVID-19 activity, but because of the risk associated with its geographical location. The Australian Capital Territory is geographically located within New South Wales, and there is unrestricted movement between the two jurisdictions. It poses a similar risk to the areas surrounding previously declared hotspots in New South Wales. Declaring the Australian Capital Territory as COVID-19 hotspots will assist in controlling the potential influx of COVID-19 cases and protect the Queensland community and enable Queensland to continue functioning as it is. Additionally, there have been circumstances of people seeking to enter Queensland from New South Wales via the Australian Capital Territory. This approach will mitigate that risk.
- Continuing to allow new residents to relocate to Queensland from a COVID-19 hotspot if they undertake mandatory quarantine will reduce Queensland's ability to manage hotel capacity and management of people in quarantine. The Commonwealth Department of Home Affairs (Australian Border Force) manages the number of overseas arrivals into Queensland. Due to the high rates of COVID-19 cases overseas, people arriving from overseas present a higher transmission risk to the community. In comparison, Queensland can control the flow of people

relocating to Queensland from a COVID-19 hotspot. People relocating from other states from a COVID-19 hotspot currently take up a large proportion of hotel availability. It is vital that Queensland maintains sufficient capacity in hotels to manage the quarantine of people arriving from overseas. Additionally, the Chief Health Officer may grant an exemption to people seeking to relocate to Queensland if required. However, the person will still be required to quarantine in government nominated premises at their own expense.

Additionally, section 362L of the *Public Health Act 2005* expressly authorises an emergency officer (public health) to take action to enforce a requirement or direction, using reasonable and necessary force. The provisions indicate that Parliament has considered liberty interests and decided to curtail those rights to address public health risks. Requiring a person who enters Queensland to agree to undergo a COVID-19 test if they develop symptoms is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Further, the Direction allows the Chief Health Officer to grant an exemption from refusal of entry or a requirement to quarantine. This allows the Chief Health Officer to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 need to address particular circumstances is considered under the Direction. For example, the Direction permits New South Wales border zone residents to travel anywhere in Queensland for work. Queensland residents can enter the border zone for work as well.

However, these people must to the extent reasonably practicable remain isolated from the general public at their place of work, keep records of close contacts and travel directly to and from their place of work. This strikes a balance between the right people to continue to work across the border zone and the wider public health concerns related to COVID-19.

Similarly, people may continue to enter Queensland to receive essential health care subject to confirmation from a specialist or person in charge of the relevant health facility that the person cannot obtain the treatment at their place of residence.

People attending in patient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

**Public Health Directions –
Border Restrictions Direction (No. 13)**

Title	<i>Border Restrictions Direction (No. 13)</i>
Date effective	5 September 2020

Background

The *Borders Direction (No. 13)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

In the past fortnight (ending 4 September 2020), Queensland had 34 new cases of COVID-19. By comparison, in the previous fortnight (ending 7 August 2020) Queensland had 7 new COVID-19 cases. 11 of these cases are linked to a cluster associated with the Brisbane Youth Detention Centre. A further 19 of these cases are linked to a cluster associated with the Queensland Corrective Service Academy. All other cases were overseas acquired.

The overall low numbers in Queensland, indicates that Queensland's domestic border measures and monitoring of individuals in quarantine who enter from COVID-19 hotspots or overseas have been effective. However, minor changes to the Direction are needed to ensure the public health measures continue to be effective in managing the COVID-19 risks presented by COVID-19 hotspots.

The Direction revokes and replaces the *Borders Direction (No. 12)*.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations.

Over the past week (to 3 September 2020) Victoria reported 627 new cases of COVID-19. In the last week, New South Wales reported 85 cases.

Although the cases numbers reported by those jurisdictions is slowly declining, the public health concern to Queensland remains due to the risk of transmission of a case from Victoria or New South Wales to Queensland if appropriate public health controls are not put in place. Preventing a person from declared hotspots of Victoria, New South Wales and Australian Capital Territory from entering Queensland reduces this risk.

Under the Direction, any person from South Australia, Western Australia, Northern Territory or Tasmania, who is not a confirmed case of COVID-19, may enter Queensland. Persons arriving from those jurisdictions may be subject to quarantine requirements, for example if the person develops symptoms consistent with COVID-19 while in Queensland. All people entering Queensland will be required to complete a Queensland Border Declaration Pass and provide evidence of their identity.

The only exceptions of people not required to complete the declaration pass are:

- maritime crew who are not required to complete a Queensland Border Declaration Pass under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency; and
- a person remanded in custody of a state or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency.

The Queensland Border Declaration Pass includes an undertaking that the person must have a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland. A fine of \$4,004 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction imposes additional quarantine requirements for persons permitted to enter who pose a higher risk to the community, including a person who has COVID-19, a person who has had known contact with a confirmed case of COVID-19, a person with symptoms or a person permitted to enter from a declared COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from persons more likely to have the virus.

The Direction also restricts people from entering Queensland if they have been in a declared COVID-19 hotspot in last 14 days preceding entry. However, a limited category of people will still be permitted to enter Queensland subject to meeting the relevant entry requirements. This includes, but not limited to, returning Queensland residents or a person performing an essential activity in Queensland such as seasonal workers or critical resources sector employees.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. To date, Victoria, New South Wales and the Australian Capital Territory have been declared as COVID-19 hotspots.

Persons entering Queensland who are required to undergo mandatory quarantine will do so in government nominated premises, such as a hotel, for 14 days. The period of 14 days was based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care or supplies, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

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

Border zone residents are permitted to enter and remain in the border zone between Queensland and New South Wales. However, a border resident who resides in New South Wales must not travel outside the border zone within Queensland and must not enter Queensland if the person had travelled to a hotspot outside the border zone within the 14 days prior to entering Queensland.

Similarly, a border zone resident who resides in Queensland may enter and remain in the border zone between Queensland and New South Wales. However, the person will be required to quarantine in accordance with the Direction if they enter a COVID-19 hotspot outside the border zone.

From 5 September 2020, the Direction will clarify the locations included in the New South Wales and Queensland border zones.

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

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of other States and Territories. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to get tested for COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The Direction also requires specific individuals from other states and territories to quarantine at a government nominated premises prior to being able to move freely in Queensland, for example if the individual has symptoms consistent with COVID-19. The Direction limits the freedom of movement of border zone

residents by preventing these people from entering Queensland if they have travelled to any other part of New South Wales not included in the border zone within the 14 days prior to entering Queensland. The Direction may also limit a border zone resident's right to work by limiting their movement within New South Wales.

- Everyone entering Queensland is also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to be tested.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to self-quarantine for 14 days before they can return to work.
- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599) and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine, or be subjected to an additional 10 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.
- Persons who develop symptoms while in Queensland will be required to submit to a COVID-19 test as per the undertaking in the Queensland Border Declaration Pass. This will limit their right to bodily integrity and personal autonomy.
- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing entry into Queensland or requiring

certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.

- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty. Additionally, requiring a person to agree to undertake a COVID-19 test if they develop symptoms while in Queensland restricts a person's liberty by only allowing them to enter Queensland subject to conditions.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly Victoria and New South Wales, which are currently experiencing community transmission of COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community.

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

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or supplies or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.

- Declaring parts of New South Wales to be a COVID-19 hotspot rather than the whole state has proved ineffective in containing the spread of COVID-19 from Victoria into New South Wales. The outbreaks in New South Wales has resulted in community transmission within the central and south-west Sydney region, with cases now extending along the New South Wales coast north and south of Sydney. The unrestricted movement across New South Wales has also led to new cases presenting in regional areas well outside of the current declared areas, such as Albury, Byron and Orange. Limiting COVID-19 hotspots to parts of New South Wales will not address the public health risk. This risk is potentially increased due to unrestricted movement of people within New South Wales. The outbreak in Victoria and community transmission in New South Wales indicates seeding can occur outside of a hotspot and potentially spread interstate, before the full extent of the outbreak can be quantified due to the lag time in the onset of symptoms. Declaring the state of New South Wales a COVID-19 hotspot will address the public health risks and pre-emptively reduce the risk of COVID-19 entering Queensland.
- Similarly, the Australian Capital Territory has to be declared a COVID-19 hotspot not due to its current COVID-19 activity, but because of the risk associated with its geographical location. The Australian Capital Territory is geographically located within New South Wales, and there is unrestricted movement between the two jurisdictions. It poses a similar risk to the areas surrounding previously declared hotspots in New South Wales. Declaring the Australian Capital Territory as COVID-19 hotspots will assist in controlling the potential influx of COVID-19 cases and protect the Queensland community and enable Queensland to continue functioning as it is. Additionally, there have been circumstances of people seeking to enter Queensland from New South Wales via the Australian Capital Territory. This approach will mitigate that risk.
- Requiring a person who enters Queensland to agree to undergo a COVID-19 test if they develop symptoms is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Further, the Direction allows the Chief Health Officer to grant an exemption from refusal of entry or a requirement to quarantine. This allows the Chief Health Officer to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.

- 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 need to address particular circumstances is considered under the Direction. For example, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere.

People attending in patient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

Public Health Directions –
Border Restrictions Direction (No. 14)

Title	<i>Border Restrictions Direction (No. 14)</i>
Date effective	XX September 2020

Background

The *Borders Direction (No. 14)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

In Queensland, there was a sharp increase in new cases between 28 July 2020 and 4 August 2020 with nine cases of COVID-19 in Queensland. Five of these cases were linked to a cluster associated with Queenslanders returning from Melbourne, a declared hotspot, and making false declarations on their border pass.

Between 20 August and 26 August 2020, 11 cases associated with an outbreak in the Brisbane Youth Detention Centre (BYDC) were reported. Between 27 August and 7 September 2020, a further 24 cases have been reported to be associated with an outbreak in the Correctional Services Training Academy. The link between the BYDC cluster and the training academy is still to be determined.

The outbreaks present a high risk of community transmission in areas where the clusters are occurring.

Despite these outbreaks, the overall low numbers in Queensland, indicates that Queensland's domestic border measures and monitoring of individuals in quarantine who enter from COVID-19 hotspots or overseas have been effective. However, changes to the Direction are needed to ensure the public health measures continue to be effective in managing the COVID-19 risks presented by COVID-19 hotspots and that essential activities, including movement of freight, can occur with appropriate safeguards in place.

The Direction revokes and replaces *Borders Direction (No. 13)* over staggered implementation periods.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations.

The number of cases in Victoria and New South Wales remain a concern to Queensland. Over the past week, there have been 606 new cases of COVID-19 reported in Victoria, and 80 new cases in New South Wales.

Victoria's daily figures have drastically reduced over the past few weeks, however there are still cases with no known source of infection, which is indicative of widespread community transmission.

Under the Direction, any person from South Australia, Western Australia, Northern Territory or Tasmania, who is not a confirmed case of COVID-19, may enter Queensland. Persons arriving from

those jurisdictions may be subject to quarantine requirements, for example if the person develops symptoms consistent with COVID-19 while in Queensland.

All people entering Queensland will be required to complete a Queensland Border Declaration Pass and provide evidence of their identity. The only exceptions of people not required to complete the declaration pass are:

- maritime crew who are not required to complete a Queensland Border Declaration Pass under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency.

The Queensland Border Declaration Pass includes an undertaking that the person must have a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland. A fine of \$4,004 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction imposes additional quarantine requirements for persons permitted to enter who pose a higher risk to the community, including a person who has COVID-19, a person who has had known contact with a confirmed case of COVID-19, a person with symptoms or a person permitted to enter from a declared COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from persons more likely to have the virus.

The Direction also restricts people from entering Queensland if they have been in a declared COVID-19 hotspot in the 14 days preceding entry. However, a limited category of people will still be permitted to enter Queensland subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist workers or those providing emergency health or fire services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. To date, Victoria, New South Wales and the Australian Capital Territory have been declared as COVID-19 hotspots.

Persons entering Queensland who are required to undergo mandatory quarantine will do so in government nominated premises, such as a hotel, for 14 days. The period of 14 days was based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care or supplies, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

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

Border zone residents are permitted to enter and remain in the border zone between Queensland and New South Wales. However, a border resident who resides in New South Wales must not travel outside the border zone within Queensland and must not enter Queensland if the person had travelled to a hotspot outside the border zone within the 14 days prior to entering Queensland.

Similarly, a border zone resident who resides in Queensland may enter and remain in the border zone between Queensland and New South Wales. However, the person will be required to quarantine in accordance with the Direction if they enter a COVID-19 hotspot outside the border zone.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of other States and Territories. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.

- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The Direction also requires specific individuals from other states and territories to quarantine at a government nominated premises prior to being able to move freely in Queensland, for example if the individual has symptoms consistent with COVID-19. The Direction limits the freedom of movement of border zone residents by preventing these people from entering Queensland if they have travelled to any other part of New South Wales not included in the border zone within the 14 days prior to entering Queensland. The Direction may also limit a border zone resident's right to work by limiting their movement within New South Wales.
- Everyone entering Queensland is also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to be tested.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to self-quarantine for 14 days before they can return to work.
- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine, or be subjected to an additional 10 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.
- Persons who develop symptoms while in Queensland will be required to submit to a COVID-19 test as per the undertaking in the Queensland Border Declaration Pass. This will limit their right to bodily integrity and personal autonomy.

- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
- Cultural rights – generally (section 27): The Direction limits a person’s ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty. Additionally, requiring a person to agree to undertake a COVID-19 test if they develop symptoms while in Queensland restricts a person’s liberty by only allowing them to enter Queensland subject to conditions.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly Victoria and New South Wales, which are currently experiencing community transmission of COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community.

Additionally, requiring most people entering Queensland to self-quarantine in nominated premises is to confine potential outbreaks and enable appropriate support of self-quarantined individuals within available resources. It also enables monitoring and enforcement of the requirements under the

Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is also in effect for a temporary period, and the restrictions as applying to a person only last for 14-days, which is tied with the typical incubation period for COVID-19. Ultimately, the purpose of quarantine is to limit the opportunity for transmission of COVID-19 during the potential incubation period.

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or supplies or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

The people who may be directed to leave Queensland is limited to those who an emergency officer reasonably believes entered or remained in Queensland in violation of this Direction and who have not been in Queensland for longer than 14 days and are, thus, still in the incubation range for COVID-19. The emergency officer must also be satisfied that the direction to leave will not compromise public health or the person's health.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and

services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.

- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Declaring parts of New South Wales to be a COVID-19 hotspot rather than the whole state has proved ineffective in containing the spread of COVID-19 from Victoria into New South Wales. The outbreaks in New South Wales has resulted in community transmission within the central and south-west Sydney region, with cases now extending along the New South Wales coast north and south of Sydney. The unrestricted movement across New South Wales has also led to new cases presenting in regional areas well outside of the current declared areas, such as Albury, Byron and Orange. Limiting COVID-19 hotspots to parts of New South Wales will not address the public health risk. This risk is potentially increased due to unrestricted movement of people within New South Wales. The outbreak in Victoria and community transmission in New South Wales indicates seeding can occur outside of a hotspot and potentially spread interstate, before the full extent of the outbreak can be quantified due to the lag time in the onset of symptoms. Declaring the state of New South Wales a COVID-19 hotspot will address the public health risks and pre-emptively reduce the risk of COVID-19 entering Queensland.
- Similarly, the Australian Capital Territory has to be declared a COVID-19 hotspot not due to its current COVID-19 activity, but because of the risk associated with its geographical location. The Australian Capital Territory is geographically located within New South Wales, and there is unrestricted movement between the two jurisdictions. It poses a similar risk to the areas surrounding previously declared hotspots in New South Wales. Declaring the Australian Capital Territory as COVID-19 hotspots will assist in controlling the potential influx of COVID-19 cases and protect the Queensland community and enable Queensland to continue functioning as it is. Additionally, there have been circumstances of people seeking to enter Queensland from New South Wales via the Australian Capital Territory. This approach will mitigate that risk.
- Requiring a person who enters Queensland to agree to undergo a COVID-19 test if they develop symptoms is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 need to address particular circumstances is considered under the Direction. For example, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

**Public Health Directions –
Border Restrictions Direction (No. 15)**

Title	<i>Border Restrictions Direction (No. 15)</i>
Date effective	1 October 2020

Background

The *Borders Direction (No. 14)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

In Queensland, there was a sharp increase in new cases in July and August with several cases associated with Queenslanders returning from a declared hotspot and making false declarations on their border pass.

Queensland's confirmed cases no longer appear to be accelerating now, with each new case reported being a close contact of a known source already in quarantine. The current low numbers of new cases in Queensland indicates that Queensland's domestic border measures and monitoring of individuals in quarantine who enter from COVID-19 hotspots or overseas have been effective.

The number of new cases in Victoria and parts of New South Wales remain a concern to Queensland; and any cross-border, interstate travel presents a risk for community transmission in Queensland for as long as the virus continues to circulate in Australia.

However, the incidence of confirmed cases around the New South Wales and Queensland border is very low or nil. There have been no confirmed cases reported in the previous 28 days in areas of New South Wales along the border and only three cases in the Gold Coast LGA in the past 28 days, all linked to a known cluster and appropriately managed.

Changes to the Direction are needed as part of a gradual easing of border restrictions in response to the decreasing risk of transmission across the border and recognition of the greater impact of border restrictions on residents along the Queensland border. This Direction expands the border zone in New South Wales and removes the Queensland side of the border zone. This will provide a right of entry for residents in the expanded New South Wales border zone into all parts of Queensland as well as permitting all Queenslanders to return to Queensland after entering the New South Wales border zone.

Other changes in this Direction are to add certain emergency services as an essential activity for which people may enter Queensland from a COVID-19 hotspot and some technical changes.

Restrictions are unchanging for the remainder of the declared COVID-19 hotspots.

The Direction revokes and replaces *Borders Direction (No. 14)* at 1 am on 1 October 2020.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations.

Although cases in COVID-19 hotspots have reduced over the past few weeks, there is still ongoing transmission, which poses a risk to Queensland absent border restrictions.

Under the Direction, any person from another State or Territory that is not arriving from a COVID-19 hotspot and is not a confirmed case of COVID-19 may enter Queensland. Persons arriving from those jurisdictions may be subject to quarantine requirements, for example if the person develops symptoms consistent with COVID-19 while in Queensland.

All people entering Queensland will be required to complete a Queensland Border Declaration Pass and provide evidence of their identity. The only exceptions of people not required to complete the declaration pass are:

- maritime crew who are not required to complete a Queensland Border Declaration Pass under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency.

The Queensland Border Declaration Pass includes an undertaking that the person must have a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland. A fine of \$4,004 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction imposes additional quarantine requirements for persons permitted to enter who pose a higher risk to the community, including a person who has COVID-19, a person who has had known contact with a confirmed case of COVID-19, a person with symptoms of COVID-19 or a person permitted to enter from a declared COVID-19 hotspot. These requirements are a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from persons more likely to have the virus.

The Direction also restricts people from entering Queensland if they have been in a declared COVID-19 hotspot in the 14 days preceding entry. However, a limited category of people will still be permitted to enter Queensland subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. To date, Victoria, New South Wales and the Australian Capital Territory have been declared as COVID-19 hotspots.

Persons entering Queensland who are required to undergo mandatory quarantine will do so in government nominated premises, such as a hotel, for 14 days. The period of 14 days was based on the

median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care or supplies, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

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

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry.

Border zone residents are permitted to enter and remain in Queensland. However, a border zone resident must not enter Queensland if the person had travelled to a hotspot outside the border zone within the 14 days prior to entering Queensland. This Direction expands the border zone, permitting more people entry into Queensland.

Similarly, a border zone resident who resides in Queensland may enter and remain in the border zone in New South Wales. However, the person will be required to quarantine in accordance with the Direction if they enter a COVID-19 hotspot outside the border zone.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an

inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.

- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The Direction also requires specific individuals from other states and territories to quarantine at a government nominated premises prior to being able to move freely in Queensland, for example if the individual has symptoms consistent with COVID-19. The Direction limits the freedom of movement of border zone residents by preventing these people from entering Queensland if they have travelled to any other part of New South Wales not included in the border zone within the 14 days prior to entering Queensland. The Direction may also limit a border zone resident's right to work by limiting their movement within New South Wales.
- Everyone entering Queensland is also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to be tested.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work

purposes. The Direction may also limit a person's right to work by requiring a person to self-quarantine for 14 days before they can return to work.

- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine, or be subjected to an additional 10 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.
- Persons who develop symptoms while in Queensland will be required to submit to a COVID-19 test as per the undertaking in the Queensland Border Declaration Pass. This will limit their right to bodily integrity and personal autonomy.
- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty. Additionally, requiring a person to agree to undertake a COVID-19 test if they develop symptoms while in Queensland restricts a person's liberty by only allowing them to enter Queensland subject to conditions.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and

- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly Victoria and New South Wales, which are currently experiencing community transmission of COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community.

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

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or supplies or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Declaring parts of New South Wales to be a COVID-19 hotspot rather than the whole state has proved ineffective in containing the spread of COVID-19 from Victoria into New South Wales. The outbreaks in New South Wales has resulted in community transmission within the central and south-west Sydney region, with cases extending along the New South Wales coast north and south of Sydney. The unrestricted movement across New South Wales has also led to new cases presenting in regional areas well outside of the current declared areas, such as Albury. Limiting COVID-19 hotspots to parts of New South Wales will not address the public health risk. This risk is potentially increased due to unrestricted movement of people within New South Wales. The outbreak in Victoria and community transmission in New South Wales indicates seeding can occur outside of a hotspot and potentially spread interstate, before the full extent of the outbreak can be quantified due to the lag time in the onset of symptoms. Declaring the state of New South Wales a COVID-19 hotspot will address the public health risks and pre-emptively reduce the risk of COVID-19 entering Queensland.
- Similarly, the Australian Capital Territory has to be declared a COVID-19 hotspot not due to its current COVID-19 activity, but because of the risk associated with its geographical location. The Australian Capital Territory is geographically located within New South Wales, and there is unrestricted movement between the two jurisdictions. It poses a similar risk to the areas surrounding previously declared hotspots in New South Wales. Declaring the Australian Capital Territory as COVID-19 hotspots will assist in controlling the potential influx of COVID-19 cases and protect the Queensland community and enable Queensland to continue functioning as it is. Additionally, there have been circumstances of people seeking to enter Queensland from New South Wales via the Australian Capital Territory. This approach will mitigate that risk.
- Requiring a person who enters Queensland to agree to undergo a COVID-19 test if they develop symptoms is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) protects the rights to security of person and life (ss 16 and 29(1)). And the border zone recognises the greater impact of border restrictions on border zone residents. These exceptions are designed to tailor the limits on human rights to those necessary.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 need to address particular circumstances is considered under the Direction. For example, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

**Public Health Directions –
Border Restrictions Direction (No. 16)**

Title	<i>Border Restrictions Direction (No. 16)</i>
Date effective	14 October 2020

Background

The *Border Restrictions Direction (No. 16)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

As at 1 October 2020, the risk to Queenslanders of contracting COVID-19 is low. In the fortnight ending on 30 September 2020, Queensland reported five newly infectious cases. As at 1 October 2020 it has been 20 days since the last evidence of community transmission in Queensland.

The rate of growth of new cases in Queensland continues to remain low in absolute terms despite recent clusters. There are four active cases in Queensland, bringing the State's total to 1,157.

The last confirmed case of community transmission in Queensland was notified on 11 September 2020. In Queensland, a majority of cases to date (76 per cent) are related to overseas or interstate travel.

The current low numbers of new cases in Queensland indicates that Queensland's domestic border measures and monitoring of individuals in quarantine who enter from COVID-19 hotspots or overseas have been effective.

The number of new cases in Victoria and parts of New South Wales remain a concern to Queensland; and any cross-border, interstate travel presents a risk for community transmission in Queensland for as long as the virus continues to circulate in Australia. Although Victoria's daily numbers have significantly reduced over the past few weeks, there are still cases with no known source of infection, which is indicative of community transmission. Nationally, jurisdictions have reported approximately 394 active cases, with the majority of these being in Victoria (as at 1 October 2020).

However, the incidence of confirmed cases around the New South Wales and Queensland border is very low or nil. There have been no confirmed cases reported in the previous 28 days in areas of New South Wales along the border and only three cases in the Gold Coast LGA in the past 28 days, all linked to a known cluster and appropriately managed.

Changes to the Direction are needed to allow Queensland to prepare for disaster season. The Direction will add a right of entry for disaster management workers, with requirements to be set out in an approved protocol.

Given the decreasing risk nationally, the Direction will change the validity of a border declaration pass from 7 days to 14 days and allow unaccompanied minors to enter Queensland if met by a responsible adult who consents to quarantine with them.

The Direction also updates the requirements for how people can travel to quarantine or leave quarantine for permitted purposes such as that a person travelling in a taxi must travel in the back seat on the passenger side. The Direction will also include a new power for an emergency officer to direct a person in quarantine to wear a mask.

The Direction revokes and replaces *Borders Direction (No. 15)* at 3pm on 14 October 2020.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations.

Although cases in COVID-19 hotspots have reduced over the past few weeks, there is still ongoing transmission, which poses a risk to Queensland absent border restrictions.

Under the Direction, any person from another State or Territory that is not arriving from a COVID-19 hotspot and is not a confirmed case of COVID-19 may enter Queensland. Persons arriving from those jurisdictions may be subject to quarantine requirements, for example if the person develops symptoms consistent with COVID-19 while in Queensland.

All people entering Queensland will be required to complete a Queensland Border Declaration Pass and provide evidence of their identity. The only exceptions of people not required to complete the declaration pass are:

- maritime crew who are not required to complete a Queensland Border Declaration Pass under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency.

The Queensland Border Declaration Pass includes an undertaking that the person must have a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland. A fine of \$4,004 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction imposes additional quarantine requirements for persons permitted to enter who pose a higher risk to the community, including a person who has COVID-19, a person who has had known contact with a confirmed case of COVID-19, a person with symptoms of COVID-19 or a person permitted to enter from a declared COVID-19 hotspot. These requirements are a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from persons more likely to have the virus.

The Direction also restricts people from entering Queensland if they have been in a declared COVID-19 hotspot in the 14 days preceding entry. However, a limited category of people will still be permitted to enter Queensland subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. To date, Victoria, New South Wales and the Australian Capital Territory have been declared as COVID-19 hotspots.

Persons entering Queensland who are required to undergo mandatory quarantine will do so in government nominated premises, such as a hotel, for 14 days. The period of 14 days was based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care or supplies, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

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

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry.

Border zone residents are permitted to enter and remain in Queensland. However, a border zone resident must not enter Queensland if the person had travelled to a hotspot outside the border zone within the 14 days prior to entering Queensland. This Direction expands the border zone, permitting more people entry into Queensland.

Similarly, a border zone resident who resides in Queensland may enter and remain in the border zone in New South Wales. However, the person will be required to quarantine in accordance with the Direction if they enter a COVID-19 hotspot outside the border zone.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The Direction also requires specific individuals from other states and territories to quarantine at a government nominated premises prior to being able to move freely in Queensland, for example if the individual has symptoms consistent with COVID-19. The Direction limits the freedom of movement of border zone residents by preventing these people from entering Queensland if they have travelled to any other part of New South Wales not included in the border zone within the 14 days prior to entering Queensland. The Direction may also limit a border zone resident's right to work by limiting their movement within New South Wales.
- Everyone entering Queensland is also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to be tested.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot

- from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to self-quarantine for 14 days before they can return to work.
 - The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]. It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine, or be subjected to an additional 10 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.
 - Persons who develop symptoms while in Queensland will be required to submit to a COVID-19 test as per the undertaking in the Queensland Border Declaration Pass. This will limit their right to bodily integrity and personal autonomy.
 - Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
 - Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
 - Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days unless they can undertake 14 days of quarantine at their own expense.
 - Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty. Additionally, requiring a person to agree to undertake a COVID-19 test if they develop symptoms while in Queensland restricts a person's liberty by only allowing them to enter Queensland subject to conditions.
 - Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
 - Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly Victoria and New South Wales, which are currently experiencing community transmission of COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community.

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

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or supplies or in an emergency.

This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Declaring parts of New South Wales to be a COVID-19 hotspot rather than the whole state has proved ineffective in containing the spread of COVID-19 from Victoria into New South Wales. The outbreaks in New South Wales has resulted in community transmission within the central and south-west Sydney region, with cases extending along the New South Wales coast north and south of Sydney. The unrestricted movement across New South Wales has also led to new cases presenting in regional areas well outside of the current declared areas, such as Albury. Limiting COVID-19 hotspots to parts of New South Wales will not address the public health risk. This risk is potentially increased due to unrestricted movement of people within New South Wales. The outbreak in Victoria and community transmission in New South Wales indicates seeding can occur outside of a hotspot and potentially spread interstate, before the full extent of the outbreak can be quantified due to the lag time in the onset of symptoms. Declaring the state of New South Wales a COVID-19 hotspot will address the public health risks and pre-emptively reduce the risk of COVID-19 entering Queensland.
- Requiring a person who enters Queensland to agree to undergo a COVID-19 test if they develop symptoms is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) protects the rights to security of person and life (ss 16 and 29(1)). And the border zone recognises the greater impact of border restrictions on border zone residents. These exceptions are designed to tailor the limits on human rights to those necessary.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 need to address particular circumstances is considered under the Direction. For example, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

Public Health Directions – Human Rights Assessment
Border Restrictions Direction (No. 17)

Title	<i>Border Restrictions Direction (No. 17) and COVID-19 hotspots declaration</i>
Date effective	3 November 2020

Background

The *Border Restrictions Direction (No. 17)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

As at 20 October 2020, the risk to Queenslanders of contracting COVID-19 is low. In the fortnight ending on 28 October 2020, Queensland reported five newly infectious cases. As at 30 October 2020, it has been 50 days since the last evidence of community transmission in Queensland.

The rate of growth of new cases in Queensland continues to remain low in absolute terms despite recent clusters. There are five active cases in Queensland, bringing the State's total to 1,171.

The last confirmed case of community transmission in Queensland was notified on 10 September 2020. In Queensland, a majority of cases to date (76 per cent) are related to overseas or interstate travel.

The current low numbers of new cases in Queensland indicates that Queensland's domestic border measures and monitoring of individuals in quarantine who enter from COVID-19 hotspots or overseas have been effective.

Victoria's daily numbers have significantly reduced over the past few weeks, however there are still cases with no known source of infection, which is indicative of community transmission.

Over the last seven days prior to 28 October 2020, case numbers have stabilised nationally, with the total number of cases at 111 compared to 109 cases in the week prior.

Nationally, jurisdictions have reported approximately 217 active cases, with the majority of these being in Victoria (as at 27 October 2020).

Given the stabilising of risk nationally, changes to the Direction are appropriate to ease border restrictions to allow for people who have been in areas of New South Wales that do not have community transmission to enter Queensland without quarantining. Changes to the Direction will remove the border zone and continue to restrict entry to Queensland from all COVID-19 hotspots. 97 New South Wales local government areas (LGAs) including all postcodes that previously comprised the border zone will be undeclared as COVID-19 hotspots.

The Direction allows for a person to enter Queensland without quarantining if they have only transited through a COVID-19 hotspot, including a person disembarking the Spirit of Tasmania and immediately departing Victoria from an airport or by private vehicle road journey. The Direction allows a person to

exit their vehicle in a COVID-19 hotspot for essential fuel or fatigue management. These changes will allow people in New South Wales to travel through COVID-19 hotspots in New South Wales to Sydney airport to depart New South Wales for Queensland.

The Direction precludes a person who has had symptoms consistent with COVID-19 in the last 14 days from entering Queensland without a negative COVID-19 test result. The Direction makes changes to require a person to provide written evidence of a negative COVID-19 test. If a person is only able to provide a result in the form of a text message, further confirmation from the person's General Practitioner or a fever clinic may be sought.

The Direction revokes and replaces *Borders Direction (No. 16)* at 3pm on 3 November 2020.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations.

Although cases in COVID-19 hotspots have reduced over the past few weeks, there is still ongoing transmission, which poses a risk to Queensland.

Under the Direction, any person from another State or Territory that is not arriving from a COVID-19 hotspot and is not a confirmed case of COVID-19 may enter Queensland. Persons arriving from those jurisdictions may be subject to quarantine requirements, for example if the person develops symptoms consistent with COVID-19 while in Queensland.

All people entering Queensland will be required to complete a Queensland Border Declaration Pass and provide evidence of their identity. The only exceptions of people not required to complete the declaration pass are:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland

The Queensland Border Declaration Pass includes an undertaking that the person must have a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland. A fine of \$4,004 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction imposes additional quarantine requirements for persons permitted to enter who pose a higher risk to the community, including a person who has COVID-19, a person who has had known contact with a confirmed case of COVID-19, a person with symptoms of COVID-19 or a person permitted to enter from a declared COVID-19 hotspot. These requirements are a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from persons more likely to have the virus.

The Direction also restricts people from entering Queensland if they have been in a declared COVID-19 hotspot in the 14 days preceding entry. However, a limited category of people will still be permitted to enter Queensland subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. Currently, Victoria and 32 LGAs in New South Wales are declared as COVID-19 hotspots.

Persons entering Queensland who are required to undergo mandatory quarantine will do so in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care or supplies, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

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

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots or those awaiting results of COVID-19 tests from entering Queensland. The Direction also requires specific individuals from other states and territories to quarantine at a government nominated premises prior to being able to move freely in Queensland, for example if the individual has symptoms consistent with COVID-19.
- Everyone entering Queensland is also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to be tested.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.
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- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border

Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to self-quarantine for 14 days before they can return to work.

- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 10 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.
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- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty. Additionally, requiring a person to agree to undertake a COVID-19 test if they develop symptoms while in Queensland restricts a person's liberty by only allowing them to enter Queensland subject to conditions.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly Victoria and parts of New South Wales, which are currently experiencing community transmission of COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community.

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

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or supplies or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Declaring parts of New South Wales to be a COVID-19 hotspot rather than the whole state has proved ineffective in containing the spread of COVID-19 from Victoria into New South Wales. The outbreaks in New South Wales has resulted in community transmission within the central and south-west Sydney region, with cases extending along the New South Wales coast north and south of Sydney. The unrestricted movement across New South Wales has also led to new cases presenting in regional areas well outside of the current declared areas, such as Albury. Limiting COVID-19 hotspots to parts of New South Wales will not address the public health risk. This risk is potentially increased due to unrestricted movement of people within New South Wales. The outbreak in Victoria and community transmission in New South Wales indicates seeding can occur outside of a hotspot and potentially spread interstate, before the full extent of the outbreak can be quantified due to the lag time in the onset of symptoms. Declaring the state of New South Wales a COVID-19 hotspot will address the public health risks and pre-emptively reduce the risk of COVID-19 entering Queensland.
- Requiring a person who enters Queensland to agree to undergo a COVID-19 test if they develop symptoms is aimed at addressing the risk presented by COVID-19. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 need to address particular circumstances is considered under the Direction. For example, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

Public Health Directions – Human Rights Assessment
Border Restrictions Direction (No. 18)

Title	<i>Border Restrictions Direction (No. 18)</i>
Date effective	1 December 2020

Background

The *Border Restrictions Direction (No. 18)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

As at 27 November, it has been 73 days since a case of COVID-19 acquired in the community has been recorded, and all cases since 15 September 2020 have been overseas acquired and detected in quarantine. Currently, Queensland has 13 active cases, with a total of 1,198 cases to date.

The rate of growth of new cases in Queensland continues to remain low in absolute terms.

In the fortnight ending on 26 November 2020, Queensland reported 11 newly infectious cases. In the previous fortnight (ending 12 November 2020), 15 newly infectious cases were reported. All cases have been identified in quarantine and were overseas acquired.

The last confirmed case of community transmission in Queensland was notified on 10 September 2020. In Queensland, a majority of cases to date (76 per cent) are related to overseas or interstate travel.

The current low numbers of new cases in Queensland indicates that Queensland's domestic border measures and monitoring of individuals in quarantine who enter from COVID-19 hotspots or overseas have been effective.

Over the last seven days prior to 26 November 2020, case numbers have stabilised nationally with 83 cases reported in the past week (an average of 12 cases per day), compared to 87 cases reported in the week prior (an average of 12 cases per day).

The majority of cases were overseas acquired, with 10% of cases reported as locally acquired (including cases under investigation).

Given the stabilising of risk nationally, changes to the Direction are appropriate to ease border restrictions to allow for people who have been in areas of Greater Sydney and Victoria to enter Queensland without quarantining. Changes to the Direction will also remove the requirement for any person entering Queensland from another State or Territory to complete a Queensland Border Declaration Pass. Under the Direction, only those people who have been in a COVID-19 hotspot or overseas and are not arriving in Queensland as their first point of arrival in Australia will be required to complete a Border Pass.

The Direction also allows for a person who is in quarantine at the time a COVID-19 hotspot is undeclared to end their quarantine period prior to completing 14 days if they have had a negative

COVID-19 test result while in quarantine in Queensland and can declare that they have not been in an area that is still declared as a COVID-19 hotspot at the time they are seeking to end quarantine. This change will allow a person completing quarantine because they had been in Victoria or Greater Sydney to end quarantine on 1 December 2020.

The Direction revokes and replaces *Borders Direction (No. 17)* at 1am on 1 December 2020.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations.

Only people who have been in a COVID-19 hotspot in the 14 days prior to entering Queensland and those people who have been overseas are not arriving in Queensland as their first point of arrival in Australia will be required to complete a Queensland Border Declaration Pass. The same exceptions of people not required to complete the declaration pass will remain for the reduced cohort of people still required to complete a pass:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland

The Queensland Border Declaration Pass includes an undertaking that the person must have a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland. A fine of \$4,004 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction restricts people from entering Queensland if they have been in a declared COVID-19 hotspot in the 14 days preceding entry. However, limited categories of people will still be permitted to enter Queensland subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. Currently, 20 South Australian LGAs are declared as COVID-19 hotspots.

Persons entering Queensland who are required to undergo mandatory quarantine will do so in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not

putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care or supplies, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority. Under the Direction, a person may now end quarantine prior to completing 14 days if the COVID-19 hotspot they had been in the 14 days prior to entering Queensland is removed from the list of hotspots while they are in quarantine.

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

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

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.

- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a government nominated premises prior to being able to move freely in Queensland.
- People who have been in a COVID-19 hotspot or who arrive into Queensland as a domestic arrival after being overseas in the past 14 days are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to be tested.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to self-quarantine for 14 days before they can return to work.
- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 10 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.

- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
- Cultural rights – generally (section 27): The Direction limits a person’s ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of South Australia, which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community.

Additionally, requiring most people entering Queensland to self-quarantine in nominated premises is to confine potential outbreaks and enable appropriate support of self-quarantined individuals within available resources. It also enables monitoring and enforcement of the requirements under the Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is also in effect for a temporary period, and the restrictions as

applying to a person only last for 14-days, which is tied with the typical incubation period for COVID-19. Ultimately, the purpose of quarantine is to limit the opportunity for transmission of COVID-19 during the potential incubation period.

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or supplies or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In

addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.

- Requiring a person who enters Queensland from a COVID-19 hotspot to agree to undergo a COVID-19 test if they develop symptoms is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 need to address particular circumstances is considered under the Direction. For example, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health

need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

RTI RELEASE

Public Health Directions – Human Rights Assessment
Border restrictions Direction (No. 19)

Title	<i>Border restrictions Direction (No. 19)</i>
Date effective	19 December 2020

Background

The *Border Restrictions Direction (No. 19)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

As at 18 December 2020, it has been 94 days since a case of COVID-19 acquired in the Queensland community has been recorded, and all cases since 15 September 2020 have been overseas acquired and detected in quarantine. Currently, Queensland has 11 active cases, with a total of 1,233 cases to date.

The rate of growth of new cases in Queensland continues to remain low in absolute terms.

In the fortnight ending on 17 December 2020, Queensland reported 17 newly infectious cases. In the previous fortnight (ending 3 December 2020), 18 newly infectious cases were reported. All cases have been identified in quarantine and were overseas acquired.

The last confirmed case of community transmission in Queensland was notified on 10 September 2020. In Queensland, a majority of cases to date (76 per cent) are related to overseas or interstate travel.

The current low numbers of new cases in Queensland indicates that Queensland's domestic border measures and monitoring of individuals in quarantine who enter from COVID-19 hotspots or overseas have been effective.

However, on 16 December 2020, a new COVID-19 case was identified in New South Wales. The person works as a driver transporting international and domestic aircrew between the airport and their hotels. As at 17 December 2020, this case is still under investigation and urgent genome sequencing has been undertaken to confirm when this infection was acquired and whether it occurred as a result of contact with aircrew. It is reported that the case is likely a strain from the United States.

On 16 December 2020, a further 2 new cases were identified in a couple from the Northern Beaches area of Sydney. As at 17 December 2020, their source of infection is still under investigation and there have been no links found to other known cases. At this stage, no links have been established between these two cases and the previously reported case. However, it is reported that the case is likely also a strain from the United States.

On 17 December 2020, 3 new cases were identified in New South Wales. One is a man who works in a band and has reportedly 'travelled extensively' in the community while infectious. The other two

cases are a couple - a woman who works at a retirement village/aged care facility and a man who attended several RSLs for work.

The New South Wales Chief Health Officer stated that authorities are working on a theory that the virus spread may have originated at the Avalon RSL.

The aged care facility where one of the positive cases works has been closed to visitors, and residents and staff who have come into contact with the positive case have been asked to get tested and isolate. A number of aged care facilities on Sydney's Northern Beaches will be locked down to visitors while authorities try to contain the outbreak.

As at 6pm (Queensland time) on 17 December 2020, New South Wales Health was reporting an additional 12 cases in Sydney bringing the 'Northern Beaches cluster' to a total of 17 cases.

As at 17 December 2020, 17 people have tested positive for COVID-19 in Sydney's Northern Beaches, New South Wales.

As at 10am 18 December 2020, a further 11 cases have been recorded, almost all confirmed from the 'Northern Beaches cluster'. This brings the cluster to a total of 28 cases.

The latest outbreak of COVID-19 cases means changes to the Direction are appropriate to declare the affected local government areas in New South Wales as COVID-19 hotspots and reinstate border restrictions for people coming to Queensland from Sydney's Northern Beaches.

The Direction takes effect at 1am on 19 December 2020.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations.

Only people who have been in a COVID-19 hotspot in the 14 days or from the start time of the declared hotspot, whichever period is shorter, prior to entering Queensland will be required to complete a Queensland Border Declaration Pass. The same exceptions of people not required to complete the declaration pass will remain for the reduced cohort of people still required to complete a pass:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland

The Queensland Border Declaration Pass includes an undertaking that the person must have a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland. A fine of \$4,004 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. However, limited categories of people will still be permitted to enter Queensland subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. Currently, one New South Wales LGA is declared as COVID-19 hotspots.

Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care or supplies, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority. Under the Direction, a person may now end quarantine prior to completing 14 days if the COVID-19 hotspot they had been prior to entering Queensland is removed from the list of hotspots while they are in quarantine.

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

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

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a government nominated premises prior to being able to move freely in Queensland.
- People who have been in a COVID-19 hotspot are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to be tested.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.

- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to self-quarantine for 14 days before they can return to work.
- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 10 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.
- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days, or from the start of declared hotspot, whichever period is shorter, unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and

- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of New South Wales, which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community.

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

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or supplies or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Requiring a person who enters Queensland from a COVID-19 hotspot to agree to undergo a COVID-19 test if they develop symptoms is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting

and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.

- 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 need to address particular circumstances is considered under the Direction. For example, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

Public Health Directions – Human Rights Assessment
Border restrictions Direction (No. 20)

Title	<i>Border restrictions Direction (No. 20)</i>
Date effective	19 December 2020

Background

The *Border Restrictions Direction (No. 20)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

As at 19 December 2020, it has been 95 days since Queensland last recorded a case of COVID-19 acquired in the community. Currently, Queensland has 10 active cases, with a total of 1,232 cases to date.

It has been 2 days since a case was infectious in the community. A case was reported on 17 December 2020 which has been linked to the NSW Northern Beaches cluster. This case returned by road to NSW on 17 December 2020. Contact tracing in one of the locations the person visited in Queensland is continuing.

In the fortnight ending on 18 December 2020, Queensland reported 12 newly infectious cases. In the previous fortnight (ending 4 December 2020) 21 new infectious cases were reported. Of the new cases reported since 5 October 2020, 63 of the 69 new cases reported were detected in hotel quarantine after arriving from overseas. The difference of 7 includes one case linked to the NSW Northern Beaches cluster which will be reported in Queensland statistics, however not counted as an active case as the person returned to NSW; two cases from a marine vessel; a case detected in hospital after quarantine was completed; a case acquired in hotel quarantine; and two historical cases.

As at 19 December 2020, a total of 28,072 cases of COVID-19 have been reported in Australia, including 908 deaths. Over the last 24 hours (as at 19 December 2020), 22 new cases were reported nationally, 6 of which were overseas acquired and 16 locally acquired. The most recent locally acquired cases detected outside of quarantine were reported in New South Wales on 17 December 2020.

The cluster in Sydney's Northern Beaches (also known as the Avalon cluster) is continuing to grow. As at 8pm on 18 December 2020 there were 38 cases associated with the cluster. Further cases have been reported on 19 December 2020 and the extent of the cluster is not yet known.

The latest outbreak of COVID-19 cases in New South Wales means changes to the Direction are appropriate to ensure people who have been in New South Wales after 1am on 11 December 2020 complete a Queensland Border Declaration Pass. The Queensland Border Declaration Pass requires a person to declare whether:

- they have been overseas
- they have been in a COVID-19 hotspot
- they have had known contact with a person who was a known case of COVID-19

- they have had symptoms consistent with COVID-19
- they are a confirmed case of COVID-19 or cleared case of COVID-19
- they have been tested for COVID-19 and has not yet received the results of that test.

As part of the Queensland Border Declaration Pass, a person must also provide personal details including their name, date of birth, phone number, address, email address and if requested evidence of their identity, Queensland residential address or any other information or documents requested by an emergency officer.

The changes to the Direction require the following people to complete a Queensland Border Declaration Pass:

- a person who has been in a COVID-19 hotspot in the previous 14 days or since the start date identified for the COVID-19 hotspot, whichever is shorter; or
- a person who has been in New South Wales from 1am on 11 December 2020. The Northern Beaches Local Government Area has been declared a hotspot from 1 am on 11 December 2020.

Given the extent of the Avalon cluster is currently unknown it is necessary to gather information about the movements and health status of every person who has been in New South Wales from 1am on 11 December 2020 seeking to enter Queensland. People seeking to enter Queensland from the Northern Beaches will only be permitted to enter Queensland in limited circumstances and in most cases will have to complete mandatory hotel quarantine.

Additional restrictions are imposed and lifted in response to evidence of community outbreaks to ensure the safety of Queenslanders. While responses to COVID-19 community clusters have been managed well, it is important to mitigate against further clusters through effective screening of people who have been in New South Wales since 11 December 2020 to ensure seeding in Queensland can be avoided.

The Direction takes effect at 1am on 20m December 2020.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations.

Anyone who is seeking to enter Queensland who has been in New South Wales from 1am on 11 December 2020 will be required to complete a Queensland Border Declaration Pass. The same exceptions of people not required to complete the declaration pass will remain:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland

The Queensland Border Declaration Pass includes an undertaking that the person must have a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland. A fine of \$4,004 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. However, limited categories of people will still be permitted to enter Queensland subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. Currently, one New South Wales LGA is declared as COVID-19 hotspot.

Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care or supplies, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority. Under the Direction, a person may now end quarantine prior to completing 14 days if the COVID-19 hotspot had been prior to entering Queensland is removed from the list of hotspots while they are in quarantine.

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19

test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

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

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a government nominated premises prior to being able to move freely in Queensland.
- People who have been in an identified COVID-19 hotspot in the previous 14 days or have been in New South Wales from 11 December 2020 are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to be tested.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in

Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.

- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to self-quarantine for 14 days before they can return to work.
- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 10 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.
- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days, or from the start of declared hotspot, whichever period is shorter, unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in exceptional circumstances. Additionally, the restriction against visitors to the

nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.

- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of New South Wales, which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community.

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or supplies or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Requiring a person who enters Queensland from a COVID-19 hotspot or New South Wales to agree to undergo a COVID-19 test if they develop symptoms is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.

- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 need to address particular circumstances is considered under the Direction. For example, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

Public Health Directions – Human Rights Assessment
Border restrictions Direction (No. 21)

Title	<i>Border restrictions Direction (No. 21)</i>
Date effective	22 December 2020

Background

The *Border Restrictions Direction (No. 20)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

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.

This Direction has been amended from the previous Direction (No. 20) to align definitions with other public health directions for international arrivals.

A cluster in Sydney's Northern Beaches (also known as the Avalon cluster) is continuing to grow. The latest outbreak of COVID-19 cases in New South Wales means it is appropriate for Direction to ensure people who have been in New South Wales after 1am on 11 December 2020 complete a Queensland Border Declaration Pass. The Queensland Border Declaration Pass requires a person to declare whether:

- they have been overseas
- they have been in a COVID-19 hotspot
- they have had known contact with a person who was a known case of COVID-19
- they have had symptoms consistent with COVID-19
- they are a confirmed case of COVID-19 or cleared case of COVID-19
- they have been tested for COVID-19 and has not yet received the results of that test.

As part of the Queensland Border Declaration Pass, a person must also provide personal details including their name, date of birth, phone number, address, email address and if requested evidence of their identity, Queensland residential address or any other information or documents requested by an emergency officer.

The changes to the Direction require the following people to complete a Queensland Border Declaration Pass:

- a person who has been in a COVID-19 hotspot in the previous 14 days or since the start date identified for the COVID-19 hotspot, whichever is shorter; or

- a person who has been in New South Wales from 1am on 11 December 2020. The Northern Beaches Local Government Area has been declared a hotspot from 1 am on 11 December 2020.

Given the extent of the Avalon cluster is currently unknown it is necessary to gather information about the movements and health status of every person who has been in New South Wales from 1am on 11 December 2020 seeking to enter Queensland. People seeking to enter Queensland from the Northern Beaches will only be permitted to enter Queensland in limited circumstances and in most cases will have to complete mandatory hotel quarantine.

Additional restrictions are imposed and lifted in response to evidence of community outbreaks to ensure the safety of Queenslanders. While responses to COVID-19 community clusters have been managed well, it is important to mitigate against further clusters through effective screening of people who have been in New South Wales since 11 December 2020 to ensure seeding in Queensland can be avoided.

The Direction takes effect at 1am on 22nd December 2020.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations.

Anyone who is seeking to enter Queensland who has been in New South Wales from 1am on 11 December 2020 will be required to complete a Queensland Border Declaration Pass. The same exceptions of people not required to complete the declaration pass will remain:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland

The Queensland Border Declaration Pass includes an undertaking that the person must have a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland. A fine of \$4,004 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. However, limited categories of people will still be permitted to enter Queensland subject to meeting the relevant entry requirements. This includes, but is not limited to,

returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. Currently, one New South Wales LGA is declared as COVID-19 hotspot.

Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care or supplies, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority. Under the Direction, a person may now end quarantine prior to completing 14 days if the COVID-19 hotspot they had been prior to entering Queensland is removed from the list of hotspots while they are in quarantine.

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

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

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a government nominated premises prior to being able to move freely in Queensland.
- People who have been in an identified COVID-19 hotspot in the previous 14 days or have been in New South Wales from 11 December 2020 are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to be tested.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot

- from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to self-quarantine for 14 days before they can return to work.
 - The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 10 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.
 - Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
 - Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
 - Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days, or from the start of declared hotspot, whichever period is shorter, unless they can undertake 14 days of quarantine at their own expense.
 - Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
 - Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
 - Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and

- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of New South Wales, which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community.

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or supplies or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the

number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.

- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Requiring a person who enters Queensland from a COVID-19 hotspot or New South Wales to agree to undergo a COVID-19 test if they develop symptoms is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 need to address particular circumstances is considered under the Direction. For example, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

RTI RELEASE

Public Health Directions – Human Rights Assessment
Border Restrictions Direction (No. 22)

Title	<i>Border Restrictions Direction (No. 22)</i>
Date effective	31 January 2021

Background

The *Border Restrictions Direction (No. 22)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

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.

This Direction has been amended from the previous Direction (No. 21) to remove the specific requirement for every person from New South Wales to complete a Queensland Border Declaration Pass. This in response to the removal of all New South Wales local government areas as COVID-19 hotspots from 1:00 am on 1 February 2021.

On 31 January 2021, the Premier of Western Australia announced that the Perth Metropolitan area, Peel region and South West regions would enter a five-day lockdown. This was in response to a confirmed case of COVID-19 in a security guard, who works in hotel quarantine in Perth. At the time the security guard was working in the quarantine hotel, there were also two cases of the UK variant and one case of the South African variant in the hotel. Western Australian authorities have released a lengthy list of possible exposure sites that the security guard has visited while potentially infectious.

As a result, in Queensland a separate hotspot declaration is being prepared to declare the Perth, Peel and South West areas of Western Australia as hotspots, until further information about the extent of any potential outbreak in Western Australia is known. This means it is appropriate for Direction to ensure people who have been in Western Australia complete a Queensland Border Declaration Pass. Requiring all people from Western Australia to complete a pass assists processing and triaging entry of people at airports.

The Queensland Border Declaration Pass requires a person to declare whether:

- they have been overseas
- they have been in a COVID-19 hotspot
- they have had known contact with a person who was a known case of COVID-19
- they have had symptoms consistent with COVID-19

- they are a confirmed case of COVID-19 or cleared case of COVID-19
- they have been tested for COVID-19 and has not yet received the results of that test.

As part of the Queensland Border Declaration Pass, a person must also provide personal details including their name, date of birth, phone number, address, email address and if requested evidence of their identity, Queensland residential address or any other information or documents requested by an emergency officer.

The changes to the Direction require the following people to complete a Queensland Border Declaration Pass:

- a person who has been in a COVID-19 hotspot in the previous 14 days or since the start date identified for the COVID-19 hotspot, whichever is shorter; or
- a person who has been in an Australian State or Territory with a COVID-19 hotspot since the start date identified for the COVID-19 hotspot in that State or Territory.

Given the extent of the Perth cluster is currently unknown it is necessary to gather information about the movements and health status of every person who has been in Western Australia seeking to enter Queensland. People seeking to enter Queensland from the declared hotspots within Western Australia will only be permitted to enter Queensland in limited circumstances and in most cases will have to complete mandatory hotel quarantine.

Additional restrictions are imposed and lifted in response to evidence of community outbreaks to ensure the safety of Queenslanders. While responses to COVID-19 community clusters have been managed well, it is important to mitigate against further clusters through effective screening of people who have been in Western Australia to ensure seeding in Queensland can be avoided.

The Direction takes effect at 1am on 22nd December 2020.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations.

Anyone who is seeking to enter Queensland who has been in Western Australia will be required to complete a Queensland Border Declaration Pass. The same exceptions of people not required to complete the declaration pass will remain:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland

The Queensland Border Declaration Pass includes an undertaking that the person must have a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland. A fine of \$4,004 will

apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. However, limited categories of people will still be permitted to enter Queensland subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. Currently, Perth and surrounding LGAs are to be declared as COVID-19 hotspot.

Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care or supplies, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority. Under the Direction, a person may now end quarantine prior to completing 14 days if the COVID-19 hotspot they had been prior to entering Queensland is removed from the list of hotspots while they are in quarantine.

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed.

They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

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

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a government nominated premises prior to being able to move freely in Queensland.
- People who have been in an identified COVID-19 hotspot in the previous 14 days or have been in the State or Territory where the COVID-19 hotspot is located are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to be tested.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter

Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.

- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to self-quarantine for 14 days before they can return to work.
- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 10 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.
- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days, or from the start of declared hotspot, whichever period is shorter, unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.

- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of Australia which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community.

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or supplies or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated

with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Requiring a person who enters Queensland from a COVID-19 hotspot or a State or Territory with a COVID-19 hotspot to agree to undergo a COVID-19 test if they develop symptoms is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting

and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.

- 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 need to address particular circumstances is considered under the Direction. For example, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

Public Health Directions – Human Rights Assessment
Border Restrictions Direction (No. 23)

Title	<i>Border Restrictions Direction (No. 23)</i>
Date effective	22 February 2021

Background

The *Border Restrictions Direction (No. 23)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

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.

This Direction has been amended from the previous Direction (No. 22) to incorporate strengthened infection control measures for persons arriving from COVID-19 hotspots required to quarantine in Queensland.

The Direction takes effect at midday on 19 February 2021.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations.

Anyone who is seeking to enter Queensland who has:

- been in a COVID-19 hotspot in the previous 14 days or since the start date identified for the COVID-19 hotspot, whichever is shorter; or
- been in a State or Territory with a COVID-19 hotspot in the previous 14 days

will be required to complete a Queensland Border Declaration Pass.

The same exceptions of people not required to complete the declaration pass will remain:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and

- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland

The Queensland Border Declaration Pass includes an undertaking that the person must have a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland. A fine of \$4,004 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. However, limited categories of people will still be permitted to enter Queensland subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19.

Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

Any travel to and from a nominated quarantine premises when a person is permitted to leave their nominated premises must be via ambulance service, emergency services vehicle or transport arranged by a government authority. If a person needs to leave quarantine for essential medical care, transport must be via ambulance service both to the hospital or other facility and when returning to the nominated premises, if applicable.

Under the Direction, a person may now end quarantine prior to completing 14 days if the COVID-19 hotspot they had been prior to entering Queensland is removed from the list of hotspots while they are in quarantine.

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

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

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

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.

- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a government nominated premises prior to being able to move freely in Queensland.
- People who have been in an identified COVID-19 hotspot in the previous 14 days or have been in the State or Territory where the COVID-19 hotspot is located are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to be tested.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to self-quarantine for 14 days before they can return to work.
- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 10 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.

- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
- Cultural rights – generally (section 27): The Direction limits a person’s ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days, or from the start of declared hotspot, whichever period is shorter, unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in extreme exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of Australia which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community.

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

19. Ultimately, the purpose of quarantine is to limit the opportunity for transmission of COVID-19 during the potential incubation period.

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Requiring a person who enters Queensland from a COVID-19 hotspot or a State or Territory with a COVID-19 hotspot to agree to undergo a COVID-19 test if they develop symptoms is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need

to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 need to address particular circumstances is considered under the Direction. For example, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

Public Health Directions – Human Rights Assessment
Border Restrictions Direction (No. 24)

Title	<i>Border Restrictions Direction (No. 24)</i>
Date effective	22 February 2021

Background

The *Border Restrictions Direction (No. 24)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

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 takes effect at 12.01 am on 24 April 2021.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations.

Anyone who is seeking to enter Queensland who has:

- been in a COVID-19 hotspot in the previous 14 days or since the start date identified for the COVID-19 hotspot, whichever is shorter; or
- been in a State or Territory with a COVID-19 hotspot in the previous 14 days

will be required to complete a Queensland Border Declaration Pass.

The same exceptions of people not required to complete the declaration pass will remain:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and

- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland

The Queensland Border Declaration Pass includes an undertaking that the person must have a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland. A fine of \$4,004 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. However, limited categories of people will still be permitted to enter Queensland subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19.

Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

Any travel to and from a nominated quarantine premises when a person is permitted to leave their nominated premises must be via ambulance service, emergency services vehicle or transport arranged by a government authority. If a person needs to leave quarantine for essential medical care, transport must be via ambulance service both to the hospital or other facility and when returning to the nominated premises, if applicable.

Under the Direction, a person may now end quarantine prior to completing 14 days if the COVID-19 hotspot they had been prior to entering Queensland is removed from the list of hotspots while they are in quarantine.

Those in quarantine are also prohibited from allowing others to enter the nominated premises unless the person also resides in the premises for the purpose of complying with the direction, enters to

provide emergency or medical care to a person at the premises, or is otherwise required or permitted under a direction given by a relevant authority.

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

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

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

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement

for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.

- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a government nominated premises prior to being able to move freely in Queensland.
- People who have been in an identified COVID-19 hotspot in the previous 14 days or have been in the State or Territory where the COVID-19 hotspot is located are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to be tested.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work.
- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 10 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 10 day quarantine.
- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a

person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.

- Cultural rights – generally (section 27): The Direction limits a person’s ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days, or from the start of declared hotspot, whichever period is shorter, unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in extreme exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of Australia which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community.

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Requiring a person who enters Queensland from a COVID-19 hotspot or a State or Territory with a COVID-19 hotspot to agree to undergo a COVID-19 test if they develop symptoms is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need

to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 need to address particular circumstances is considered under the Direction. For example, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

Public Health Directions – Human Rights Assessment
Border Restrictions Direction (No. 2425)

Title	<i>Border Restrictions Direction (No. <u>2425</u>)</i>
Date effective	<u>22 February 18 June 2021 at 1am</u>

Background

The *Border Restrictions Direction (No. 2425)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

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 *Border Restrictions Direction (No. 25)*. The Direction has been updated to:

- Provide that a Queensland resident or New South Wales border zone resident who has only been in the New South Wales border zone or Queensland in the previous 14 days and is entering Queensland by road will not have to complete a Queensland Border Declaration Pass, unless a COVID-19 hotspot has been declared in the New South Wales border zone;
- Provide that a person who refuses to undertake a COVID-19 test when requested by an emergency officer will be quarantined for an additional 14 days from the end of their quarantine period;
- Introduce the endorsed transport provider requirements; and
- Other minor clarifications.

~~The Direction takes effect at 12.01 am on 24 April 2021.~~

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations.

Anyone who is seeking to enter Queensland who has:

- been in a COVID-19 hotspot in the previous 14 days or since the start date identified for the COVID-19 hotspot, whichever is shorter; or
- been in a State or Territory with a COVID-19 hotspot in the previous 14 days

will be required to complete a Queensland Border Declaration Pass.

The same exceptions of people not required to complete the declaration pass will remain:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland; and
- -a Queensland resident or New South Wales border zone resident who has only been in the New South Wales border zone or Queensland in the previous 14 days and is entering Queensland by road will not have to complete a Queensland Border Declaration Pass, unless a COVID-19 hotspot has been declared in the New South Wales border zone.

The Queensland Border Declaration Pass includes an undertaking that the person must have a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland. A fine of \$4,004 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. However, limited categories of people will still be permitted to enter Queensland subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19.

Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care, to

comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

Under the Direction, transport operators engaged to transport quarantined persons to and from quarantine hotels or other premises must be endorsed by a government authority and have a transport plan in place.

Any travel to and from a nominated quarantine premises when a person is permitted to leave their nominated premises must be via ambulance service, emergency services vehicle or transport arranged by a government authority. If a person needs to leave quarantine for essential medical care, transport must be via ambulance service both to the hospital or other facility and when returning to the nominated premises, if applicable.

Under the Direction, a person may ~~now~~ end quarantine prior to completing 14 days if the COVID-19 hotspot they had been prior to entering Queensland is removed from the list of hotspots while they are in quarantine.

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

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

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test. A person will be detained for a further period of ~~10-14~~ days if the person denies an emergency officer's (public health) request to be tested.

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a government nominated premises prior to being able to move freely in Queensland. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days.
- People who have been in an identified COVID-19 hotspot in the previous 14 days or have been in the State or Territory where the COVID-19 hotspot is located are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to be tested.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).

- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work.
- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional ~~10~~ **14** days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional ~~10-14~~ day quarantine.
- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days, or from the start of declared hotspot, whichever period is shorter, unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in extreme exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of Australia which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community.

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Requiring a person who enters Queensland from a COVID-19 hotspot or a State or Territory with a COVID-19 hotspot to agree to undergo a COVID-19 test if they develop symptoms is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.

- 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 need to address particular circumstances is considered under the Direction. For example, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

Public Health Directions – Human Rights Assessment
Border Restrictions Direction (No. 26)

Title	<i>Border Restrictions Direction (No. 26)</i>
Date effective	28 June 2021 at 1am

Background

The *Border Restrictions Direction (No. 26)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

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 *Border Restrictions Direction (No. 25)*. The Direction has been updated to:

- remove the requirement for a person who has been in a State or Territory with a declared COVID-19 hotspot to complete a Queensland Border Declaration Pass. These people will only be required to complete a Queensland Travel Declaration under the *Queensland Travel Declaration Direction (No.3)*; and
- require a Queensland resident or New South Wales border zone resident who has only been in the New South Wales border zone or Queensland in the previous 14 days and is entering Queensland by road to complete a Queensland Border Declaration Pass if required under the Direction.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations.

Anyone who is seeking to enter Queensland who has been in a COVID-19 hotspot in the previous 14 days or since the start date identified for the COVID-19 hotspot, whichever is shorter will be required to complete a Queensland Border Declaration Pass.

The following exceptions of people not required to complete the declaration pass will remain:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;

- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland.

The Queensland Border Declaration Pass includes an undertaking that the person must have a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland. A fine of \$4,004 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. However, limited categories of people will still be permitted to enter Queensland subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19.

Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

Under the Direction, transport operators engaged to transport quarantined persons to and from quarantine hotels or other premises must be endorsed by a government authority and have a transport plan in place.

Any travel to and from a nominated quarantine premises when a person is permitted to leave their nominated premises must be via ambulance service, emergency services vehicle or transport arranged

by a government authority. If a person needs to leave quarantine for essential medical care, transport must be via ambulance service both to the hospital or other facility and when returning to the nominated premises, if applicable.

Under the Direction, a person may end quarantine prior to completing 14 days if the COVID-19 hotspot they had been prior to entering Queensland is removed from the list of hotspots while they are in quarantine.

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

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

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test. A person will be detained for a further period of 14 days if the person denies an emergency officer's (public health) request to be tested.

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and

residents of non-hotspot areas. The definition of ‘discrimination’ under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.

- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual’s rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person’s ability to make an autonomous decision about medical treatment. A person’s right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a government nominated premises prior to being able to move freely in Queensland. The Direction limits this right by restricting a person’s movement to any other premises, other than in essential or emergency situations, for 14 days.
- People who have been in an identified COVID-19 hotspot in the previous 14 days or have been in the State or Territory where the COVID-19 hotspot is located are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to be tested.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person’s religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one’s property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people’s right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person’s right to

work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work.

- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 14 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 14 day quarantine.
- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days, or from the start of declared hotspot, whichever period is shorter, unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in extreme exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland
- requirement for people entering Queensland who have been in a COVID-19 hotspot to complete a Queensland Border Declaration Pass.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of Australia which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community.

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and

services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.

- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Requiring a person who enters Queensland from a COVID-19 hotspot to agree to undergo a COVID-19 test if they develop symptoms is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Additionally, only those people who have been in a COVID-19 hotspot are required to complete a Queensland Border Declaration Pass. Anyone else entering Queensland is only required to complete the less onerous Queensland Travel Declaration. The Queensland Travel Declaration requires a person to provide less personal information in recognition that the public health risk is lower for a person who has not been in a COVID-19 hotspot.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 need to address particular circumstances is considered under the Direction. For example, people may continue to enter Queensland to receive essential health care subject to confirmation from a

prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

RTI RELEASED

Public Health Directions – Human Rights Assessment
Border Restrictions Direction (No. 27)

Title	<i>Border Restrictions Direction (No. 27)</i>
Date effective	15 July 2021

Background

The *Border Restrictions Direction (No. 27)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

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 *Border Restrictions Direction (No. 26)*. The Direction has been updated to require a person entering Queensland who has been in a declared COVID-19 hotspot in the last 14 days or since the identified start date for the COVID-19 hotspot, whichever is shorter, to provide the following information on their Queensland Border Declaration Pass:

- whether they have been to an interstate exposure venue during the relevant exposure period; and
- an undertaking that they will monitor interstate exposure venues once every 24 hours from the time they complete the Queensland Border Declaration Pass and for the 14 days after they enter Queensland.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations.

Anyone who is seeking to enter Queensland who has been in a COVID-19 hotspot in the previous 14 days or since the start date identified for the COVID-19 hotspot, whichever is shorter will be required to complete a Queensland Border Declaration Pass.

The following exceptions of people not required to complete the declaration pass will remain:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;

- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland.

The Queensland Border Declaration Pass includes undertakings that the person will present for a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland and monitor interstate exposure venues daily for 14 days following entry. A fine of \$4,135 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. However, limited categories of people will still be permitted to enter Queensland subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19.

Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

Under the Direction, transport operators engaged to transport quarantined persons to and from quarantine hotels or other premises must be endorsed by a government authority and have a transport plan in place.

Any travel to and from a nominated quarantine premises when a person is permitted to leave their nominated premises must be via ambulance service, emergency services vehicle or transport arranged

by a government authority. If a person needs to leave quarantine for essential medical care, transport must be via ambulance service both to the hospital or other facility and when returning to the nominated premises, if applicable.

Under the Direction, a person may end quarantine prior to completing 14 days if the COVID-19 hotspot they had been prior to entering Queensland is removed from the list of hotspots while they are in quarantine.

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

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

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test. A person will be detained for a further period of 14 days if the person denies an emergency officer's (public health) request to be tested.

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and

residents of non-hotspot areas. The definition of ‘discrimination’ under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.

- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual’s rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person’s ability to make an autonomous decision about medical treatment. A person’s right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a government nominated premises prior to being able to move freely in Queensland. The Direction limits this right by restricting a person’s movement to any other premises, other than in essential or emergency situations, for 14 days.
- People who have been in an identified COVID-19 hotspot in the previous 14 days or have been in the State or Territory where the COVID-19 hotspot is located are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland and to monitor the interstate exposure venues daily for 14 days following entry. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to provide these undertakings.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person’s religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one’s property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
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Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work.

- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 14 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 14 day quarantine.
- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
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- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in extreme exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland

- requirement for people entering Queensland who have been in a COVID-19 hotspot to complete a Queensland Border Declaration Pass.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of Australia which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community.

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the

number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.

- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Requiring a person who enters Queensland from a COVID-19 hotspot to agree to undergo a COVID-19 test if they develop symptoms is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Additionally, only those people who have been in a COVID-19 hotspot are required to complete a Queensland Border Declaration Pass. Anyone else entering Queensland is only required to complete the less onerous Queensland Travel Declaration. The Queensland Travel Declaration requires a person to provide less personal information in recognition that the public health risk is lower for a person who has not been in a COVID-19 hotspot.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 need to address particular circumstances is considered under the Direction. For example, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

RTI RELEASED

Public Health Directions – Human Rights Assessment
Border Restrictions Direction (No. 28)

Title	<i>Border Restrictions Direction (No. 28)</i>
Date effective	23 July 2021

Background

The *Border Restrictions Direction (No. 28)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

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 *Border Restrictions Direction (No. 27)*. The Direction has been updated to introduce new requirements for residents of the New South Wales border zone and Queensland residents travelling to the New South Wales border zone and then seeking to re-enter Queensland.

The Direction will:

- introduce a New South Wales border zone
- allow a New South Wales border zone resident who has not been in a COVID-19 hotspot outside of the border zone, to enter Queensland for a permitted purpose
- allow a Queensland resident to re-enter Queensland from the border zone without quarantining if they entered the border zone for a permitted purpose
- permitted purposes for entering Queensland from the border zone and vice versa are:
 - to obtain food or other goods or services for the personal needs of the household or other household purposes, including for pets, and for vulnerable persons
 - to obtain medical care or supplies or other health care services
 - to perform work or volunteering
 - to provide assistance, care or support to a family member or to fulfil other caring responsibilities
 - to attend any court or tribunal of Australia or to comply with or give effect to orders of the court or tribunal of Australia
 - to attend a childcare facility, school, university, or other educational institution
 - to attend organised sport
 - to assist with or participate in an investigation or other action by a law enforcement authority, whether voluntarily or not

- for children under 18 years who do not live in the same household as their biological parents or siblings or one of their parents or siblings, continuing existing arrangements for access to, and contact between, parents and children and siblings
- avoiding injury or illness or to escape a risk of harm
- to comply with or give effect to the exercise of a power or function of a government agency or entity under a law
- for the purpose of obtaining a COVID-19 test
- in the event of an emergency situation
- to obtain a COVID-19 vaccination
- A New South Wales border zone resident/Queensland resident is not permitted to enter Queensland/the border zone without an exemption for the following reasons:
 - to attend a wedding or funeral
 - to exercise (apart from organised sport)
 - for recreational purposes, including but not limited to holidaying, spectating at professional sporting events or attending cinemas, theme parks or other tourist experiences.

The Direction will also require freight and logistics operators entering Queensland who have been in a declared COVID-19 hotspot in the last 14 days or since the identified start date for the COVID-19 hotspot, whichever is shorter, to provide the following information on their Queensland Border Declaration Pass:

- whether they have been in an affected area (the Fairfield, Liverpool and Canterbury-Bankstown local government areas in the State of New South Wales) in the last 14 days
- for freight and logistics operators who have left the confines of their vehicle in an affected area, whether they have undertaken a COVID-19 test in the 72 hours immediately prior to entering Queensland and received a negative COVID-19 test result within 7 days prior to entering Queensland
- for freight and logistics operators who have not left the confines of their vehicle in an affected area, whether they have received a negative COVID-19 test result within 7 days prior to entering Queensland

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations. In addition to the changes from the previous version of the direction to include a NSW border zone, the direction achieves its purpose as follows.

Anyone who is seeking to enter Queensland who has been in a COVID-19 hotspot in the previous 14 days or since the start date identified for the COVID-19 hotspot, whichever period is shorter, will be required to complete a Queensland Border Declaration Pass.

The following exceptions of people not required to complete the declaration pass will remain:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with

- a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland.

The Queensland Border Declaration Pass includes undertakings that the person will present for a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland and monitor interstate exposure venues daily for 14 days following entry. A fine of \$4,135 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. However, limited categories of people will still be permitted to enter Queensland subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19.

Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

Under the Direction, transport operators engaged to transport quarantined persons to and from quarantine hotels or other premises must be endorsed by a government authority and have a transport plan in place.

Any travel to and from a nominated quarantine premises when a person is permitted to leave their nominated premises must be via ambulance service, emergency services vehicle or transport arranged by a government authority. If a person needs to leave quarantine for essential medical care, transport must be via ambulance service both to the hospital or other facility and when returning to the nominated premises, if applicable.

Under the Direction, a person may end quarantine prior to completing 14 days if the COVID-19 hotspot they had been prior to entering Queensland is removed from the list of hotspots while they are in quarantine.

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

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

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test. A person will be detained for a further period of 14 days if the person denies an emergency officer's (public health) request to be tested.

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry. The changes to the Direction support updates to the *Operational protocol for freight movements entering Queensland* to introduce mandatory COVID-19 testing for freight and logistics operators. Under the new protocol, a freight and logistics operator who does not comply with the below testing requirements are not permitted to enter Queensland:

- freight and logistics operators who have been in COVID-19 hotspots must have received a negative COVID-19 test within 7 days of entering Queensland and maintain a rolling 7-day routine testing cycle while they continue to travel into and out of COVID-19 hotspots
- freight and logistics operators who have left the confines of their vehicle in an affected area (Fairfield, Liverpool and Canterbury-Bankstown LGAs in NSW) must have undertaken a COVID-19 test in the 72 hours immediately prior to entering Queensland to be permitted to enter Queensland and have had a negative COVID-19 test result within 7 days of entering Queensland. These drivers must maintain a rolling 3-day testing cycle until they leave

Queensland or 14 days have passed since they were in the affected area, whichever is shorter.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits these workers' ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a government nominated premises prior to being able to move freely in Queensland. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days.
- People who have been in an identified COVID-19 hotspot in the previous 14 days are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland and to monitor the interstate exposure venues daily for 14 days following entry. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to provide these undertakings.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.

- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits a freight and logistics operator's right to work by prohibiting them from entering Queensland if they have not complied with the mandatory COVID-19 testing requirements.
- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 14 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 14 day quarantine.
- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days, or from the start of declared hotspot, whichever period is shorter, unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in extreme exceptional circumstances. Additionally, the restriction against visitors to

the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.

- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland
- requirement for people entering Queensland who have been in a COVID-19 hotspot to complete a Queensland Border Declaration Pass
- requirement for freight and logistics operators who have been in COVID-19 hotspots to comply with mandatory COVID-19 testing obligations.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of Australia which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community. However, NSW's current epidemiological situation indicates there is a potentially lower risk of transmission presented by NSW border zone residents who have not left the border zone and travelled further into NSW in the previous 14 days. Accordingly, border zone residents are permitted to enter Queensland for essential reasons and vice versa.

Introducing mandatory testing requirements for freight and logistics operators will reduce the risk of COVID-19 cases arriving from interstate and having contact with the Queensland community, given freight and logistics operators are permitted to enter and travel through Queensland without quarantining for 14 days.

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results or who haven't complied with mandatory COVID-19 testing obligations from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Requiring a person who enters Queensland from a COVID-19 hotspot to agree to undergo a COVID-19 test if they develop symptoms and requiring freight and logistics operators to undergo mandatory COVID-19 testing prior to entering Queensland is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Additionally, only those people who have been in a COVID-19 hotspot are required to complete a Queensland Border Declaration Pass. Anyone else entering Queensland is only required to complete the less onerous Queensland Travel Declaration. The Queensland Travel Declaration requires a person to provide less personal information in recognition that the public health risk is lower for a person who has not been in a COVID-19 hotspot.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 need to address particular circumstances is considered under the Direction. For example, as NSW's current epidemiological situation indicates there is a potentially lower risk of transmission presented by NSW border zone residents, these residents are permitted to enter Queensland for essential reasons provided they have not left the border zone in the previous 14 days. Also, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

fair balance between the human rights it limits and the need to reduce the risk of COVID-19 spreading into Queensland.

RTI RELEASE

Public Health Directions – Human Rights Assessment
Border Restrictions Direction (No. 30)

Title	<i>Border Restrictions Direction (No. 30)</i>
Date effective	26 July 2021

Background

The *Border Restrictions Direction (No. 30)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

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 *Border Restrictions Direction (No. 29)*. The Direction has been updated to add additional new South Wales local government areas as affected areas: Cumberland and Blacktown. This change will operate to require freight and logistics operators from more local government areas to be subject to more frequent surveillance testing requirements under the *Operational protocol for freight movements entering Queensland*.

The Direction will continue to require freight and logistics operators entering Queensland who have been in a declared COVID-19 hotspot in the last 14 days or since the identified start date for the COVID-19 hotspot, whichever is shorter, to provide the following information on their Queensland Border Declaration Pass:

- whether they have been in an affected area (the Fairfield, Liverpool, Canterbury-Bankstown, Cumberland and Blacktown local government areas in the State of New South Wales) in the last 14 days
- for freight and logistics operators who have left the confines of their vehicle in an affected area, whether they have undertaken a COVID-19 test in the 72 hours immediately prior to entering Queensland and received a negative COVID-19 test result within 7 days prior to entering Queensland
- for freight and logistics operators who have not left the confines of their vehicle in an affected area, whether they have received a negative COVID-19 test result within 7 days prior to entering Queensland

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations. In addition to the changes from the previous version of the direction to include a NSW border zone, the direction achieves its purpose as follows.

Anyone who is seeking to enter Queensland who has been in a COVID-19 hotspot in the previous 14 days or since the start date identified for the COVID-19 hotspot, whichever period is shorter, will be required to complete a Queensland Border Declaration Pass.

The following exceptions of people not required to complete the declaration pass will remain:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland.

The Queensland Border Declaration Pass includes undertakings that the person will present for a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland and monitor interstate exposure venues daily for 14 days following entry. A fine of \$4,135 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. However, limited categories of people will still be permitted to enter Queensland subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19.

Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease.

Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

Under the Direction, transport operators engaged to transport quarantined persons to and from quarantine hotels or other premises must be endorsed by a government authority and have a transport plan in place.

Any travel to and from a nominated quarantine premises when a person is permitted to leave their nominated premises must be via ambulance service, emergency services vehicle or transport arranged by a government authority. If a person needs to leave quarantine for essential medical care, transport must be via ambulance service both to the hospital or other facility and when returning to the nominated premises, if applicable.

Under the Direction, a person may end quarantine prior to completing 14 days if the COVID-19 hotspot they had been prior to entering Queensland is removed from the list of hotspots while they are in quarantine.

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

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

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test. A person will be detained for a further period of 14 days if the person denies an emergency officer's (public health) request to be tested.

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry. The changes to the Direction support updates to the *Operational protocol for freight movements entering Queensland* to introduce mandatory COVID-19 testing for freight and logistics operators. Under the new protocol, a freight and logistics operator who does not comply with the below testing requirements are not permitted to enter Queensland:

- freight and logistics operators who have been in COVID-19 hotspots must have received a negative COVID-19 test within 7 days of entering Queensland and maintain a rolling 7-day routine testing cycle while they continue to travel into and out of COVID-19 hotspots
- freight and logistics operators who have left the confines of their vehicle in an affected area (Fairfield, Liverpool and Canterbury-Bankstown LGAs in NSW) must have undertaken a COVID-19 test in the 72 hours immediately prior to entering Queensland to be permitted to enter Queensland and have had a negative COVID-19 test result within 7 days of entering Queensland. These drivers must maintain a rolling 3-day testing cycle until they leave Queensland or 14 days have passed since they were in the affected area, whichever is shorter.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits these workers' ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a

government nominated premises prior to being able to move freely in Queensland. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days.

- People who have been in an identified COVID-19 hotspot in the previous 14 days are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland and to monitor the interstate exposure venues daily for 14 days following entry. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to provide these undertakings.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits a freight and logistics operator's right to work by prohibiting them from entering Queensland if they have not complied with the mandatory COVID-19 testing requirements.
- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018) 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 14 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 14 day quarantine.
- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.

- Cultural rights – generally (section 27): The Direction limits a person’s ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days, or from the start of declared hotspot, whichever period is shorter, unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in extreme exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland
- requirement for people entering Queensland who have been in a COVID-19 hotspot to complete a Queensland Border Declaration Pass
- requirement for freight and logistics operators who have been in COVID-19 hotspots to comply with mandatory COVID-19 testing obligations.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of Australia which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community. However, NSW’s current epidemiological situation indicates there is a potentially lower risk of transmission presented by NSW border zone residents who have not left the border zone and travelled further into NSW in the previous 14 days. Accordingly, border zone residents are permitted to enter Queensland for essential reasons and vice versa.

Expanding mandatory testing requirements for freight and logistics operators will reduce the risk of COVID-19 cases arriving from interstate and having contact with the Queensland community, given freight and logistics operators are permitted to enter and travel through Queensland without quarantining for 14 days.

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results or who haven't complied with mandatory COVID-19 testing obligations from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.

- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Requiring a person who enters Queensland from a COVID-19 hotspot to agree to undergo a COVID-19 test if they develop symptoms and requiring freight and logistics operators to undergo mandatory COVID-19 testing prior to entering Queensland is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Additionally, only those people who have been in a COVID-19 hotspot are required to complete a Queensland Border Declaration Pass. Anyone else entering Queensland is only required to complete the less onerous Queensland Travel Declaration. The Queensland Travel Declaration requires a person to provide less personal information in recognition that the public health risk is lower for a person who has not been in a COVID-19 hotspot.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 need to address particular circumstances is considered under the Direction. For example, as NSW's current epidemiological situation indicates there is a potentially lower risk of transmission presented by NSW border zone residents, these residents are permitted to enter Queensland for essential reasons provided they have not left the border zone in the previous 14 days. Also, people

may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

Public Health Directions – Human Rights Assessment
Border Restrictions Direction (No. 31)

Title	<i>Border Restrictions Direction (No. 31)</i>
Date effective	30 July 2021

Background

The *Border Restrictions Direction (No. 31)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

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 *Border Restrictions Direction (No. 30)*. The Direction has been updated to allow people permitted to enter Queensland from South Australian or Victorian hotspots, to quarantine at home subject to the following conditions:

- the person entering Queensland by air;
- the person travelling directly to the residence by private vehicle, or in a private vehicle driven a family member, friend or household member
- the private residence is no more than 2 hours safe driving distance from the person's point of arrival in Queensland; and
- the private residence does not have shared amenities other than those that can be accessed by persons who usually occupy the residence.

The Direction has also been updated to provide that subject to the following conditions, a person in hotel quarantine from a South Australian or Victorian hotspot may be transferred to home quarantine:

- completing a quarantine transfer declaration and providing their contact details and private residence address where they will complete quarantine (no more than 2 hours safe driving distance from the hotel);
- having obtained at least one negative COVID-19 test result;
- the person travelling directly to the residence by private vehicle, or in a private vehicle driven a family member, friend or household member; and
- the private residence does not have shared amenities other than those that can be accessed by persons who usually occupy the residence.

The Direction has also been updated to add additional new South Wales local government areas as affected areas: Parramatta, Campbelltown and Georges River. This change will operate to require freight and logistics operators from more local government areas to be subject to more frequent surveillance testing requirements under the *Operational protocol for freight movements entering Queensland*.

The Direction will continue to require freight and logistics operators entering Queensland who have been in a declared COVID-19 hotspot in the last 14 days or since the identified start date for the COVID-19 hotspot, whichever is shorter, to provide the following information on their Queensland Border Declaration Pass:

- whether they have been in an affected area (the Fairfield, Liverpool, Canterbury-Bankstown, Cumberland, Blacktown, Parramatta, Campbelltown and Georges River local government areas in the State of New South Wales) in the last 14 days
- for freight and logistics operators who have left the confines of their vehicle in an affected area, whether they have undertaken a COVID-19 test in the 72 hours immediately prior to entering Queensland and received a negative COVID-19 test result within 7 days prior to entering Queensland
- for freight and logistics operators who have not left the confines of their vehicle in an affected area, whether they have received a negative COVID-19 test result within 7 days prior to entering Queensland

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations. In addition to the changes from the previous version of the direction to include a NSW border zone, the direction achieves its purpose as follows.

Anyone who is seeking to enter Queensland who has been in a COVID-19 hotspot in the previous 14 days or since the start date identified for the COVID-19 hotspot, whichever period is shorter, will be required to complete a Queensland Border Declaration Pass.

The following exceptions of people not required to complete the declaration pass will remain:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland.

The Queensland Border Declaration Pass includes undertakings that the person will present for a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland and monitor

interstate exposure venues daily for 14 days following entry. A fine of \$4,135 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. However, limited categories of people will still be permitted to enter Queensland subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19.

Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

Under the Direction, transport operators engaged to transport quarantined persons to and from quarantine hotels or other premises must be endorsed by a government authority and have a transport plan in place.

Any travel to and from a nominated quarantine premises when a person is permitted to leave their nominated premises must be via ambulance service, emergency services vehicle or transport arranged by a government authority. If a person needs to leave quarantine for essential medical care, transport must be via ambulance service both to the hospital or other facility and when returning to the nominated premises, if applicable.

Under the Direction, a person may end quarantine prior to completing 14 days if the COVID-19 hotspot they had been prior to entering Queensland is removed from the list of hotspots while they are in quarantine.

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

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

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test. A person will be detained for a further period of 14 days if the person denies an emergency officer's (public health) request to be tested.

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry. The changes to the Direction support updates to the *Operational protocol for freight movements entering Queensland* to introduce mandatory COVID-19 testing for freight and logistics operators. Under the new protocol, a freight and logistics operator who does not comply with the below testing requirements are not permitted to enter Queensland:

- freight and logistics operators who have been in COVID-19 hotspots must have received a negative COVID-19 test within 7 days of entering Queensland and maintain a rolling 7-day routine testing cycle while they continue to travel into and out of COVID-19 hotspots
- freight and logistics operators who have left the confines of their vehicle in an affected area (Fairfield, Liverpool and Canterbury-Bankstown LGAs in NSW) must have undertaken a COVID-19 test in the 72 hours immediately prior to entering Queensland to be permitted to enter Queensland and have had a negative COVID-19 test result within 7 days of entering Queensland. These drivers must maintain a rolling 3-day testing cycle until they leave Queensland or 14 days have passed since they were in the affected area, whichever is shorter.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits these workers' ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a government nominated premises prior to being able to move freely in Queensland. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days.
- People who have been in an identified COVID-19 hotspot in the previous 14 days are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland and to monitor the interstate exposure venues daily for 14 days following entry. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to provide these undertakings.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot

- from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits a freight and logistics operator's right to work by prohibiting them from entering Queensland if they have not complied with the mandatory COVID-19 testing requirements.
 - The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 14 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 14 day quarantine.
 - Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
 - Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
 - Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days, or from the start of declared hotspot, whichever period is shorter, unless they can undertake 14 days of quarantine at their own expense.
 - Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
 - Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in extreme exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
 - Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland
- requirement for people entering Queensland who have been in a COVID-19 hotspot to complete a Queensland Border Declaration Pass
- requirement for freight and logistics operators who have been in COVID-19 hotspots to comply with mandatory COVID-19 testing obligations.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of Australia which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community. However, NSW's current epidemiological situation indicates there is a potentially lower risk of transmission presented by NSW border zone residents who have not left the border zone and travelled further into NSW in the previous 14 days. Accordingly, border zone residents are permitted to enter Queensland for essential reasons and vice versa.

Expanding mandatory testing requirements for freight and logistics operators will reduce the risk of COVID-19 cases arriving from interstate and having contact with the Queensland community, given freight and logistics operators are permitted to enter and travel through Queensland without quarantining for 14 days.

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results or who haven't complied with mandatory COVID-19 testing obligations from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Requiring a person who enters Queensland from a COVID-19 hotspot to agree to undergo a COVID-19 test if they develop symptoms and requiring freight and logistics operators to undergo mandatory COVID-19 testing prior to entering Queensland is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Additionally, only those people who have been in a COVID-19 hotspot are required to complete a Queensland Border Declaration Pass. Anyone else entering Queensland is only required to complete the less onerous Queensland Travel Declaration. The Queensland Travel Declaration requires a person to provide less personal information in recognition that the public health risk is lower for a person who has not been in a COVID-19 hotspot.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 need to address particular circumstances is considered under the Direction. For example, as NSW's current epidemiological situation indicates there is a potentially lower risk of transmission presented by NSW border zone residents, these residents are permitted to enter Queensland for essential reasons provided they have not left the border zone in the previous 14 days. Also, a less restrictive approach is applied to travellers from South Australian and Victorian hotspots based on the epidemiological situation in those jurisdictions. In certain circumstances, these travellers will be permitted to quarantine at home rather than a government nominated hotel.

Also, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

fair balance between the human rights it limits and the need to reduce the risk of COVID-19 spreading into Queensland.

RTI RELEASE

Public Health Directions – Human Rights Assessment
Border Restrictions Direction (No. 32)

Title	<i>Border Restrictions Direction (No. 32)</i>
Date effective	8 August 2021

Background

The *Border Restrictions Direction (No. 32)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

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 *Border Restrictions Direction (No. 31)*. The Direction has been updated to remove the option for travellers from Victorian hotspots to quarantine at home.

The Direction has also been updated to add additional new South Wales local government areas as affected areas: Parramatta, Campbelltown and Georges River. This change will operate to require freight and logistics operators from more local government areas to be subject to more frequent surveillance testing requirements under the *Operational protocol for freight movements entering Queensland*.

The Direction will continue to require freight and logistics operators entering Queensland who have been in a declared COVID-19 hotspot in the last 14 days or since the identified start date for the COVID-19 hotspot, whichever is shorter, to provide the following information on their Queensland Border Declaration Pass:

- whether they have been in an affected area (the Fairfield, Liverpool, Canterbury Bankstown, Cumberland, Blacktown, Parramatta, Campbelltown and Georges River local government areas in the State of New South Wales) in the last 14 days
- for freight and logistics operators who have left the confines of their vehicle in an affected area, whether they have undertaken a COVID-19 test in the 72 hours immediately prior to entering Queensland and received a negative COVID-19 test result within 7 days prior to entering Queensland
- for freight and logistics operators who have not left the confines of their vehicle in an affected area, whether they have received a negative COVID-19 test result within 7 days prior to entering Queensland.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations. In addition to the changes from the previous version of the direction to include a NSW border zone, the direction achieves its purpose as follows.

Anyone who is seeking to enter Queensland who has been in a COVID-19 hotspot in the previous 14 days or since the start date identified for the COVID-19 hotspot, whichever period is shorter, will be required to complete a Queensland Border Declaration Pass.

The following exceptions of people not required to complete the declaration pass will remain:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland.

The Queensland Border Declaration Pass includes undertakings that the person will present for a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland and monitor interstate exposure venues daily for 14 days following entry. A fine of \$4,135 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. However, limited categories of people will still be permitted to enter Queensland subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19.

Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease.

Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

Under the Direction, transport operators engaged to transport quarantined persons to and from quarantine hotels or other premises must be endorsed by a government authority and have a transport plan in place.

Any travel to and from a nominated quarantine premises when a person is permitted to leave their nominated premises must be via ambulance service, emergency services vehicle or transport arranged by a government authority. If a person needs to leave quarantine for essential medical care, transport must be via ambulance service both to the hospital or other facility and when returning to the nominated premises, if applicable.

Under the Direction, a person may end quarantine prior to completing 14 days if the COVID-19 hotspot they had been prior to entering Queensland is removed from the list of hotspots while they are in quarantine.

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

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

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test. A person will be detained for a further period of 14 days if the person denies an emergency officer's (public health) request to be tested.

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry. The changes to the Direction support updates to the *Operational protocol for freight movements entering Queensland* to introduce mandatory COVID-19 testing for freight and logistics operators. Under the new protocol, a freight and logistics operator who does not comply with the below testing requirements are not permitted to enter Queensland:

- freight and logistics operators who have been in COVID-19 hotspots must have received a negative COVID-19 test within 7 days of entering Queensland and maintain a rolling 7-day routine testing cycle while they continue to travel into and out of COVID-19 hotspots
- freight and logistics operators who have left the confines of their vehicle in an affected area (Fairfield, Liverpool and Canterbury-Bankstown LGAs in NSW) must have undertaken a COVID-19 test in the 72 hours immediately prior to entering Queensland to be permitted to enter Queensland and have had a negative COVID-19 test result within 7 days of entering Queensland. These drivers must maintain a rolling 3-day testing cycle until they leave Queensland or 14 days have passed since they were in the affected area, whichever is shorter.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits these workers' ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a

government nominated premises prior to being able to move freely in Queensland. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days.

- People who have been in an identified COVID-19 hotspot in the previous 14 days are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland and to monitor the interstate exposure venues daily for 14 days following entry. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to provide these undertakings.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits a freight and logistics operator's right to work by prohibiting them from entering Queensland if they have not complied with the mandatory COVID-19 testing requirements.
- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 14 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 14 day quarantine.
- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.

- Cultural rights – generally (section 27): The Direction limits a person’s ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days, or from the start of declared hotspot, whichever period is shorter, unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in extreme exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland
- requirement for people entering Queensland who have been in a COVID-19 hotspot to complete a Queensland Border Declaration Pass
- requirement for freight and logistics operators who have been in COVID-19 hotspots to comply with mandatory COVID-19 testing obligations.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of Australia which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community. However, NSW’s current epidemiological situation indicates there is a potentially lower risk of transmission presented by NSW border zone residents who have not left the border zone and travelled further into NSW in the previous 14 days. Accordingly, border zone residents are permitted to enter Queensland for essential reasons and vice versa.

Expanding mandatory testing requirements for freight and logistics operators will reduce the risk of COVID-19 cases arriving from interstate and having contact with the Queensland community, given freight and logistics operators are permitted to enter and travel through Queensland without quarantining for 14 days.

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results or who haven't complied with mandatory COVID-19 testing obligations from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.

- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from COVID-19 hotspots with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Requiring a person who enters Queensland from a COVID-19 hotspot to agree to undergo a COVID-19 test if they develop symptoms and requiring freight and logistics operators to undergo mandatory COVID-19 testing prior to entering Queensland is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Additionally, only those people who have been in a COVID-19 hotspot are required to complete a Queensland Border Declaration Pass. Anyone else entering Queensland is only required to complete the less onerous Queensland Travel Declaration. The Queensland Travel Declaration requires a person to provide less personal information in recognition that the public health risk is lower for a person who has not been in a COVID-19 hotspot.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 need to address particular circumstances is considered under the Direction. For example, as NSW's current epidemiological situation indicates there is a potentially lower risk of transmission presented by NSW border zone residents, these residents are permitted to enter Queensland for essential reasons provided they have not left the border zone in the previous 14 days. A least

restrictive approach is still applied to travellers from South Australian hotspots based on the epidemiological situation in that jurisdiction. In certain circumstances, these travellers will still be permitted to quarantine at home rather than a government nominated hotel. Existing exceptions to hotel quarantine under the Direction will continue to apply to travellers from other hotspots, for example for domestic air crew, who are permitted to quarantine at their residence in Queensland.

Also, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from a hotspot, and the freedom of movement.

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

Public Health Directions – Human Rights Assessment
Border Restrictions Direction (No. 33)

Title	<i>Border Restrictions Direction (No. 33)</i>
Date effective	XX August 2021

Background

The *Border Restrictions Direction (No. 33)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

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 has been updated to introduce additional restrictions on border zone residents who have been in a lockdown (stay at home) zone inside the border zone in the preceding 14 days.

Prior to this update, Queensland residents and New South Wales border zone residents were able to move between Queensland and the New South Wales border zone for a wide range of permitted purposes provided they had not travelled to a declared COVID-19 hotspot outside the border zone in the preceding 14 days.

In response to the NSW Government's stay-at-home orders for local government areas within the border zone including Byron Shire, Brewarrina Shire, Burke Shire, Richmond Valley, City of Lismore, Ballina Shire and Walgett Shire, the Direction has been updated to reflect a new category for identifying those LGAs to be known as a lockdown (stay at home) zone. This new category will require that anyone who enters Queensland, including border zone residents, who have been in the LGAs of Ballina Shire, Brewarrina Shire, Burke Shire, Byron Shire, City of Lismore, Richmond Valley or Walgett Shire to follow the NSW stay-at-home restrictions while in Queensland.

If a border zone resident has been in a lockdown (stay at home) zone in the preceding 14 days, the Direction provides that they may only enter Queensland for an essential purpose specified in the Direction, and may only remain in Queensland for the time necessary to perform that essential purpose. Conversely, the Direction also provides that a Queensland resident who is returning from a lockdown (stay at home zone) may home quarantine if they entered the lockdown zone for a listed essential purpose, but must complete quarantine in a government nominated facility if they were in the lockdown zone for any other purpose.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from either a lockdown (stay at home) zone or a COVID-19 hotspot respond to an acute public health risk identified in these locations. The inclusion of a lockdown (stay at home) zone allows for the Direction to impose more specific requirements for travellers from those areas than for those traveling from a COVID-19 hotspot to reflect the higher risk profile of the lockdown (stay at home) zone, particularly given the proximity of the four local government areas in the lockdown (stay at home) zone to the Queensland border. In addition to some other minor clarifying amendments, the Direction achieves its purpose as follows.

Anyone who is seeking to enter Queensland who has been in either a lockdown (stay at home) zone or COVID-19 hotspot during the relevant period, will be required to complete a Queensland Border Declaration Pass.

The following exceptions of people not required to complete the declaration pass will remain:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland.

The Queensland Border Declaration Pass includes undertakings that the person will present for a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland and monitor interstate exposure venues daily for 14 days following entry. A fine of \$4,135 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. The lockdown (stay at home) zone is within the declared COVID-19 hotspot of NSW and subject to this restriction.

However, limited categories of people will still be permitted to enter Queensland from either a lockdown (stay at home) zone or COVID-19 hotspot subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from either a lockdown (stay at home) zone or a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community

transmission of COVID-19. However, reasons for entry to Queensland from a lockdown (stay at home) zone recognise its place in the border zone and allow for border zone and Queensland residents to continue to cross between Queensland and New South Wales for limited, essential activities.

Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

Under the Direction, persons traveling from either a lockdown (stay at home) zone or a COVID-19 hotspot within the relevant period must observe the 14 day quarantine requirements unless entry is for a permitted purpose, or entry is for one of the limited essential purposes for a border zone resident. A Queensland resident may undertake home quarantine where they return from being in a lockdown (stay at home) zone for one of the limited essential purposes provided in the Direction.

Under the Direction, transport operators engaged to transport quarantined persons to and from quarantine hotels or other premises must be endorsed by a government authority and have a transport plan in place.

Any travel to and from a nominated quarantine premises when a person is permitted to leave their nominated premises must be via ambulance service, emergency services vehicle or transport arranged by a government authority. If a person needs to leave quarantine for essential medical care, transport must be via ambulance service both to the hospital or other facility and when returning to the nominated premises, if applicable.

Under the Direction, a person may end quarantine prior to completing 14 days if either a lockdown (stay at home) zone or the COVID-19 hotspot they had been prior to entering Queensland is removed from the list of areas requiring quarantine while they are in quarantine.

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

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

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test. A person will be detained for a further period of 14 days if the person denies an emergency officer's (public health) request to be tested.

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry. The Direction support updates to the *Operational protocol for freight movements entering Queensland* to introduce mandatory COVID-19 testing for freight and logistics operators. Under the new protocol, a freight and logistics operator who does not comply with the below testing requirements are not permitted to enter Queensland:

- freight and logistics operators who have been in COVID-19 hotspots must have received a negative COVID-19 test within 7 days of entering Queensland and maintain a rolling 7-day routine testing cycle while they continue to travel into and out of COVID-19 hotspots
- freight and logistics operators who have left the confines of their vehicle in an affected area (Fairfield, Liverpool and Canterbury-Bankstown LGAs in NSW) must have undertaken a COVID-19 test in the 72 hours immediately prior to entering Queensland to be permitted to enter Queensland and have had a negative COVID-19 test result within 7 days of entering Queensland. These drivers must maintain a rolling 3-day testing cycle until they leave Queensland or 14 days have passed since they were in the affected area, whichever is shorter.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.

- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits these workers' ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a government nominated premises prior to being able to move freely in Queensland. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days.
- People who have been in an identified COVID-19 hotspot in the previous 14 days are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland and to monitor the interstate exposure venues daily for 14 days following entry. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to provide these undertakings.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements*

entering Queensland also limits a freight and logistics operator's right to work by prohibiting them from entering Queensland if they have not complied with the mandatory COVID-19 testing requirements.

- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 14 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 14 day quarantine.
- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days, or from the start of declared hotspot, whichever period is shorter, unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in extreme exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland
- requirement for people entering Queensland who have been in a COVID-19 hotspot to complete a Queensland Border Declaration Pass

- requirement for freight and logistics operators who have been in COVID-19 hotspots to comply with mandatory COVID-19 testing obligations.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of Australia which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community. However, NSW's current epidemiological situation indicates there is a potentially lower risk of transmission presented by NSW border zone residents who have not left the border zone and travelled further into NSW in the previous 14 days. Accordingly, border zone residents are permitted to enter Queensland for essential reasons and vice versa.

Expanding mandatory testing requirements for freight and logistics operators will reduce the risk of COVID-19 cases arriving from interstate and having contact with the Queensland community, given freight and logistics operators are permitted to enter and travel through Queensland without quarantining for 14 days.

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results or who haven't complied with mandatory COVID-19 testing obligations from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with

COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from either a lockdown (stay at home) zone or a COVID-19 hotspot with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Requiring a person who enters Queensland from either a lockdown (stay at home) zone or a COVID-19 hotspot to agree to undergo a COVID-19 test if they develop symptoms and requiring freight and logistics operators to undergo mandatory COVID-19 testing prior to entering Queensland is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Additionally, only those people who have been in either a lockdown (stay at home) zone or a COVID-19 hotspot are required to complete a Queensland Border Declaration Pass. Anyone else entering Queensland is only required to complete the less onerous Queensland Travel Declaration. The Queensland Travel Declaration requires a person to provide less personal information in recognition that the public health risk is lower for a person who has not been in either a lockdown (stay at home) zone or a COVID-19 hotspot.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 need to address particular circumstances is considered under the Direction. For example, as NSW's current epidemiological situation indicates there is a potentially lower risk of transmission presented by NSW border zone residents, these residents are permitted to enter Queensland for essential reasons provided they have not left the border zone or been in a lockdown (stay at home) zone in the previous 14 days. A least restrictive approach is still applied to travellers from South Australian hotspots based on the epidemiological situation in that jurisdiction. In certain circumstances, these travellers will still be permitted to quarantine at home rather than a government nominated hotel. Existing exceptions to hotel quarantine under the Direction will continue to apply to travellers from other hotspots, for example for domestic air crew, who are permitted to quarantine at their residence in Queensland.

Also, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from either a lockdown (stay at home) zone or a COVID-19 hotspot, and the freedom of movement.

However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) particularly given the proximity of the lockdown (stay at home) zone to the Queensland border 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
Border Restrictions Direction (No. 34)

Title	<i>Border Restrictions Direction (No. 34)</i>
Date effective	13 August 2021

Background

The *Border Restrictions Direction (No. 34)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

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 has been updated with a minor amendment to the definition of permitted purpose for which a border zone resident may travel into Queensland if they have not been within a locked down area travelled to a declared COVID-19 hotspot outside the border zone in the preceding 14 days. The amendment includes removing the term *essential* from the permitted purpose of '*essential work or volunteering*' to minimise any confusion between the higher threshold for border zone residents traveling to and from a declared COVID-19 hotspot or lockdown (stay at home) area.

Previously, Queensland residents and New South Wales border zone residents were able to move between Queensland and the New South Wales border zone for a wide range of permitted purposes provided they had not travelled to a declared COVID-19 hotspot outside the border zone in the preceding 14 days.

In response to the NSW Government's stay-at-home orders for local government areas within the border zone including Byron Shire, Brewarrina Shire, Bourke Shire, Richmond Valley, City of Lismore, Ballina Shire and Walgett Shire, the Direction has been updated to reflect a new category for identifying those LGAs to be known as a lockdown (stay at home) zone. This new category will require that anyone who enters Queensland, including border zone residents, who have been in the LGAs of Ballina Shire, Brewarrina Shire, Bourke Shire, Byron Shire, City of Lismore, Richmond Valley or Walgett Shire to follow the NSW stay-at-home restrictions while in Queensland.

The Direction has also been updated to bring forward the effective start date for the local government areas within the border zone identified as a lockdown (stay at home) zone from 31 July 2021, or 9 August 2021, as declared by the New South Wales Government, to be from 12 August 2021. The purpose of this change is to reflect that there is a low risk of transmission from these Local Government areas in the period prior to 12 August 2021.

If a border zone resident has been in a lockdown (stay at home) zone in the preceding 14 days, the Direction provides that they may only enter Queensland for an essential purpose specified in the Direction, and may only remain in Queensland for the time necessary to perform that essential purpose. Conversely, the Direction also provides that a Queensland resident who is returning from a lockdown (stay at home) zone may home quarantine if they entered the lockdown zone for a listed essential purpose, but must complete quarantine in a government nominated facility if they were in the lockdown zone for any other purpose.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from either a lockdown (stay at home) zone or a COVID-19 hotspot respond to an acute public health risk identified in these locations. The inclusion of a lockdown (stay at home) zone allows for the Direction to impose more specific requirements for travellers from those areas than for those traveling from a COVID-19 hotspot to reflect the higher risk profile of the lockdown (stay at home) zone, particularly given the proximity of the four local government areas in the lockdown (stay at home) zone to the Queensland border. In addition to some other minor clarifying amendments, the Direction achieves its purpose as follows.

Anyone who is seeking to enter Queensland who has been in either a lockdown (stay at home) zone or COVID-19 hotspot during the relevant period, will be required to complete a Queensland Border Declaration Pass.

The following exceptions of people not required to complete the declaration pass will remain:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland.

The Queensland Border Declaration Pass includes undertakings that the person will present for a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland and monitor interstate exposure venues daily for 14 days following entry. A fine of \$4,135 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. The lockdown (stay at home) zone is within the declared COVID-19 hotspot of NSW and subject to this restriction.

However, limited categories of people will still be permitted to enter Queensland from either a lockdown (stay at home) zone or COVID-19 hotspot subject to meeting the relevant entry

requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from either a lockdown (stay at home) zone or a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. However, reasons for entry to Queensland from a lockdown (stay at home) zone recognise its place in the border zone and allow for border zone and Queensland residents to continue to cross between Queensland and New South Wales for limited, essential activities.

Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

Under the Direction, persons traveling from either a lockdown (stay at home) zone or a COVID-19 hotspot within the relevant period must observe the 14 day quarantine requirements unless entry is for a permitted purpose, or entry is for one of the limited essential purposes for a border zone resident. A Queensland resident may undertake home quarantine where they return from being in a lockdown (stay at home) zone for one of the limited essential purposes provided in the Direction.

Under the Direction, transport operators engaged to transport quarantined persons to and from quarantine hotels or other premises must be endorsed by a government authority and have a transport plan in place.

Any travel to and from a nominated quarantine premises when a person is permitted to leave their nominated premises must be via ambulance service, emergency services vehicle or transport arranged by a government authority. If a person needs to leave quarantine for essential medical care, transport must be via ambulance service both to the hospital or other facility and when returning to the nominated premises, if applicable.

Under the Direction, a person may end quarantine prior to completing 14 days if either a lockdown (stay at home) zone or the COVID-19 hotspot they had been prior to entering Queensland is removed from the list of areas requiring quarantine while they are in quarantine.

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

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

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test. A person will be detained for a further period of 14 days if the person denies an emergency officer's (public health) request to be tested.

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry. The Direction support updates to the *Operational protocol for freight movements entering Queensland* to introduce mandatory COVID-19 testing for freight and logistics operators. Under the new protocol, a freight and logistics operator who does not comply with the below testing requirements are not permitted to enter Queensland:

- freight and logistics operators who have been in COVID-19 hotspots must have received a negative COVID-19 test within 7 days of entering Queensland and maintain a rolling 7-day routine testing cycle while they continue to travel into and out of COVID-19 hotspots
- freight and logistics operators who have left the confines of their vehicle in an affected area (Fairfield, Liverpool and Canterbury-Bankstown LGAs in NSW) must have undertaken a COVID-19 test in the 72 hours immediately prior to entering Queensland to be permitted to enter Queensland and have had a negative COVID-19 test result within 7 days of entering Queensland. These drivers must maintain a rolling 3-day testing cycle until they leave Queensland or 14 days have passed since they were in the affected area, whichever is shorter.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits these workers' ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a government nominated premises prior to being able to move freely in Queensland. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days.
- People who have been in an identified COVID-19 hotspot in the previous 14 days are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland and to monitor the interstate exposure venues daily for 14 days following entry. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to provide these undertakings.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot

- from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits a freight and logistics operator's right to work by prohibiting them from entering Queensland if they have not complied with the mandatory COVID-19 testing requirements.
 - The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 14 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 14 day quarantine.
 - Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
 - Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
 - Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days, or from the start of declared hotspot, whichever period is shorter, unless they can undertake 14 days of quarantine at their own expense.
 - Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
 - Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in extreme exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
 - Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland
- requirement for people entering Queensland who have been in a COVID-19 hotspot to complete a Queensland Border Declaration Pass
- requirement for freight and logistics operators who have been in COVID-19 hotspots to comply with mandatory COVID-19 testing obligations.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of Australia which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community. However, NSW's current epidemiological situation indicates there is a potentially lower risk of transmission presented by NSW border zone residents who have not left the border zone and travelled further into NSW in the previous 14 days. Accordingly, border zone residents are permitted to enter Queensland for essential reasons and vice versa.

Expanding mandatory testing requirements for freight and logistics operators will reduce the risk of COVID-19 cases arriving from interstate and having contact with the Queensland community, given freight and logistics operators are permitted to enter and travel through Queensland without quarantining for 14 days.

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results or who haven't complied with mandatory COVID-19 testing obligations from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from either a lockdown (stay at home) zone or a COVID-19 hotspot with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Requiring a person who enters Queensland from either a lockdown (stay at home) zone or a COVID-19 hotspot to agree to undergo a COVID-19 test if they develop symptoms and requiring freight and logistics operators to undergo mandatory COVID-19 testing prior to entering Queensland is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Additionally, only those people who have been in either a lockdown (stay at home) zone or a COVID-19 hotspot are required to complete a Queensland Border Declaration Pass. Anyone else entering Queensland is only required to complete the less onerous Queensland Travel Declaration. The Queensland Travel Declaration requires a person to provide less personal information in recognition that the public health risk is lower for a person who has not been in either a lockdown (stay at home) zone or a COVID-19 hotspot.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 need to address particular circumstances is considered under the Direction. For example, as NSW's current epidemiological situation indicates there is a potentially lower risk of transmission presented by NSW border zone residents, these residents are permitted to enter Queensland for essential reasons provided they have not left the border zone or been in a lockdown (stay at home) zone in the previous 14 days. A least restrictive approach is still applied to travellers from South Australian hotspots based on the epidemiological situation in that jurisdiction. In certain circumstances, these travellers will still be permitted to quarantine at home rather than a government nominated hotel. Existing exceptions to hotel quarantine under the Direction will continue to apply to travellers from other hotspots, for example for domestic air crew, who are permitted to quarantine at their residence in Queensland.

Also, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from either a lockdown (stay at home) zone or a COVID-19 hotspot, and the freedom of movement.

However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) particularly given the proximity of the lockdown (stay at home) zone to the Queensland border 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
Border Restrictions Direction (No. 35)

Title	<i>Border Restrictions Direction (No. 35)</i>
Date effective	14 August 2021

Background

The *Border Restrictions Direction (No. 35)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

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 has been updated to apply the same higher threshold that currently applies to border zone residents travelling to and from a declared COVID-19 hotspot or lockdown (stay at home) zone to all parts of the border zone. From 8pm 14 August 2021, all border zone residents will only be able to travel to and from Queensland for one of the limited essential purposes listed in the Direction. A 24 hour transitional period has been allowed to enable Queensland residents to return home before the new requirements apply.

The Direction also changes the circumstances where a person transiting through a COVID-19 hotspot is taken to be in the hotspot. Currently a person can transit through by car, stopping only for limited breaks. The Direction is being amended to require that a person can only transit by car, without stopping, through a hotspot or to an airport within a COVID-19 hotspot to travel by air out of the hotspot, where the journey is for a safe travel distance of less than two hours from the person's point of entry to the COVID-19 hotspot.

Previously, Queensland residents and New South Wales border zone residents were able to move between Queensland and the New South Wales border zone for a wide range of permitted purposes provided they had not travelled to a declared COVID-19 hotspot outside the border zone, or to a lockdown (stay at home) zone, in the preceding 14 days.

In response to the NSW Government's determination that all of regional New South Wales will now be in lockdown in addition to the existing local government areas within the border zone (including Byron Shire, Brewarrina Shire, Bourke Shire, Richmond Valley, City of Lismore, Ballina Shire and Walgett Shire), all areas of the border zone will now be subject to the same restrictions. The Direction applies from 8 pm 14 August 2021 and will no longer differentiate between identified start dates for listed Local Government Areas.

A border zone resident may only enter Queensland for an essential purpose specified in the Direction, and may only remain in Queensland for the time necessary to perform that essential purpose. Conversely, the Direction also provides that a Queensland resident who is returning from a border zone may home quarantine if they entered the border zone for a listed essential purpose, but must complete quarantine in a government nominated facility if they were in the border zone for any other purpose.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations. The inclusion of a border zone, with allowances made for essential activities to continue, allows for the Direction to ensure that requirements for travellers from this area reflects the unique situation of this area, while managing the risks of the current outbreak and lockdowns across regional New South Wales and the border zone. The Direction achieves its purpose as follows.

Anyone who is seeking to enter Queensland who has been in a COVID-19 hotspot during the relevant period, will be required to complete a Queensland Border Declaration Pass.

The following exceptions of people not required to complete the declaration pass will remain:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland.

The Queensland Border Declaration Pass includes undertakings that the person will present for a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland and monitor interstate exposure venues daily for 14 days following entry. A fine of \$4,135 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. The border zone is within the declared COVID-19 hotspot of NSW and subject to this restriction.

However, limited categories of people will still be permitted to enter Queensland from a COVID-19 hotspot subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster

management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. However, reasons for entry to Queensland from a zone recognise its place in the border zone and allow for some border zone and Queensland residents to continue to cross between Queensland and New South Wales for limited, essential activities.

Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

Under the Direction, persons traveling from a COVID-19 hotspot within the relevant period must observe the 14 day quarantine requirements unless entry is for one of the limited essential purposes for a border zone resident. A Queensland resident may undertake home quarantine where they return from being in the border zone for one of the limited essential purposes provided in the Direction.

Under the Direction, transport operators engaged to transport quarantined persons to and from quarantine hotels or other premises must be endorsed by a government authority and have a transport plan in place.

Any travel to and from a nominated quarantine premises when a person is permitted to leave their nominated premises must be via ambulance service, emergency services vehicle or transport arranged by a government authority. If a person needs to leave quarantine for essential medical care, transport must be via ambulance service both to the hospital or other facility and when returning to the nominated premises, if applicable.

Under the Direction, a person may end quarantine prior to completing 14 days if the COVID-19 hotspot they had been prior to entering Queensland is removed from the list of areas requiring quarantine while they are in quarantine.

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

The Direction also restricts the reasons that a person quarantining at a nominated premises can open the door to their room and requires that surgical masks must be worn by all occupants of a room any

time the door is open. Unless the quarantined person is leaving the nominated premises for a permitted purpose, they must only open the door to their allocated room when permitted to do so by a quarantine facility worker.

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test. A person will be detained for a further period of 14 days if the person denies an emergency officer's (public health) request to be tested.

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry. The Direction support updates to the *Operational protocol for freight movements entering Queensland* to introduce mandatory COVID-19 testing for freight and logistics operators. Under the new protocol, a freight and logistics operator who does not comply with the below testing requirements is not permitted to enter Queensland:

- freight and logistics operators who have been in COVID-19 hotspots must have received a negative COVID-19 test within 7 days of entering Queensland and maintain a rolling 7-day routine testing cycle while they continue to travel into and out of COVID-19 hotspots
- freight and logistics operators who have left the confines of their vehicle in an affected area (Fairfield, Liverpool and Canterbury-Bankstown LGAs in NSW) must have undertaken a COVID-19 test in the 72 hours immediately prior to entering Queensland to be permitted to enter Queensland and have had a negative COVID-19 test result within 7 days of entering Queensland. These drivers must maintain a rolling 3-day testing cycle until they leave Queensland or 14 days have passed since they were in the affected area, whichever is shorter.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it

does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals.

- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits these workers' ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a government nominated premises prior to being able to move freely in Queensland. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days.
- People who have been in an identified COVID-19 hotspot in the previous 14 days are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland and to monitor the interstate exposure venues daily for 14 days following entry. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to provide these undertakings.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days. People in quarantine will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption to enter Queensland. The Direction may also limit a person's right to

work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits a freight and logistics operator's right to work by prohibiting them from entering Queensland if they have not complied with the mandatory COVID-19 testing requirements.

- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 14 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 14 day quarantine.
- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot.
- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days, or from the start of the declared hotspot, whichever period is shorter, unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in extreme exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland; and
- ban on people from COVID-19 hotspots entering Queensland, except for certain reasons or activities; and

- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland
- requirement for people entering Queensland who have been in a COVID-19 hotspot to complete a Queensland Border Declaration Pass
- requirement for freight and logistics operators who have been in COVID-19 hotspots to comply with mandatory COVID-19 testing obligations.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of Australia which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community. However, NSW's current epidemiological situation indicates there is a potentially lower risk of transmission presented by NSW border zone residents who have not left the border zone and travelled further into NSW in the previous 14 days. Accordingly, border zone residents are permitted to enter Queensland for essential reasons and vice versa.

Expanding mandatory testing requirements for freight and logistics operators will reduce the risk of COVID-19 cases arriving from interstate and having contact with the Queensland community, given freight and logistics operators are permitted to enter and travel through Queensland without quarantining for 14 days.

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results or who haven't complied with mandatory COVID-19 testing obligations from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from a COVID-19 hotspot with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Requiring a person who enters Queensland from a COVID-19 hotspot to agree to undergo a COVID-19 test if they develop symptoms and requiring freight and logistics operators to undergo mandatory COVID-19 testing prior to entering Queensland is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Additionally, only those people who have been in either a COVID-19 hotspot are required to complete a Queensland Border Declaration Pass. Anyone else entering Queensland is only required to complete the less onerous Queensland Travel Declaration. The Queensland Travel Declaration requires a person to provide less personal information in recognition that the public health risk is lower for a person who has not been in either a COVID-19 hotspot.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment.
- 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 need to address particular circumstances is considered under the Direction. For example, as NSW's current epidemiological situation indicates there is a potentially lower risk of transmission presented by NSW border zone residents, these residents are permitted to enter Queensland for essential reasons provided they have not left the border zone in the previous 14 days. A least restrictive approach is still applied to travellers from South Australian hotspots based on the epidemiological situation in that jurisdiction. In certain circumstances, these travellers will still be permitted to quarantine at home rather than a government nominated hotel. Existing exceptions to hotel quarantine under the Direction will continue to apply to travellers from other hotspots, for example for domestic air crew, who are permitted to quarantine at their residence in Queensland.

Also, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from either a COVID-19 hotspot, and the freedom of movement.

However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) particularly given the proximity of the border zone to the Queensland border 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
Border Restrictions Direction (No. 36)

Title	<i>Border Restrictions Direction (No. 36)</i>
Date effective	16 August 2021

Background

The *Border Restrictions Direction (No. 36)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

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 has been updated to apply the same higher threshold that currently applies to border zone residents travelling to and from a declared COVID-19 hotspot or lockdown (stay at home) zone to all parts of the border zone. From 8pm 14 August 2021, all border zone residents ~~will be~~ only be able travel to and from Queensland for one of the limited essential purposes listed in the Direction. ~~A 24 hour transitional period has been allowed to enable Queensland residents to return home before the new requirements apply.~~

~~The Direction also changes the circumstances where a person transiting through a COVID-19 hotspot is taken to be in the hotspot. Currently a person can transit through by car, stopping only for limited breaks. The Direction is being amended to require that a person can only transit by car, without stopping, through a hotspot or to an airport within a COVID-19 hotspot to travel by air out of the hotspot, where the journey is for a safe travel distance of less than two hours from the person's point of entry to the COVID-19 hotspot.~~

~~Previously, Queensland residents and New South Wales border zone residents were able to move between Queensland and the New South Wales border zone for a wide range of permitted purposes provided they had not travelled to a declared COVID-19 hotspot outside the border zone, or to a lockdown (stay at home) zone, in the preceding 14 days.~~

In response to the NSW Government's determination that all of regional New South Wales will now be in lockdown ~~in addition to the existing local government areas within the border zone (including Byron Shire, Brewarrina Shire, Bourke Shire, Richmond Valley, City of Lismore, Ballina Shire and Walgett Shire)~~, all areas of the border zone will now be subject to the same restrictions.

~~The Direction applies from 8 pm 14 August 2021 and will no longer differentiate between identified start dates for listed Local Government Areas.~~

A border zone resident may only enter Queensland for an essential purpose specified in the Direction, and may only remain in Queensland for the time necessary to perform that essential purpose. Conversely, the Direction also provides that a Queensland resident who is returning from a border zone may comply with stay at home requirements ~~home quarantine~~ if they entered the border zone for a listed essential purpose, but must complete quarantine in a government nominated facility if they were in the border zone for any other purpose. The Direction clarifies the terminology for stay at home requirements and includes the usual 14 day requirement tied to the incubation period.

The updated Direction clarifies the limited essential reason for which border zone and Queensland residents may move between Queensland and the border zone, and stay at home requirements, to ensure the Direction provides an appropriate response tpo the current epidemiological risk in the region. Only essential workers will now be able to enter Queensland or the border zone for the purpose of COVID-19 vaccination.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations. The inclusion of a border zone, with allowances made for essential activities to continue, allows for the Direction to ensure that requirements for travellers from this area reflects the unique situation of this area, while managing the risks of the current outbreak and lockdowns across regional New South Wales and the border zone. The Direction achieves its purpose as follows.

Queensland Border Declaration Pass

Anyone who is seeking to enter Queensland who has been in a COVID-19 hotspot during the relevant period, will be required to complete a Queensland Border Declaration Pass.

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The following exceptions of people not required to complete the declaration pass will remain:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland.

The Queensland Border Declaration Pass includes undertakings that the person will present for a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland and monitor interstate exposure venues daily for 14 days following entry. A fine of \$4,135 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

Entry into Queensland

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. The border zone is within the declared COVID-19 hotspot of NSW and subject to this restriction.

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However, limited categories of people will still be permitted to enter Queensland from a COVID-19 hotspot subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. However, reasons for entry to Queensland from a border zone recognise its place in the border zone close connection to Queensland border communities and allow for some border zone and Queensland residents of these areas to continue to cross between Queensland and New South Wales for limited, essential activities.

The Direction requires essential workers to have at least one dose of a COVID-19 vaccine to be permitted to enter Queensland, effective from 11.59pm Friday 20 August 2021. From 1.00am Saturday 21 August, only essential workers will be permitted to enter to obtain a COVID-19 vaccine. Until that time, NSW residents may attend a walk-in COVID-19 vaccination appointment in Queensland; a scheduled appointment will not be required.

Essential workers will be required to provide documentation to evidence their vaccination.

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These arrangements promote access to essential health services and support the new requirement for essential workers to be vaccinated in order to enter Queensland.

The Direction also clarifies that the definition of essential work is exhaustive, not inclusive, by reference to the list in the definition. The following two categories are being added into the definition of 'essential work', allowing movement across the border for these workers:

- a pathology collection worker, including a pathology courier

- an aged care or disability worker, where considered essential to maintain continuity of care for aged care recipients or people with disability.

The Direction clarifies that vulnerable Queensland children may attend school or childcare in the border zone and vice versa.

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Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

Under the Direction, persons traveling from a COVID-19 hotspot within the relevant period must observe the 14 day quarantine requirements unless entry is for one of the limited essential purposes for a border zone resident. A Queensland resident ~~may undertake~~ must comply with stay at home requirements ~~home quarantine~~ where they return from being in the border zone for one of the limited essential purposes provided in the Direction. The Direction adopts the terminology of 'stay at home requirements' to distinguish these from the stricter requirements that apply to quarantine for close contacts and people entering hotel quarantine from other hotspots.

Under the Direction, transport operators engaged to transport quarantined persons to and from quarantine hotels or other premises must be endorsed by a government authority and have a transport plan in place.

Any travel to and from a nominated quarantine premises when a person is permitted to leave their nominated premises must be via ambulance service, emergency services vehicle or transport arranged by a government authority. If a person needs to leave quarantine for essential medical care, transport must be via ambulance service both to the hospital or other facility and when returning to the nominated premises, if applicable.

Under the Direction, a person may end quarantine prior to completing 14 days if the COVID-19 hotspot they had been in prior to entering Queensland is removed from the list of areas requiring quarantine, while they are in quarantine.

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

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

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated

quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test. A person will be detained for a further period of 14 days if the person denies an emergency officer's (public health) request to be tested.

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry. The Direction supports updates to the *Operational protocol for freight movements entering Queensland* to introduce mandatory COVID-19 testing for freight and logistics operators. Under the new protocol, a freight and logistics operator who does not comply with the below testing requirements is not permitted to enter Queensland:

- freight and logistics operators who have been in COVID-19 hotspots must have received a negative COVID-19 test within 7 days of entering Queensland and maintain a rolling 7-day routine testing cycle while they continue to travel into and out of COVID-19 hotspots
- freight and logistics operators who have left the confines of their vehicle in an affected area (Fairfield, Liverpool and Canterbury-Bankstown LGAs in NSW) must have undertaken a COVID-19 test in the 72 hours immediately prior to entering Queensland to be permitted to enter Queensland and have had a negative COVID-19 test result within 7 days of entering Queensland. These drivers must maintain a rolling 3-day testing cycle until they leave Queensland or 14 days have passed since they were in the affected area, whichever is shorter.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals. [From 1.00am AEST 21 August 2021, the restriction on which border zone residents may enter to obtain a COVID-19 vaccine indirectly discriminates between people on the basis of their work or profession.](#)
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. The requirements for

mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits these workers' ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual. Requiring COVID-19 vaccination as a condition of entry to Queensland limits essential workers' ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to COVID-19 vaccination is limited as their ability to enter Queensland is predicated on being vaccinated.

- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a government nominated premises prior to being able to move freely in Queensland. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days. Queensland essential workers in the border zone, who are permitted to re-enter Queensland, are subject to stay at home requirements that impose a lesser restriction on their movement for 14 days. Queensland residents following stay at home requirements after travelling to the NSW border zone may leave home to attend a walk in vaccination appointment; a scheduled appointment is not required.
- People who have been in an identified COVID-19 hotspot in the previous 14 days are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland and to monitor the interstate exposure venues daily for 14 days following entry. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to provide these undertakings.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days, or to follow stay at home requirements after entering from performing a limited essential purpose in the border zone. People in quarantine or following a stay at home requirement will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to COVID-19 vaccination or to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption, or evidence of COVID-19 vaccination to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by

requiring a person to quarantine for 14 days before they can return to work. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits a freight and logistics operator's right to work by prohibiting them from entering Queensland if they have not complied with the mandatory COVID-19 testing requirements.

- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599) and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 14 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 14 day quarantine.
- This right may also be limited by requiring essential workers to be vaccinated as a condition of entry into Queensland, and by requiring them to provide evidence of their vaccination. A person's right to provide full, free and informed consent to COVID-19 vaccination is limited as their ability to enter Queensland is predicated on being vaccinated. However, this condition of entry to Queensland is for a limited time, until the Direction is revoked or replaced.
- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot. A person following stay at home requirements is restricted from visiting other family members but can remain with their own household and may receive two visitors, which supports the right to protection of families and children. Other household members are not limited in their movements.
- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days, or from the start of the declared hotspot, whichever period is shorter, unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in extreme exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right. The updated Direction clarifies that movement between Queensland and the border zone is

permitted for vulnerable children, as well as for children of essential workers, to attend school or childcare.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement for essential workers to be vaccinated and provide evidence of vaccination as a condition of entry to Queensland;
- limits access to Queensland to obtain COVID-19 vaccination to essential workers
- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland, or to follow stay at home requirements; and
- ban on people from COVID-19 hotspots, including the border zone, entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland
- requirement for people entering Queensland who have been in a COVID-19 hotspot to complete a Queensland Border Declaration Pass
- requirement for freight and logistics operators who have been in COVID-19 hotspots to comply with mandatory COVID-19 testing obligations.

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The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of Australia, including the border zone, which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community. ~~However, NSW's current epidemiological situation indicates there is a potentially lower risk of transmission presented by NSW border zone residents who have not left the border zone and travelled further into NSW in the previous 14 days. Accordingly, b~~border zone residents are permitted to enter Queensland for essential reasons and vice versa in recognition of the proximity and interconnectedness of the Queensland and New South Wales border communities.

Expanding mandatory testing requirements for freight and logistics operators will reduce the risk of COVID-19 cases arriving from interstate and having contact with the Queensland community, given freight and logistics operators are permitted to enter and travel through Queensland without quarantining for 14 days.

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine or follow stay at home requirements when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results or who haven't complied with mandatory COVID-19 testing obligations from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine and stay at home requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence. The stay at home requirements reflect the need for essential workers to continue to leave home for their essential work, and other limited permitted purposes.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Providing an exhaustive list of essential workers that may move between Queensland and the border zone, requiring evidence of COVID-19 vaccination for this group, and allowing them to follow stay at home requirements rather than quarantine, is necessary to manage the risk of transmission while maintaining essential supplies and services to the community. The additional categories of essential worker ensure that pathology services can be maintained, including for essential COVID-19 testing and aged care and disability care workers are available to provide care to vulnerable people.
- The requirement for essential workers to have at least one dose of a COVID-19 vaccine to be permitted to enter Queensland takes effect from 11.59pm Friday 20 August 2021. From 1.00am Saturday 21 August, only essential workers will be permitted to enter to obtain a COVID-19 vaccine.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from a COVID-19 hotspot with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In

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addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.

- Requiring a person who enters Queensland from a COVID-19 hotspot to agree to undergo a COVID-19 test if they develop symptoms and requiring freight and logistics operators to undergo mandatory COVID-19 testing prior to entering Queensland is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for [vulnerable children to attend school or childcare](#), people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Additionally, only those people who have been in ~~either~~ a COVID-19 hotspot are required to complete a Queensland Border Declaration Pass. Anyone else entering Queensland is only required to complete the less onerous Queensland Travel Declaration. The Queensland Travel Declaration requires a person to provide less personal information in recognition that the public health risk is lower for a person who has not been in either a COVID-19 hotspot.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment. [Information is only required to be provided to the extent necessary to support compliance and reduce the risk of transmission and further outbreaks of COVID-19.](#)
- 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 need to address particular circumstances is considered under the Direction. For example, as NSW's current epidemiological situation indicates there is a potentially lower risk of transmission presented by NSW border zone residents, these residents are permitted to enter Queensland for essential reasons provided they have not left the border zone in the previous 14 days. ~~A least restrictive approach is still applied to travellers from South Australian hotspots based on the~~

~~epidemiological situation in that jurisdiction. In certain circumstances, these travellers will still be permitted to quarantine at home rather than a government nominated hotel.~~ Existing exceptions to hotel quarantine under the Direction will continue to apply to travellers from other hotspots, for example for domestic air crew, who are permitted to quarantine at their residence in Queensland.

Also, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from either a COVID-19 hotspot, and the freedom of movement.

However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) particularly given the proximity of the border zone to the Queensland border 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
Border Restrictions Direction (No. 37)

Title	<i>Border Restrictions Direction (No. 37)</i>
Date effective	XX August 2021

Background

The *Border Restrictions Direction (No. 37)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

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 has been updated to apply the same higher threshold that currently applies to border zone residents travelling to and from a declared COVID-19 hotspot or lockdown (stay at home) zone to all parts of the border zone. From 8pm 14 August 2021, all border zone residents are only able to travel to and from Queensland for one of the limited essential purposes listed in the Direction.

In response to the NSW Government's determination that all of regional New South Wales will now be in lockdown, all areas of the border zone will now be subject to the same restrictions.

A border zone resident may only enter Queensland for an essential purpose specified in the Direction, and may only remain in Queensland for the time necessary to perform that essential purpose. Conversely, the Direction also provides that a Queensland resident who is returning from a border zone may comply with stay at home requirements if they entered the border zone for a listed essential purpose, but must complete quarantine in a government nominated facility if they were in the border zone for any other purpose. The Direction clarifies the terminology for stay at home requirements and includes the usual 14 day requirement tied to the incubation period.

The updated Direction clarifies the limited essential reason for which border zone and Queensland residents may move between Queensland and the border zone, and stay at home requirements, to ensure the Direction provides an appropriate response to the current epidemiological risk in the region. Only essential workers will now be able to enter Queensland or the border zone for the purpose of COVID-19 vaccination.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations. The inclusion of a border zone, with allowances made for

essential activities to continue, allows for the Direction to ensure that requirements for travellers from this area reflect the unique situation of this area, while managing the risks of the current outbreak and lockdowns across regional New South Wales and the border zone. The Direction achieves its purpose as follows.

Queensland Border Declaration Pass

Anyone who is seeking to enter Queensland who has been in a COVID-19 hotspot during the relevant period, will be required to complete a Queensland Border Declaration Pass.

The following exceptions of people not required to complete the declaration pass will remain:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland.

The Queensland Border Declaration Pass includes undertakings that the person will present for a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland and monitor interstate exposure venues daily for 14 days following entry. A fine of \$4,135 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

Entry into Queensland

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. The border zone is within the declared COVID-19 hotspot of NSW and subject to this restriction.

However, limited categories of people will still be permitted to enter Queensland from a COVID-19 hotspot subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. However, reasons for entry to Queensland from a border zone recognise its close connection to Queensland border communities and allow for some residents of these areas to continue to cross between Queensland and New South Wales for limited, essential activities.

The Direction requires essential workers to have at least one dose of a COVID-19 vaccine to be permitted to enter Queensland, effective from 11.59pm Friday 20 August 2021. From 1.00am Saturday 21 August, only essential workers will be permitted to enter to obtain a COVID-19 vaccine. Until that time, NSW residents may attend a walk-in COVID-19 vaccination appointment in Queensland; a scheduled appointment will not be required.

Essential workers will be required to provide documentation to evidence their vaccination.

These arrangements promote access to essential health services and support the new requirement for essential workers to be vaccinated in order to enter Queensland.

The Direction also clarifies that the definition of essential work is exhaustive, not inclusive, by reference to the list in the definition. The following two categories are being added into the definition of 'essential work', allowing movement across the border for these workers:

- a pathology collection worker, including a pathology courier
- an aged care or disability worker, where considered essential to maintain continuity of care for aged care recipients or people with disability. The Direction clarifies that vulnerable Queensland children may attend school or childcare in the border zone and vice versa.

Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

Under the Direction, persons traveling from a COVID-19 hotspot within the relevant period must observe the 14 day quarantine requirements unless entry is for one of the limited essential purposes for a border zone resident. A Queensland resident must comply with stay at home requirements where they return from being in the border zone for one of the limited essential purposes provided in the Direction. The Direction adopts the terminology of 'stay at home requirements' to distinguish these from the stricter requirements that apply to quarantine for close contacts and people entering hotel quarantine from other hotspots.

Under the Direction, transport operators engaged to transport quarantined persons to and from quarantine hotels or other premises must be endorsed by a government authority and have a transport plan in place.

Any travel to and from a nominated quarantine premises when a person is permitted to leave their nominated premises must be via ambulance service, emergency services vehicle or transport arranged by a government authority. If a person needs to leave quarantine for essential medical care, transport

must be via ambulance service both to the hospital or other facility and when returning to the nominated premises, if applicable.

Under the Direction, a person may end quarantine prior to completing 14 days if the COVID-19 hotspot they had been in prior to entering Queensland is removed from the list of areas requiring quarantine, while they are in quarantine.

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

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

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test. A person will be detained for a further period of 14 days if the person denies an emergency officer's (public health) request to be tested.

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry. The Direction supports updates to the *Operational protocol for freight movements entering Queensland* to introduce mandatory COVID-19 testing for freight and logistics operators. Under the new protocol, a freight and logistics operator who does not comply with the below testing requirements is not permitted to enter Queensland:

- freight and logistics operators who have been in COVID-19 hotspots must have received a negative COVID-19 test within 7 days of entering Queensland and maintain a rolling 7-day routine testing cycle while they continue to travel into and out of COVID-19 hotspots
- freight and logistics operators who have left the confines of their vehicle in an affected area (Fairfield, Liverpool and Canterbury-Bankstown LGAs in NSW) must have undertaken a COVID-19 test in the 72 hours immediately prior to entering Queensland to be permitted to

enter Queensland and have had a negative COVID-19 test result within 7 days of entering Queensland. These drivers must maintain a rolling 3-day testing cycle until they leave Queensland or 14 days have passed since they were in the affected area, whichever is shorter.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals. From 1.00am AEST 21 August 2021, the restriction on which border zone residents may enter to obtain a COVID-19 vaccine indirectly discriminates between people on the basis of their work or profession.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits these workers' ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual. Requiring COVID-19 vaccination as a condition of entry to Queensland limits essential workers' ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to COVID-19 vaccination is limited as their ability to enter Queensland is predicated on being vaccinated.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a government nominated premises prior to being able to move freely in Queensland. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days. Queensland essential workers in the border zone, who are permitted to re-enter Queensland, are subject to stay at home requirements that impose a lesser restriction on their movement for 14 days. Queensland residents following stay at home requirements after travelling to the NSW border zone may leave home to attend a walk in vaccination appointment; a scheduled appointment is not required.
- People who have been in an identified COVID-19 hotspot in the previous 14 days are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland and to monitor the interstate exposure venues daily

for 14 days following entry. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to provide these undertakings.

- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days, or to follow stay at home requirements after entering from performing a limited essential purpose in the border zone. People in quarantine or following a stay at home requirement will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to COVID-19 vaccination or to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption, or evidence of COVID-19 vaccination to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits a freight and logistics operator's right to work by prohibiting them from entering Queensland if they have not complied with the mandatory COVID-19 testing requirements.
- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599) and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018) 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 14 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 14 day quarantine.
- This right may also be limited by requiring essential workers to be vaccinated as a condition of entry into Queensland, and by requiring them to provide evidence of their vaccination. A person's right to provide full, free and informed consent to COVID-19 vaccination is limited as their ability to enter Queensland is predicated on being vaccinated. However, this condition of entry to Queensland is for a limited time, until the Direction is revoked or replaced.
- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot. A person

following stay at home requirements is restricted from visiting other family members but can remain with their own household and may receive two visitors, which supports the right to protection of families and children. Other household members are not limited in their movements.

- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days, or from the start of the declared hotspot, whichever period is shorter, unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in extreme exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right. The updated Direction clarifies that movement between Queensland and the border zone is permitted for vulnerable children, as well as for children of essential workers, to attend school or childcare.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement for essential workers to be vaccinated and provide evidence of vaccination as a condition of entry to Queensland;
- limits access to Queensland to obtain COVID-19 vaccination to essential workers
- requirement to quarantine, and be subject to a COVID-19 test during quarantine, for some people entering Queensland, or to follow stay at home requirements; and
- ban on people from COVID-19 hotspots, including the border zone, entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland
- requirement for people entering Queensland who have been in a COVID-19 hotspot to complete a Queensland Border Declaration Pass
- requirement for freight and logistics operators who have been in COVID-19 hotspots to comply with mandatory COVID-19 testing obligations.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of Australia, including the border zone, which currently have a cluster of

active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community. Border zone residents are permitted to enter Queensland for essential reasons and vice versa in recognition of the proximity and interconnectedness of the Queensland and New South Wales border communities.

Expanding mandatory testing requirements for freight and logistics operators will reduce the risk of COVID-19 cases arriving from interstate and having contact with the Queensland community, given freight and logistics operators are permitted to enter and travel through Queensland without quarantining for 14 days.

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose. Requiring certain people to quarantine or follow stay at home requirements when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results or who haven't complied with mandatory COVID-19 testing obligations from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine and stay at home requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence. The stay at home requirements reflect the need for essential workers to continue to leave home for their essential work, and other limited permitted purposes.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with

COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage.
- Providing an exhaustive list of essential workers that may move between Queensland and the border zone, requiring evidence of COVID-19 vaccination for this group, and allowing them to follow stay at home requirements rather than quarantine, is necessary to manage the risk of transmission while maintaining essential supplies and services to the community. The additional categories of essential worker ensure that pathology services can be maintained, including for essential COVID-19 testing and aged care and disability care workers are available to provide care to vulnerable people.
- The requirement for essential workers to have at least one dose of a COVID-19 vaccine to be permitted to enter Queensland takes effect from 11.59pm Friday 20 August 2021. From 1.00am Saturday 21 August, only essential workers will be permitted to enter to obtain a COVID-19 vaccine.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from a COVID-19 hotspot with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Requiring a person who enters Queensland from a COVID-19 hotspot to agree to undergo a COVID-19 test if they develop symptoms and requiring freight and logistics operators to undergo mandatory COVID-19 testing prior to entering Queensland is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for vulnerable children to attend school or childcare, people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) 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.

Additionally, only those people who have been in a COVID-19 hotspot are required to complete a Queensland Border Declaration Pass. Anyone else entering Queensland is only required to complete the less onerous Queensland Travel Declaration. The Queensland Travel Declaration requires a person to provide less personal information in recognition that the public health risk is lower for a person who has not been in either a COVID-19 hotspot.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment. Information is only required to be provided to the extent necessary to support compliance and reduce the risk of transmission and further outbreaks of COVID-19.
- 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 need to address particular circumstances is considered under the Direction. For example, as NSW's current epidemiological situation indicates there is a potentially lower risk of transmission presented by NSW border zone residents, these residents are permitted to enter Queensland for essential reasons provided they have not left the border zone in the previous 14 days. Existing exceptions to hotel quarantine under the Direction will continue to apply to travellers from other hotspots, for example for domestic air crew, who are permitted to quarantine at their residence in Queensland.

Also, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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. The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from either a COVID-19 hotspot, and the freedom of movement.

However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) particularly given the proximity of the border zone to the Queensland border 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
Border Restrictions Direction (No. 38)

Title	<i>Border Restrictions Direction (No. 38)</i>
Date effective	24 August 2021

Background

The *Border Restrictions Direction (No. 38)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

The Direction will apply from midday on-24 August 2021.

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

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.

In response to the NSW Government's determination that all of regional New South Wales will now be in lockdown, all areas of the border zone are now subject to the same restrictions.

A border zone resident may only enter Queensland for an essential purpose specified in the Direction, and may only remain in Queensland for the time necessary to perform that essential purpose. Conversely, the Direction also provides that a Queensland resident who is returning from a border zone may comply with stay at home requirements if they entered the border zone for a listed essential purpose, but must complete quarantine in a government nominated facility if they were in the border zone for any other purpose. .

The updated Direction requires border zone residents and Queensland residents who have been in the border zone in the last 14 days and are permitted to enter Queensland to wear a mask at all times in Queensland with exceptions for children under the age of 12 and situations where it is not safe to wear a mask. The updated Direction also limits a border zone resident who is unable to wear a mask due to a medical condition to enter Queensland for medical/health care or a vaccination. A border zone resident (over the age of 12) who is unable to wear a mask will not be permitted to enter Queensland to obtain food or supplies or to perform essential work. Finally, the updated Direction requires a border zone resident that needs to stay overnight or longer in Queensland to complete an essential purpose to observe stay at home requirements while they are in Queensland.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations. The inclusion of a border zone, with allowances made for essential activities to continue, allows for the Direction to ensure that requirements for travellers from this area reflect the unique situation of this area, while managing the risks of the current outbreak and lockdowns across regional New South Wales and the border zone. The Direction achieves its purpose as follows.

Queensland Border Declaration Pass

Anyone who is seeking to enter Queensland who has been in a COVID-19 hotspot during the relevant period, will be required to complete a Queensland Border Declaration Pass.

The following exceptions of people not required to complete the declaration pass will remain:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland.

The Queensland Border Declaration Pass includes undertakings that the person will present for a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland and monitor interstate exposure venues daily for 14 days following entry. A fine of \$4,135 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

Entry into Queensland

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. The border zone is within the declared COVID-19 hotspot of NSW and subject to this restriction.

However, limited categories of people will still be permitted to enter Queensland from a COVID-19 hotspot subject to meeting the relevant entry requirements. This includes, but is not limited to, returning Queensland residents, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services. The direction requires endorsement of essential workers by the relevant Queensland Government agency, and essential workers must evidence that endorsement in order to enter Queensland as an essential worker.

A new resident has been permitted to enter Queensland from a COVID-19 hotspot by air, with 14 days hotel quarantine. The Direction limits the airports into which new residents may fly to Brisbane and Gold Coast. This is to reduce the impact of new resident arrivals on transport requirements and to align with locations that have greater capacity for hotel quarantine. The change will support a better public health response to containing and managing the risk of transmission of COVID-19 in the community.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. However, reasons for entry to Queensland from a border zone recognise its close connection to Queensland border communities and allow for some residents of these areas to continue to cross between Queensland and New South Wales for limited, essential activities.

The Direction requires essential workers to have at least one dose of a COVID-19 vaccine to be permitted to enter Queensland, effective from 11.59pm Friday 20 August 2021. From 1.00am Saturday 21 August, only essential workers will be permitted to enter to obtain a COVID-19 vaccine. Other border zone residents may attend a scheduled COVID-19 vaccination appointment in Queensland if they cannot reasonably obtain a COVID-19 vaccination in New South Wales.

Essential workers will be required to provide documentation to evidence their vaccination.

These arrangements promote access to essential health services and support the new requirement for essential workers to be vaccinated in order to enter Queensland.

Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

The Direction requires a person leaving hotel quarantine in Queensland to undertake a COVID-19 test 2 or 3 days after leaving hotel quarantine (day 16/17 testing) and to restrict their movements until they receive a negative result from that test. This new requirement will be mandatory from 7 September. This was a recommendation from AHPPC on 7 July 2021. The AHPPC recommended that day 16/17 testing requirements should apply to all international travellers. Queensland is introducing this requirement for domestic travellers under the Border Restrictions Direction as currently domestic and international travellers quarantine at the same hotels. Queensland is working to move towards separating these cohorts in the future, however, this isn't currently possible due to hotel quarantine capacity restraints.

The Direction also introduces a requirement for a person who has completed hotel quarantine in another State or Territory that is a COVID-19 hotspot who transits directly to Queensland to undertake a COVID-19 test on day 16/17

There is a general requirement to restrict movement until the result of the Day 16 or 17 test is received.

A person seeking to transit through a Queensland airport to an international destination will now only be permitted to remain in a quarantine hotel for up to 72 hours before departing Queensland. This is consistent with the approach to international arrivals.

Under the Direction, persons traveling from a COVID-19 hotspot within the relevant period must observe the 14 day quarantine requirements unless entry is for one of the limited essential purposes for a border zone resident. A Queensland resident must comply with stay at home requirements where they return from being in the border zone for one of the limited essential purposes provided in the Direction. The Direction adopts the terminology of 'stay at home requirements' to distinguish these from the stricter requirements that apply to quarantine for close contacts and people entering hotel quarantine from other hotspots. The Direction now provides that a Border zone resident that needs to stay overnight or longer in Queensland to complete an essential purpose must observe stay at home requirements while they are in Queensland.

Queensland residents and Border zone residents who have been in the border zone in the last 14 days and who are permitted to enter Queensland from the border zone will now be required to wear a face mask at all times in Queensland. There are fewer exceptions in place than for impacted areas currently. The two main exceptions are children under the age of 12 years, and situations where it is not safe to wear a mask due to the nature of the person's work.

A border zone resident who is unable to wear a mask due to a medical condition will only be permitted to enter Queensland for medical/health care or vaccination. A border zone resident over the age of 12 who cannot wear a mask will not be permitted to enter Queensland to obtain food or supplies or perform essential work.

Under the Direction, transport operators engaged to transport quarantined persons to and from quarantine hotels or other premises must be endorsed by a government authority and have a transport plan in place.

Any travel to and from a nominated quarantine premises when a person is permitted to leave their nominated premises must be via ambulance service, emergency services vehicle or transport arranged by a government authority. If a person needs to leave quarantine for essential medical care, transport must be via ambulance service both to the hospital or other facility and when returning to the nominated premises, if applicable.

Under the Direction, a person may end quarantine prior to completing 14 days if the COVID-19 hotspot they had been in prior to entering Queensland is removed from the list of areas requiring quarantine, while they are in quarantine.

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

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

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test. A person will be detained for a further period of 14 days if the person denies an emergency officer's (public health) request to be tested.

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry. The Direction supports updates to the *Operational protocol for freight movements entering Queensland* to introduce mandatory COVID-19 testing for freight and logistics operators. Under the new protocol, a freight and logistics operator who does not comply with the below testing requirements is not permitted to enter Queensland:

- freight and logistics operators who have been in COVID-19 hotspots must have received a negative COVID-19 test within 7 days of entering Queensland and maintain a rolling 7-day routine testing cycle while they continue to travel into and out of COVID-19 hotspots
- freight and logistics operators who have left the confines of their vehicle in an affected area (Fairfield, Liverpool and Canterbury-Bankstown LGAs in NSW) must have undertaken a COVID-19 test in the 72 hours immediately prior to entering Queensland to be permitted to enter Queensland and have had a negative COVID-19 test result within 7 days of entering Queensland. These drivers must maintain a rolling 3-day testing cycle until they leave Queensland or 14 days have passed since they were in the affected area, whichever is shorter.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals. From 1.00am AEST 21 August 2021, the restriction on which border zone residents may enter to obtain a COVID-19 vaccine indirectly discriminates between people on the basis of their work or profession.
- The Direction will not allow an exception for a border zone resident who is unable to wear a face mask to enter Queensland to obtain groceries or supplies, or to perform essential work. They will only be able to enter Queensland to obtain medical/health care or a vaccination.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits these workers' ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland, and their release from quarantine, is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual. Requiring COVID-19 vaccination as a condition of entry to Queensland limits essential workers' ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to COVID-19 vaccination is limited as their ability to enter Queensland is predicated on being vaccinated.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a government nominated premises prior to being able to move freely in Queensland. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days. Queensland essential workers in the border zone, who are permitted to re-enter Queensland, are subject to stay at home requirements that impose a lesser restriction on their movement for 14 days. Queensland residents following stay at home requirements after travelling to the NSW border zone may leave home to attend a walk in vaccination appointment; a scheduled appointment is not required.
- Stay at home requirements will now apply to Border zone residents entering Queensland for limited essential purposes, where they remain overnight for the essential purpose. This limits the right to movement while they are in Queensland but still allows some movement, for example, to attend essential work, to obtain essential health care, or to obtain groceries.
- The Direction further limits the freedom of movement by specifying the airports that a new resident may fly into; and by requiring endorsement of a person as an essential worker before they can enter Queensland from a border zone.
- People who have been in an identified COVID-19 hotspot in the previous 14 days are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop

symptoms of COVID-19 while in Queensland and to monitor the interstate exposure venues daily for 14 days following entry. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to provide these undertakings.

- The requirement to wear a mask, with very limited exceptions, further restricts the right of movement into Queensland.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days, or to follow stay at home requirements after entering from performing a limited essential purpose in the border zone. People in quarantine or following a stay at home requirement will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to COVID-19 vaccination or to a COVID-19 test may infringe on a person's religious or personal views.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption, or evidence of COVID-19 vaccination to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits a freight and logistics operator's right to work by prohibiting them from entering Queensland if they have not complied with the mandatory COVID-19 testing requirements.
- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 14 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 14 day quarantine. Similar considerations apply to the requirement for a quarantined person to provide an undertaking for Day 16/17 testing before they are released from quarantine.
- This right may also be limited by requiring essential workers to be vaccinated as a condition of entry into Queensland, and by requiring them to provide evidence of their vaccination. A person's right to provide full, free and informed consent to COVID-19 vaccination is limited as their ability

to enter Queensland is predicated on being vaccinated. However, this condition of entry to Queensland is for a limited time, until the Direction is revoked or replaced.

- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot. A person following stay at home requirements is restricted from visiting other family members but can remain with their own household and may receive two visitors, which supports the right to protection of families and children. Other household members are not limited in their movements.
- Cultural rights – generally (section 27): The Direction limits a person’s ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days, or from the start of the declared hotspot, whichever period is shorter, unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in extreme exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right. The updated Direction clarifies that movement between Queensland and the border zone is permitted for vulnerable children, as well as for children of essential workers, to attend school or childcare.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- requirement for essential workers to be vaccinated and provide evidence of vaccination as a condition of entry to Queensland;
- requirement for essential border zone workers to observe stay at home requirements if they remain in Queensland overnight or longer for the essential purpose;
- requirement to wear face masks in Queensland, with very limited exceptions, where a Queensland resident or border zone resident permitted to enter Queensland has been in the border zone in the past 14 days;
- limits access to Queensland to obtain COVID-19 vaccination to scheduled appointments where a vaccination could not reasonably be obtained in New South Wales.;

- requirement to quarantine, and be subject to a COVID-19 test during quarantine and to undertake to do Day 16/17 testing as a precondition of release from quarantine, for some people entering Queensland, or to follow stay at home requirements; and
- ban on people from COVID-19 hotspots, including the border zone, entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland
- requirement for people entering Queensland who have been in a COVID-19 hotspot to complete a Queensland Border Declaration Pass
- requirement for freight and logistics operators who have been in COVID-19 hotspots to comply with mandatory COVID-19 testing obligations.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of Australia, including the border zone, which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community. Border zone residents are permitted to enter Queensland for essential reasons and vice versa in recognition of the proximity and interconnectedness of the Queensland and New South Wales border communities.

Expanding mandatory testing requirements for freight and logistics operators will reduce the risk of COVID-19 cases arriving from interstate and having contact with the Queensland community, given freight and logistics operators are permitted to enter and travel through Queensland without quarantining for 14 days.

Additionally, requiring most people entering Queensland to quarantine in nominated premises or to follow stay at home requirements is to confine potential outbreaks and enable appropriate support of quarantined individuals within available resources. It also enables monitoring and enforcement of the requirements under the Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is also in effect for a temporary period, and the restrictions as applying to a person only last for 14-days, which is tied to the typical incubation period for COVID-19. Ultimately, the purpose of quarantine or stay at home requirements is to limit the opportunity for transmission of COVID-19 during the potential incubation period. The Day 16/17 test supports this approach by using testing to manage the risk of an extended incubation period rather than by requiring longer quarantine periods.

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 certain people to quarantine or follow stay at home requirements when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results or who haven't complied with mandatory COVID-19 testing obligations from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine and stay at home requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence. The stay at home requirements reflect the need for essential workers to continue to leave home for their essential work, and other limited permitted purposes.

Applying the stay at home requirements to border zone residents permitted to enter Queensland for essential work purposes manages the risk associated with overnight and longer stays, while allowing them to remain in Queensland to complete their essential purpose. The requirement is also consistent with the requirements for Queensland residents who have been to the border zone for essential purposes.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage. Testing 2 to 3 days after the quarantine period ends further reduces the risk of community transmission while releasing travellers from quarantine restrictions.
- Providing an exhaustive list of essential workers that may move between Queensland and the border zone, requiring evidence of COVID-19 vaccination for this group, and allowing them to follow stay at home requirements rather than quarantine, is necessary to manage the risk of transmission while maintaining essential supplies and services to the community. The additional categories of essential worker ensure that pathology services can be maintained, including for essential COVID-19 testing and aged care and disability care workers are available to provide care to vulnerable people. Essential workers will also need to be endorsed as such.
- The requirement for essential workers to have at least one dose of a COVID-19 vaccine to be permitted to enter Queensland takes effect from 11.59pm Friday 20 August 2021.
- Requiring masks to be worn, with very limited exceptions, by Queensland residents and border zone residents who have been in the border zone in the last 14 days provides further protection against the risk of transmission from the locked down local government areas in the border zone. The response is proportionate to the current high risk of transmission from the border zone at this time. Face masks have been used in parts of Queensland to provide an effective response to reducing transmission; requirements have been tailored to the epidemiological risks.

- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from a COVID-19 hotspot with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Requiring a person who enters Queensland from a COVID-19 hotspot to agree to undergo a COVID-19 test if they develop symptoms and requiring freight and logistics operators to undergo mandatory COVID-19 testing prior to entering Queensland is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.
- Limiting entry by air for new residents to either Brisbane or the Gold Coast restricts freedom of movement but is a necessary measure to ensure that finite public resources are directed to responding to and containing the spread of COVID-19 in the community. The alternative is that significant resources are diverted to transporting people entering at airports all over Queensland to locations, primarily in Brisbane and the Gold Coast, where there is greater hotel quarantine capacity. Similar reasoning applies to placing a time limit on the time a person may remain in a quarantine hotel, transiting through Queensland to an international destination.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for vulnerable children to attend school or childcare, people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) protects the rights to security of person and life (ss 16 and 29(1)). There is also an exception for border zone residents who are unable to wear a mask for medical reasons; they may still enter Queensland without a mask to obtain medical/health care or vaccination. These exceptions are designed to tailor the limits on human rights to those necessary.

Additionally, only those people who have been in a COVID-19 hotspot are required to complete a Queensland Border Declaration Pass. Anyone else entering Queensland is only required to complete the less onerous Queensland Travel Declaration. The Queensland Travel Declaration requires a person to provide less personal information in recognition that the public health risk is lower for a person who has not been in either a COVID-19 hotspot.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.

- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment. Information is only required to be provided to the extent necessary to support compliance and reduce the risk of transmission and further outbreaks of COVID-19.
- 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 need to address particular circumstances is considered under the Direction. For example, as NSW's current epidemiological situation indicates there is a potentially lower risk of transmission presented by NSW border zone residents, these residents are permitted to enter Queensland for essential reasons provided they have not left the border zone in the previous 14 days, wear face masks while in Queensland and observe the stay at home requirements rather than quarantining. Existing exceptions to hotel quarantine under the Direction will continue to apply to travellers from other hotspots, for example for domestic air crew, who are permitted to quarantine at their residence in Queensland.

Also, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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.

In addition, requiring a person upon leaving hotel quarantine to undertake to have a further test on day 16 or 17, and to avoid certain facilities until receiving a negative test result, does not unreasonably restrict the persons movements. The Direction also recognises the hardship that certain persons would face in quarantine, including unaccompanied minors and persons with particular health needs, and allows them to quarantine with another person.

The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from either a COVID-19 hotspot or returning from overseas, and the freedom of movement.

Requiring a person to agree to undergo a COVID-19 test is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. The additional testing on day 16 or 17 of a person's quarantine period reflects the heightened risk of community transmission that has impacted Queensland and other jurisdictions, particularly with the recent emergence of the Delta strain. For example, a person who is released from quarantine may potentially be asymptomatic and there will be no means of confirmation without a test. The person could potentially infect people in the wider community once they are released from quarantine. Tackling such a scenario would require resources

for contact tracing (one person could have up to 200 contacts) and may divert resources from other critical areas. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights. A person also has the option of agreeing to the test or remaining in quarantine for a further 14 days.

However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) particularly given the transmission risks associated with hotel quarantine, and proximity of the border zone to the Queensland border, 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
Border Restrictions Direction (No. 39)

Title	<i>Border Restrictions Direction (No. 39)</i>
Date effective	24 August 2021

Background

The *Border Restrictions Direction (No. 39)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

The Direction will apply from midday on 25 August 2021.

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

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 further limits rights of entry into Queensland from declared COVID-19 hotspots in order to contain and respond to the increased risk of community transmission of the Delta variant of COVID-19.

From midday on 25 August 2021 until midday on 8 September 2021, a returning Queensland resident or new Queensland resident who has been in a COVID-19 hotspot in the preceding 14 days will not be permitted to enter Queensland without an exemption. The other rights of entry to Queensland from COVID-19 hotspots will remain unchanged. For example, entry to access essential health care or to fulfil an obligation relating to shared parenting or child contact.

A border zone resident may only enter Queensland for an essential purpose specified in the Direction, and may only remain in Queensland for the time necessary to perform that essential purpose. Conversely, the Direction also provides that a Queensland resident who is returning from a border zone may comply with stay at home requirements if they entered the border zone for a listed essential purpose, but must complete quarantine in a government nominated facility if they were in the border zone for any other purpose.

The Direction requires border zone residents and Queensland residents who have been in the border zone in the last 14 days and are permitted to enter Queensland to wear a mask at all times in Queensland with exceptions for children under the age of 12 and situations where it is not safe to wear a mask. The Direction also limits a border zone resident who is unable to wear a mask due to a medical condition to enter Queensland for medical/health care or a vaccination. A border zone resident (over the age of 12) who is unable to wear a mask will not be permitted to enter Queensland

to obtain food or supplies or to perform essential work. Finally, the Direction requires a border zone resident that needs to stay overnight or longer in Queensland to complete an essential purpose to observe stay at home requirements while they are in Queensland.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations. The inclusion of a border zone, with allowances made for essential activities to continue, allows for the Direction to ensure that requirements for travellers from this area reflect the unique situation of this area, while managing the risks of the current outbreak and lockdowns across regional New South Wales and the border zone. The Direction achieves its purpose as follows.

Queensland Border Declaration Pass

Anyone who is seeking to enter Queensland who has been in a COVID-19 hotspot during the relevant period, will be required to complete a Queensland Border Declaration Pass.

The following exceptions of people not required to complete the declaration pass will remain:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and
- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland.

The Queensland Border Declaration Pass includes undertakings that the person will present for a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland and monitor interstate exposure venues daily for 14 days following entry. A fine of \$4,135 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

The Direction places a restriction on entry into Queensland by a Queensland resident or new Queensland resident for two weeks from midday 25 August 2021, but does not prevent application for a pass being made during this time.

Entry into Queensland

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. The border zone is within the declared COVID-19 hotspot of NSW and subject to this restriction.

However, limited categories of people will still be permitted to enter Queensland from a COVID-19 hotspot subject to meeting the relevant entry requirements. This includes, , persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as

specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services. The direction requires endorsement of essential workers by the relevant Queensland Government agency, and essential workers must evidence that endorsement in order to enter Queensland as an essential worker.

The Direction now limits both returning Queensland residents and new residents from entering Queensland from a COVID-19 hotspot from midday 25 August 2021, for a two week period, to ensure that hotel quarantine accommodation is available for those most in need, or for emergency situations. Applications for a Queensland Border Declaration Pass, and for an exemption to enter Queensland without meeting the requirements of the Direction.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. However, reasons for entry to Queensland from a border zone recognise its close connection to Queensland border communities and allow for some residents of these areas to continue to cross between Queensland and New South Wales for limited, essential activities.

The Direction requires essential workers to have at least one dose of a COVID-19 vaccine to be permitted to enter Queensland. Other border zone residents are permitted to enter Queensland to attend a scheduled COVID-19 vaccination appointment in Queensland if they cannot reasonably obtain a COVID-19 vaccination in New South Wales.

Essential workers will be required to provide documentation to evidence their vaccination.

These arrangements promote access to essential health services and support the new requirement for essential workers to be vaccinated in order to enter Queensland.

Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

The Direction requires a person leaving hotel quarantine in Queensland to undertake a COVID-19 test 2 or 3 days after leaving hotel quarantine (day 16/17 testing) and to restrict their movements until they receive a negative result from that test. This new requirement will be mandatory from 7 September. This was a recommendation from AHPPC on 7 July 2021. The AHPPC recommended that day 16/17 testing requirements should apply to all international travellers. Queensland is introducing this requirement for domestic travellers under the Border Restrictions Direction as currently domestic and international travellers quarantine at the same hotels. Queensland is working to move towards

separating these cohorts in the future, however, this isn't currently possible due to hotel quarantine capacity restraints.

There is a general requirement to restrict movement until the result of the Day 16 or 17 test is received.

A person seeking to transit through a Queensland airport to an international destination will now only be permitted to remain in a quarantine hotel for up to 72 hours before departing Queensland. This is consistent with the approach to international arrivals.

Under the Direction, persons traveling from a COVID-19 hotspot within the relevant period must observe the 14 day quarantine requirements unless entry is for one of the limited essential purposes for a border zone resident. A Queensland resident must comply with stay at home requirements where they return from being in the border zone for one of the limited essential purposes provided in the Direction. The Direction adopts the terminology of 'stay at home requirements' to distinguish these from the stricter requirements that apply to quarantine for close contacts and people entering hotel quarantine from other hotspots. The Direction now provides that a Border zone resident that needs to stay overnight or longer in Queensland to complete an essential purpose must observe stay at home requirements while they are in Queensland.

Queensland residents and Border zone residents who have been in the border zone in the last 14 days and who are permitted to enter Queensland from the border zone will now be required to wear a face mask at all times in Queensland. There are fewer exceptions in place than for impacted areas currently. The two main exceptions are children under the age of 12 years, and situations where it is not safe to wear a mask due to the nature of the person's work.

A border zone resident who is unable to wear a mask due to a medical condition will only be permitted to enter Queensland for medical/health care or vaccination. A border zone resident over the age of 12 who cannot wear a mask will not be permitted to enter Queensland to obtain food or supplies or perform essential work.

Under the Direction, transport operators engaged to transport quarantined persons to and from quarantine hotels or other premises must be endorsed by a government authority and have a transport plan in place.

Any travel to and from a nominated quarantine premises when a person is permitted to leave their nominated premises must be via ambulance service, emergency services vehicle or transport arranged by a government authority. If a person needs to leave quarantine for essential medical care, transport must be via ambulance service both to the hospital or other facility and when returning to the nominated premises, if applicable.

Under the Direction, a person may end quarantine prior to completing 14 days if the COVID-19 hotspot they had been in prior to entering Queensland is removed from the list of areas requiring quarantine, while they are in quarantine.

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

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

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test. A person will be detained for a further period of 14 days if the person denies an emergency officer's (public health) request to be tested.

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals. From 1.00am AEST 21 August 2021, the restriction on which border zone residents may enter to obtain a COVID-19 vaccine indirectly discriminates between people on the basis of their work or profession. The changes in entry rights to Queensland from COVID-19 hotspots do not discriminate between Queensland residents and residents of other jurisdictions seeking to move to Queensland.
- The Direction will not allow an exception for a border zone resident who is unable to wear a face mask to enter Queensland to obtain groceries or supplies, or to perform essential work. They will only be able to enter Queensland to obtain medical/health care or a vaccination.

- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits these workers' ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland, and their release from quarantine, is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual. Requiring COVID-19 vaccination as a condition of entry to Queensland limits essential workers' ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to COVID-19 vaccination is limited as their ability to enter Queensland is predicated on being vaccinated.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a government nominated premises prior to being able to move freely in Queensland. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days. Queensland essential workers in the border zone, who are permitted to re-enter Queensland, are subject to stay at home requirements that impose a lesser restriction on their movement for 14 days. Queensland residents following stay at home requirements after travelling to the NSW border zone may leave home to attend a walk in vaccination appointment; a scheduled appointment is not required.
- Stay at home requirements will now apply to Border zone residents entering Queensland for limited essential purposes, where they remain overnight for the essential purpose. This limits the right to movement while they are in Queensland but still allows some movement, for example, to attend essential work, to obtain essential health care, or to obtain groceries.
- The Direction further limits the freedom of movement by specifying the airports that a new resident may fly into; and by requiring endorsement of a person as an essential worker before they can enter Queensland from a border zone.
- People who have been in an identified COVID-19 hotspot in the previous 14 days are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland and to monitor the interstate exposure venues daily for 14 days following entry. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to provide these undertakings.
- People who have been in an identified COVID-19 hotspot in the previous 14 days will not have a right of entry to Queensland in the next two weeks, restricting freedom of movement for Queensland residents and new residents.
- The requirement to wear a mask, with very limited exceptions, further restricts the right of movement into Queensland.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days, or to follow stay at home requirements after entering from performing a limited essential purpose in the border zone. People in quarantine or following a stay at home requirement will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be

manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to COVID-19 vaccination or to a COVID-19 test may infringe on a person's religious or personal views. The updated Direction may indirectly limit this right in the same way as the current Direction.

- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland. The restriction on returning Queensland residents right of entry to Queensland may limit this right temporarily but does not remove the right to enjoy one's property.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption, or evidence of COVID-19 vaccination to enter Queensland. The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits a freight and logistics operator's right to work by prohibiting them from entering Queensland if they have not complied with the mandatory COVID-19 testing requirements.
- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 14 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 14 day quarantine. Similar considerations apply to the requirement for a quarantined person to provide an undertaking for Day 16/17 testing before they are released from quarantine.
- This right may also be limited by requiring essential workers to be vaccinated as a condition of entry into Queensland, and by requiring them to provide evidence of their vaccination. A person's right to provide full, free and informed consent to COVID-19 vaccination is limited as their ability to enter Queensland is predicated on being vaccinated. However, this condition of entry to Queensland is for a limited time, until the Direction is revoked or replaced.
- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot. A person following stay at home requirements is restricted from visiting other family members but can remain with their own household and may receive two visitors, which supports the right to protection of families and children. Other household members are not limited in their movements.

- The Direction also limits this right as it prevents Queensland residents from returning home from a hotspot. Little notice will be given to the implementation of this restriction, potentially restricting family routines and community.
- Cultural rights – generally (section 27): The Direction limits a person’s ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days, or from the start of the declared hotspot, whichever period is shorter, unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in extreme exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance. Prohibiting people from hotspots from entering Queensland will also engage this right. The updated Direction clarifies that movement between Queensland and the border zone is permitted for vulnerable children, as well as for children of essential workers, to attend school or childcare.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- restriction on rights of entry of Queensland residents and new residents for the two weeks from midday 25 August 2021
- requirement for essential workers to be vaccinated and provide evidence of vaccination as a condition of entry to Queensland;
- requirement for essential border zone workers to observe stay at home requirements if they remain in Queensland overnight or longer for the essential purpose;
- requirement to wear face masks in Queensland, with very limited exceptions, where a Queensland resident or border zone resident permitted to enter Queensland has been in the border zone in the past 14 days;
- limits access to Queensland to obtain COVID-19 vaccination to scheduled appointments where a vaccination could not reasonably be obtained in New South Wales.;
- requirement to quarantine, and be subject to a COVID-19 test during quarantine and to undertake to do Day 16/17 testing as a precondition of release from quarantine, for some people entering Queensland, or to follow stay at home requirements; and
- ban on people from COVID-19 hotspots, including the border zone, entering Queensland, except for certain reasons or activities; and

- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland
- requirement for people entering Queensland who have been in a COVID-19 hotspot to complete a Queensland Border Declaration Pass
- requirement for freight and logistics operators who have been in COVID-19 hotspots to comply with mandatory COVID-19 testing obligations.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of Australia, including the border zone, which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community. Border zone residents are permitted to enter Queensland for essential reasons and vice versa in recognition of the proximity and interconnectedness of the Queensland and New South Wales border communities.

Expanding mandatory testing requirements for freight and logistics operators will reduce the risk of COVID-19 cases arriving from interstate and having contact with the Queensland community, given freight and logistics operators are permitted to enter and travel through Queensland without quarantining for 14 days.

Additionally, requiring most people entering Queensland to quarantine in nominated premises or to follow stay at home requirements is to confine potential outbreaks and enable appropriate support of quarantined individuals within available resources. It also enables monitoring and enforcement of the requirements under the Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is also in effect for a temporary period, and the restrictions as applying to a person only last for 14-days, which is tied to the typical incubation period for COVID-19. Ultimately, the purpose of quarantine or stay at home requirements is to limit the opportunity for transmission of COVID-19 during the potential incubation period. The Day 16/17 test supports this approach by using testing to manage the risk of an extended incubation period rather than by requiring longer quarantine periods.

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.

Restricting rights of entry from a COVID-19 hotspot for a limited period of time helps achieve the intended purpose by reducing the risk of transmission from recognised high risk areas, and helps ensure availability of government nominated quarantine accommodation for priority cases. The response is suitable given the increased risk associated with the highly transmissible Delta variant of COVID-19.

Requiring certain people to quarantine or follow stay at home requirements when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results or who haven't complied with mandatory COVID-19 testing obligations from entering Queensland will

help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine and stay at home requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence. The stay at home requirements reflect the need for essential workers to continue to leave home for their essential work, and other limited permitted purposes.

Applying the stay at home requirements to border zone residents permitted to enter Queensland for essential work purposes manages the risk associated with overnight and longer stays, while allowing them to remain in Queensland to complete their essential purpose. The requirement is also consistent with the requirements for Queensland residents who have been to the border zone for essential purposes.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage. Testing 2 to 3 days after the quarantine period ends further reduces the risk of community transmission while releasing travellers from quarantine restrictions.
- Hotel quarantine has been used as a necessary measure to allow people to enter Queensland from hotspots, while minimising the risk of community transmission or an outbreak as they travel from higher risk parts of Australia. However, the number of people accepting hotel quarantine requirements in order to continue to travel between Queensland and other jurisdictions has placed an unmanageable demand on the available hotel quarantine facilities. Genuine emergency requirements, including humanitarian placement of evacuees from Afghanistan, are now at risk as a result of the influx of new residents and returning Queensland residents. Reducing the number of people entering Queensland automatically is necessary to allow emergency officers and public health units to triage and prioritise entry into Queensland through hotel quarantine. This is a short term response to a critical situation.
- Providing an exhaustive list of essential workers that may move between Queensland and the border zone, requiring evidence of COVID-19 vaccination for this group, and allowing them to follow stay at home requirements rather than quarantine, is necessary to manage the risk of

transmission while maintaining essential supplies and services to the community. The additional categories of essential worker ensure that pathology services can be maintained, including for essential COVID-19 testing and aged care and disability care workers are available to provide care to vulnerable people. Essential workers will also need to be endorsed as such.

- The requirement for essential workers to have at least one dose of a COVID-19 vaccine to be permitted to enter Queensland takes effect from 11.59pm Friday 20 August 2021.
- Requiring masks to be worn, with very limited exceptions, by Queensland residents and border zone residents who have been in the border zone in the last 14 days provides further protection against the risk of transmission from the locked down local government areas in the border zone. The response is proportionate to the current high risk of transmission from the border zone at this time. Face masks have been used in parts of Queensland to provide an effective response to reducing transmission; requirements have been tailored to the epidemiological risks.
- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from a COVID-19 hotspot with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Requiring a person who enters Queensland from a COVID-19 hotspot to agree to undergo a COVID-19 test if they develop symptoms and requiring freight and logistics operators to undergo mandatory COVID-19 testing prior to entering Queensland is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for vulnerable children to attend school or childcare, people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) protects the rights to security of person and life (ss 16 and 29(1)). There is also an exception for border zone residents who are unable to wear a mask for medical reasons; they may still enter Queensland without a mask to obtain medical/health care or vaccination. These exceptions are designed to tailor the limits on human rights to those necessary.

Additionally, only those people who have been in a COVID-19 hotspot are required to complete a Queensland Border Declaration Pass. Anyone else entering Queensland is only required to complete the less onerous Queensland Travel Declaration. The Queensland Travel Declaration requires a person to provide less personal information in recognition that the public health risk is lower for a person who has not been in either a COVID-19 hotspot.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment. Information is only required to be provided to the extent necessary to support compliance and reduce the risk of transmission and further outbreaks of COVID-19.
- 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 need to address particular circumstances is considered under the Direction. For example, as NSW's current epidemiological situation indicates there is a potentially lower risk of transmission presented by NSW border zone residents, these residents are permitted to enter Queensland for essential reasons provided they have not left the border zone in the previous 14 days, wear face masks while in Queensland and observe the stay at home requirements rather than quarantining. Existing exceptions to hotel quarantine under the Direction will continue to apply to travellers from other hotspots, for example for domestic air crew, who are permitted to quarantine at their residence in Queensland.

Also, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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.

A person seeking to enter Queensland from a hotspot in the two week period after midday 25 August 2021 may still apply for a pass to enter Queensland, and may seek an exemption from the requirements of the Direction. This allows consideration to be given to the particular circumstances of the person and how their human rights are limited. Exemptions will be considered for emergent and compassionate grounds, and limited entry rights remain for identified categories of people entering from a hotspot. These categories take into account and support human rights such as access to medical treatment, education and protection of the family and children.

In addition, requiring a person upon leaving hotel quarantine to undertake to have a further test on day 16 or 17, and to avoid certain facilities until receiving a negative test result, does not unreasonably restrict the persons movements. The Direction also recognises the hardship that certain persons would face in quarantine, including unaccompanied minors and persons with particular health needs, and allows them to quarantine with another person.

The Chief Health Officer has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from either a COVID-19 hotspot or returning from overseas, and the freedom of movement.

Requiring a person to agree to undergo a COVID-19 test is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. The additional testing on day 16 or 17 of a person's quarantine period reflects the heightened risk of community transmission that has impacted Queensland and other jurisdictions, particularly with the recent emergence of the Delta strain. For example, a person who is released from quarantine may potentially be asymptomatic and there will be no means of confirmation without a test. The person could potentially infect people in the wider community once they are released from quarantine. Tackling such a scenario would require resources for contact tracing (one person could have up to 200 contacts) and may divert resources from other critical areas. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights. A person also has the option of agreeing to the test or remaining in quarantine for a further 14 days.

However, the importance of limiting the spread of COVID-19 into Queensland (taking into account the right to life) particularly given the transmission risks associated with hotel quarantine, and proximity of the border zone to the Queensland border, 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
Border Restrictions Direction (No. 40)

Title	<i>Border Restrictions Direction (No. 40)</i>
Date effective	6 September 2021

Background

The *Border Restrictions Direction (No. 40)* (Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

The Direction will apply from 6 September 2021.

Purpose of the Direction

The purpose of the Direction is to limit the spread of COVID-19 within the community, including by limiting the spread of COVID-19 into Queensland from persons arriving from COVID-19 hotspots.

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 limits rights of entry into Queensland from declared COVID-19 hotspots in order to contain and respond to the increased risk of community transmission of the Delta variant of COVID-19.

Under *Border Restrictions Direction (No. 39)*, from midday on 25 August 2021 until midday 8 September 2021, a returning or new Queensland resident who has been in a COVID-19 hotspot in the preceding 14 days was not permitted to enter Queensland without an exemption. The other rights of entry to Queensland from COVID-19 hotspots remain unchanged.

The Direction is being updated to allow the entry of returning and new Queensland residents from mid-day 8 September 2021. Changes to the Direction will require that a returning and new Queensland residents seeking entry into Queensland:

- have been provided an allocated entry date and designated entry airport to enter Queensland, confirmed in writing from a government authority; and
- are entering on the allocated entry date and to the designated entry airport; and
- must have a valid Border Declaration Pass; and
- must provide evidence of Queensland residency in the form of a prescribed document outlined in the Direction when applying for a Border Declaration Pass and if requested by an emergency officer (public health).

Under the Direction, returning and new Queensland residents who arrive in Queensland without meeting the above requirements may be directed to hotel quarantine at their own expense until they can safely depart Queensland.

Under the Direction, a border zone resident may only enter Queensland for an essential purpose specified in the Direction, and may only remain in Queensland for the time necessary to perform that essential purpose. A Queensland resident may enter the border zone for an essential purpose and remain in the border zone for the time necessary to perform that essential purpose. A Queensland resident who is returning from a border zone must comply with stay at home requirements if they entered the border zone for a listed essential purpose. If they entered the border zone for a non-essential reason, they are not permitted to return to Queensland by road but must arrive in Queensland on an allocated day via a designated airport, provide evidence of Queensland residency when applying for a Border Declaration Pass and if requested by an emergency officer (public health) and complete 14 days quarantine in a government nominated facility.

The Direction requires border zone residents and Queensland residents who have been in the border zone in the last 14 days and are permitted to enter Queensland to wear a mask at all times in Queensland with exceptions for children under the age of 12 and situations where it is not safe to wear a mask. The Direction also limits the reason a border zone resident who is unable to wear a mask due to a medical condition to enter Queensland to receiving medical/health care or a vaccination. A border zone resident (over the age of 12) who is unable to wear a mask will not be permitted to enter Queensland to obtain food or supplies or to perform essential work. Finally, the Direction requires a border zone resident that needs to stay overnight or longer in Queensland to complete an essential purpose to observe stay at home requirements while they are in Queensland.

How the Direction achieves the purpose

The restrictions for persons entering Queensland from a COVID-19 hotspot respond to an acute public health risk identified in these locations. The inclusion of a border zone, with allowances made for essential activities to continue, allows for the Direction to ensure that requirements for travellers from this area reflect the unique situation of this area, while managing the risks of the current outbreak and lockdowns across regional New South Wales and the border zone. The Direction achieves its purpose as follows.

Queensland Border Declaration Pass

Anyone who is seeking to enter Queensland, including returning and new Queensland residents who have been in a COVID-19 hotspot during the relevant period, will be required to complete a Queensland Border Declaration Pass.

The following exceptions of people not required to complete the declaration pass will remain:

- maritime crew who are not required to complete a Queensland Border Declaration Pass if permitted under the Protocol for Maritime Crew approved by the Chief Health Officer while acting in compliance with that Protocol;
- a person performing an essential activity related to national and state security, police, health or emergency services who enters Queensland to respond to an emergency;
- a passenger of an ambulance or aeromedical service; and
- a person remanded in custody of a state, territory or commonwealth law enforcement agency, subject to an extradition order or otherwise, who is required to enter Queensland to comply with a court order or assist with or participate in an investigation or other action at the direction of the law enforcement agency; and

- a disaster management worker who is not required to give a Queensland Border Declaration Pass if permitted under the Operational protocol for the disaster management workers entering Queensland.

The Queensland Border Declaration Pass includes undertakings that the person will present for a COVID-19 test if they develop symptoms consistent with COVID-19 while in Queensland and monitor interstate exposure venues daily for 14 days following entry. A fine of \$4,135 will apply to anyone who provides false or misleading information in their Queensland Border Declaration Pass. A penalty of up to 6 months imprisonment may also apply if a person is prosecuted for an offence of contravening the Direction. This is intended to provide a stronger deterrent against failing to comply with the Direction.

Entry into Queensland

The Direction prohibits people from entering Queensland if they have been in a declared COVID-19 hotspot in the last 14 days or since the start date of the declared COVID-19 hotspot, whichever is shorter, preceding entry. The border zone is within the declared COVID-19 hotspot of NSW and subject to this restriction.

However, limited categories of people will still be permitted to enter Queensland from a COVID-19 hotspot subject to meeting the relevant entry requirements. This includes, persons entering to fulfill shared parenting arrangements, or a person performing an essential activity in Queensland such as specialist or essential workers, disaster management workers or those providing emergency energy, drinking water, sewerage, liquid fuel, resources or telecommunications services. The direction requires endorsement of essential workers by the relevant Queensland Government agency, and essential workers must evidence that endorsement in order to enter Queensland as an essential worker.

The Direction requires returning or new Queensland residents entering Queensland from a COVID-19 hotspot to have been allocated an entry date and designated airport to enter Queensland. They must only enter on the allocated date from the designated airport and will not be able to enter Queensland otherwise. Further, returning and new Queenslanders must also have a valid Border Declaration Pass. Returning and new Queensland residents must provide evidence of their Queensland residency when applying for a Border Declaration Pass and if requested by an emergency officer (public health). A prescriptive list of documents that may be used for this purpose is provided in the Direction along with alternatives for new residents where they are unable to provide evidence of a residential address in Queensland. Applications for a Queensland Border Declaration Pass, and for an exemption to enter Queensland can continue to be made without meeting the requirements of the Direction.

The Direction imposes restrictions on persons entering Queensland from a COVID-19 hotspot as a protective measure to ensure the health and safety of residents by limiting the spread of COVID-19 from interstate travel from areas with known community transmission of COVID-19. However, reasons for entry to Queensland from a border zone recognise its close connection to Queensland border communities and allow for some residents of these areas to continue to cross between Queensland and New South Wales for limited, essential activities.

The Direction requires essential workers from the border zone to have at least one dose of a COVID-19 vaccine to be permitted to enter Queensland. Other border zone residents are permitted to enter Queensland to attend a scheduled COVID-19 vaccination appointment in Queensland if they cannot reasonably obtain a COVID-19 vaccination in New South Wales.

Essential workers will be required to provide documentation to evidence their vaccination.

These arrangements promote access to essential health services and support the new requirement for essential workers to be vaccinated in order to enter Queensland.

Persons who are permitted to enter Queensland from a COVID-19 hotspot are generally required to undergo mandatory quarantine. This is in government nominated premises, such as a hotel, for 14 days. The period of 14 days is based on the median incubation period of 5 to 6 days, with a range of 1 to 14 days. Hotel quarantine under police enforcement will ensure that persons at risk of COVID-19, should they develop the disease, are not putting other members of the public at risk of disease. Quarantine in this manner also ensures that a person has access to necessary food and medical supplies during their period of quarantine.

Persons arriving into Queensland who are required to quarantine must travel directly to the quarantine premises, and may not leave during the 14-day period, or the period they are required to be in Queensland, whichever is shorter, except for the purpose of obtaining essential medical care, to comply with a legal obligation such as a court order, to avoid injury or illness or to escape a risk of harm, or as otherwise required or permitted under a direction given to the person by a relevant authority.

The Direction requires a person leaving hotel quarantine in Queensland to undertake a COVID-19 test 2 or 3 days after leaving hotel quarantine (day 16/17 testing) and to restrict their movements until they receive a negative result from that test. This new requirement will be mandatory from 7 September. This was a recommendation from AHPPC on 7 July 2021. The AHPPC recommended that day 16/17 testing requirements should apply to all international travellers. Queensland is introducing this requirement for domestic travellers under the Border Restrictions Direction as currently domestic and international travellers quarantine at the same hotels. Queensland is working to move towards separating these cohorts in the future, however, this is not currently possible due to hotel quarantine capacity restraints.

There is a general requirement to restrict movement until the result of the Day 16 or 17 test is received.

A person seeking to transit through a Queensland airport to an international destination will now only be permitted to remain in a quarantine hotel for up to 72 hours before departing Queensland. This is consistent with the approach to international arrivals.

Under the Direction, persons traveling from a COVID-19 hotspot within the relevant period must observe the 14 day quarantine requirements unless entry is for one of the limited essential purposes for a border zone resident. A Queensland resident must comply with stay at home requirements where they return from being in the border zone for one of the limited essential purposes provided in the Direction. The Direction adopts the terminology of 'stay at home requirements' to distinguish these from the stricter requirements that apply to quarantine for close contacts and people entering hotel quarantine from other hotspots. The Direction now provides that a Border zone resident that needs to stay overnight or longer in Queensland to complete an essential purpose must observe stay at home requirements while they are in Queensland.

Queensland residents and Border zone residents who have been in the border zone in the last 14 days and who are permitted to enter Queensland from the border zone will now be required to wear a face mask at all times in Queensland. There are fewer exceptions in place than for impacted areas currently. The two main exceptions are children under the age of 12 years, and situations where it is not safe to wear a mask due to the nature of the person's work.

A border zone resident who is unable to wear a mask due to a medical condition will only be permitted to enter Queensland for medical/health care or vaccination. A border zone resident over the age of 12 who cannot wear a mask will not be permitted to enter Queensland to obtain food or supplies or perform essential work.

Under the Direction, transport operators engaged to transport quarantined persons to and from quarantine hotels or other premises must be endorsed by a government authority and have a transport plan in place.

Any travel to and from a nominated quarantine premises when a person is permitted to leave their nominated premises must be via ambulance service, emergency services vehicle or transport arranged by a government authority. If a person needs to leave quarantine for essential medical care, transport must be via ambulance service both to the hospital or other facility and when returning to the nominated premises, if applicable.

Under the Direction, a person may end quarantine prior to completing 14 days if the COVID-19 hotspot they had been in prior to entering Queensland is removed from the list of areas requiring quarantine, while they are in quarantine.

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

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

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

Some persons may quarantine in other suitable premises. For example, a person coming to Queensland for patient health care may quarantine at the health facility.

A person, including an unaccompanied minor, will also be able to enter Queensland from a COVID-19 hotspot without quarantining if they have completed a minimum 14 days of government mandated quarantine in a COVID-19 hotspot in another State or Territory. These people must be able to provide written confirmation that they have completed quarantine and had a negative COVID-19 test result after day 10 (or later) of the government mandated quarantine from a government authority of another State or Territory where the government mandated quarantine was completed. They must also provide an undertaking that they travelled directly to Queensland after leaving the premises of government mandated quarantine and wore a protective mask on their journey.

A person required to quarantine may be requested by an emergency officer (public health) to submit to a COVID-19 test. A person will be detained for a further period of 14 days if the person denies an emergency officer's (public health) request to be tested.

A person entering for an essential activity must comply with any protocol approved by the Chief Health Officer that relates to the activity being performed. These protocols are made in consultation with industry.

The Chief Health Officer or a delegate may grant a person an exemption from all or part of the Direction based on extreme exceptional circumstances. Exemptions can be given subject to conditions.

Human rights engaged

- Right to equality and non-discrimination (section 15): The restrictions on people entering Queensland from a COVID-19 hotspot indirectly discriminates between residents of hotspots and residents of non-hotspot areas. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis of interstate residence, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. Additionally, requiring certain people from other states and territories to quarantine when entering Queensland indirectly discriminates against those individuals. The restriction on which border zone residents may enter to obtain a COVID-19 vaccine indirectly discriminates between people on the basis of their work or profession.
- The Direction will not allow an exception for a border zone resident who is unable to wear a face mask to enter Queensland to obtain groceries or supplies, or to perform essential work. They will only be able to enter Queensland to obtain medical/health care or a vaccination.
- Right to life (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. Under international law, this right is an absolute right which must be realised and outweighs the potential impacts on any one individual's rights.
- Protection from torture and cruel, inhuman or degrading treatment (section 17): This right includes the right not to be subjected to medical treatment without consent. The requirement for persons entering Queensland to agree to a COVID-19 test if they develop symptoms limits a person's ability to make an autonomous decision about medical treatment. The requirements for mandatory COVID-19 testing of freight and logistics operators under the *Operational protocol for freight movements entering Queensland* also limits these workers' ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to the test is limited as their ability to enter Queensland, and their release from quarantine, is predicated on agreeing to the test. It may be argued that the testing is compulsory and not consensual. Requiring COVID-19 vaccination as a condition of entry to Queensland limits essential workers' ability to make an autonomous decision about medical treatment. A person's right to provide full, free and informed consent to COVID-19 vaccination is limited as their ability to enter Queensland is predicated on being vaccinated.
- Freedom of movement (section 19): The Direction limits the freedom of movement by preventing travellers from COVID-19 hotspots from entering Queensland. The travellers who are permitted to enter from a COVID-19 hotspot under the Direction are generally required to quarantine at a government nominated premises prior to being able to move freely in Queensland. The Direction limits this right by restricting a person's movement to any other premises, other than in essential or emergency situations, for 14 days. Queensland essential workers in the border zone, who are permitted to re-enter Queensland, are subject to stay at home requirements that impose a lesser restriction on their movement for 14 days. Queensland residents following stay at home requirements after travelling to the NSW border zone may leave home to attend a walk in vaccination appointment; a scheduled appointment is not required.
- Stay at home requirements will now apply to Border zone residents entering Queensland for limited essential purposes, where they remain overnight for the essential purpose. This limits the

right to movement while they are in Queensland but still allows some movement, for example, to attend essential work, to obtain essential health care, or to obtain groceries.

- The Direction further limits the freedom of movement by specifying the airports that a returning new resident may fly into when they are permitted to enter under the Direction on an allocated entry date; and by requiring endorsement of a person as an essential worker before they can enter Queensland from a border zone.
- People who have been in an identified COVID-19 hotspot in the previous 14 days are also required to complete a Queensland Border Declaration Pass and agree to be tested if they develop symptoms of COVID-19 while in Queensland and to monitor the interstate exposure venues daily for 14 days following entry. This requirement engages freedom of movement as it prevents those individuals from entering Queensland if they refuse to provide these undertakings.
- People who have been in an identified COVID-19 hotspot in the previous 14 days will not have a right of entry to Queensland until mid-day 8 September 2021, restricting freedom of movement for Queensland residents and new residents until they receive an allocated day to enter Queensland
- The requirement to wear a mask, with very limited exceptions, further restricts the right of movement into Queensland.
- Freedom of thought, conscience, religion and belief (section 20): The Direction may limit this right by requiring the majority of people entering from a hotspot to quarantine for a period of 14 days, or to follow stay at home requirements after entering from performing a limited essential purpose in the border zone. People in quarantine or following a stay at home requirement will be unable to publicly demonstrate and practise 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. In so far as a person from a COVID-19 hotspot has a religion or belief that can only be manifested in Queensland (for example at a particular sacred site in Queensland), the right may also be limited by preventing these people from being able to enter Queensland to access a sacred site in Queensland. Requiring a person to submit to COVID-19 vaccination or to a COVID-19 test may infringe on a person's religious or personal views. The updated Direction may indirectly limit this right in the same way as the current Direction.
- Freedom of expression (section 21): The Direction limits this right by requiring some people to quarantine or preventing some people from entering Queensland, thereby restricting the ways in which people choose to express themselves freely (for example, orally in person).
- Peaceful assembly and freedom of association (section 22): By requiring people to quarantine or restricting entry into Queensland, the Direction may limit the ability of people to engage in peaceful assembly and to associate freely.
- Property rights (section 24): One of the aspects of the right to property is the right to use and enjoy one's property. The right may be limited by preventing a person from a COVID-19 hotspot from entering Queensland and requiring certain people to quarantine at a government nominated premises at their own expense prior to being able to access property in Queensland. The restriction on returning and new Queensland residents right of entry to Queensland may limit this right temporarily but does not remove the right to enjoy one's property.
- Privacy and reputation (section 25): The Direction limits this right as it may interfere with people's right to make and maintain interstate social and family connections. Interference with privacy may also occur by making a person provide personal details by way of a Queensland Border Declaration or exemption, or evidence of COVID-19 vaccination to enter Queensland. Further interferences will occur for returning and new Queensland resident's by having to provide proof of their residency in Queensland when applying for a Border Declaration Pass and if requested by an emergency officer (public health). The Direction may also limit a person's right to work by not allowing people to enter Queensland from a COVID-19 hotspot for work purposes. The Direction may also limit a person's right to work by requiring a person to quarantine for 14 days before they can return to work. The requirements for mandatory COVID-19 testing of freight and logistics

operators under the *Operational protocol for freight movements entering Queensland* also limits a freight and logistics operator's right to work by prohibiting them from entering Queensland if they have not complied with the mandatory COVID-19 testing requirements.

- The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]). It is arguable that the Direction engages this aspect of the right through the requirement for a person to either agree to a COVID-19 test during quarantine or be subjected to an additional 14 days of quarantine. Although this aspect of the right may be engaged, it is considered not to be limited as the Direction includes a practical alternative of an additional 14 day quarantine. Similar considerations apply to the requirement for a quarantined person to provide an undertaking for Day 16/17 testing before they are released from quarantine.
- This right may also be limited by requiring essential workers to be vaccinated as a condition of entry into Queensland, and by requiring them to provide evidence of their vaccination. A person's right to provide full, free and informed consent to COVID-19 vaccination is limited as their ability to enter Queensland is predicated on being vaccinated. However, this condition of entry to Queensland is for a limited time, until the Direction is revoked or replaced.
- Protection of families and children (section 26): The Direction limits this right as it restricts family members, children and other personal visitors from visiting their loved ones. For example, if a person is required to quarantine for 14 days after entering Queensland before seeing their family or if a person is prevented from entering Queensland as they are from a hotspot. A person following stay at home requirements is restricted from visiting other family members but can remain with their own household and may receive two visitors, which supports the right to protection of families and children. Other household members are not limited in their movements.
- The Direction also limits this right as it prevents Queensland residents from returning home from a hotspot until 8 September 2021..
- Cultural rights – generally (section 27): The Direction limits a person's ability to engage with others who share their cultural background by preventing entry into Queensland or prohibiting certain people from congregating for the purpose of cultural expression without first undertaking 14 days of quarantine at their own expense.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): The Direction limits the right to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs as it restricts entry to Queensland to people who have been in a COVID-19 hotspot in the last 14 days, or from the start of the declared hotspot, whichever period is shorter, unless they can undertake 14 days of quarantine at their own expense.
- Right to liberty (section 29): The requirement to undertake mandatory quarantine at a government-nominated premises may go beyond restricting freedom of movement to restricting liberty.
- Right to humane treatment when deprived of liberty (section 30): The requirement to quarantine at government-nominated premises such as supervised hotel room may be particularly onerous for some people, and arguably may engage the right to humane treatment when deprived of liberty. However, the Direction allows for the Chief Health Officer to provide individual exemptions in extreme exceptional circumstances. Additionally, the restriction against visitors to the nominated premises while quarantining may be a limit on the right to humane treatment when deprived of liberty.
- Right to education (section 36): Requiring a person to quarantine in a government-nominated premises limits these rights by restricting their movements and their ability to engage with community and, if the detained person is a school aged child, restricting school attendance.

Prohibiting people from hotspots from entering Queensland will also engage this right. The updated Direction clarifies that movement between Queensland and the border zone is permitted for vulnerable children, as well as for children of essential workers, to attend school or childcare.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

- restriction on rights of entry of Queensland residents and new residents;
- requirement for returning and new Queensland residents to provide evidence of Queensland residency when applying for a Border Declaration Pass and if requested by an emergency officer (public health);
- requirement for returning and new Queensland residents to have a Border Declaration Pass, and enter on an allocated entry date from a designated entry airport to be allowed entry into Queensland;
- requirement for essential border zone workers to be vaccinated and provide evidence of vaccination as a condition of entry to Queensland;
- requirement for essential border zone workers to observe stay at home requirements if they remain in Queensland overnight or longer for the essential purpose;
- requirement to wear face masks in Queensland, with very limited exceptions, where a Queensland resident or border zone resident permitted to enter Queensland has been in the border zone in the past 14 days;
- limits access to Queensland to obtain COVID-19 vaccination to scheduled appointments where a vaccination could not reasonably be obtained in New South Wales.;
- requirement to quarantine, and be subject to a COVID-19 test during quarantine and to undertake to do Day 16/17 testing as a precondition of release from quarantine, for some people entering Queensland, or to follow stay at home requirements; and
- ban on people from COVID-19 hotspots, including the border zone, entering Queensland, except for certain reasons or activities; and
- requirement for people permitted to enter Queensland to agree to a COVID-19 test if they develop symptoms while in Queensland
- requirement for people entering Queensland who have been in a COVID-19 hotspot to complete a Queensland Border Declaration Pass
- requirement for freight and logistics operators who have been in COVID-19 hotspots to comply with mandatory COVID-19 testing obligations.

The purpose of restricting entry into Queensland is to reduce the risk of COVID-19 cases arriving from interstate, particularly parts of Australia, including the border zone, which currently have a cluster of active COVID-19 cases. Restricting entry from those jurisdictions will help prevent the spread of COVID-19 within the broader Queensland community. Border zone residents are permitted to enter Queensland for essential reasons and vice versa in recognition of the proximity and interconnectedness of the Queensland and New South Wales border communities. The essential reasons for which border zone residents may enter Queensland has been broadened under this Direction to recognise court ordered purposes, such as a person reporting for parole, and entering to donate blood at a scheduled appointment at a blood collection centre.

Expanding mandatory testing requirements for freight and logistics operators will reduce the risk of COVID-19 cases arriving from interstate and having contact with the Queensland community, given freight and logistics operators are permitted to enter and travel through Queensland without quarantining for 14 days.

Additionally, requiring most people entering Queensland to quarantine in nominated premises or to follow stay at home requirements is to confine potential outbreaks and enable appropriate support of quarantined individuals within available resources. It also enables monitoring and enforcement of the requirements under the Direction, noting the increased strain on front-line emergency responders and police due to the COVID-19 pandemic. The Direction is also in effect for a temporary period, and the restrictions as applying to a person only last for 14-days, which is tied to the typical incubation period for COVID-19. Ultimately, the purpose of quarantine or stay at home requirements is to limit the opportunity for transmission of COVID-19 during the potential incubation period. The Day 16/17 test supports this approach by using testing to manage the risk of an extended incubation period rather than by requiring longer quarantine periods.

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.

The pause on entry for returning and new Queensland residents was put in place to ease the strain on the already overwhelmed hotel quarantine system. Requiring returning and new Queensland residents to enter Queensland on an allocated day, at an allocated airport with a valid Border Declaration Pass will enable authorities to ensure appropriate hotel quarantine accommodation is available for these cohorts and reduce the risk of spreading COVID-19 to the Queensland community. Requiring returning and new Queenslanders to provide evidence of their identity will enable emergency officers to properly assess their suitability to enter Queensland, without further overwhelming the hotel quarantine system by allowing a wider class of persons to enter.

The response is suitable given the increased risk associated with the highly transmissible Delta variant of COVID-19.

Requiring certain people to quarantine or follow stay at home requirements when they enter Queensland and preventing people coming from hotspots or those awaiting COVID-19 test results or who haven't complied with mandatory COVID-19 testing obligations from entering Queensland will help to achieve the same purpose, by limiting the opportunities for transmission of COVID-19 during the potential incubation period.

Additionally, the quarantine and stay at home requirements have been tailored to the needs of different cohorts of people. For example, a minor who is required to quarantine may have a parent or guardian quarantine with them at their own expense. Similarly, a person unable to live independently without ongoing or regular support may have a carer or support person quarantine with them. This approach balances the needs of minors or people unable to live independently with the potential public health risks of allowing this cohort to quarantine at a personal residence. The stay at home requirements reflect the need for essential workers to continue to leave home for their essential work, and other limited permitted purposes.

Applying the stay at home requirements to border zone residents permitted to enter Queensland for essential work purposes manages the risk associated with overnight and longer stays, while allowing them to remain in Queensland to complete their essential purpose. The requirement is also consistent

with the requirements for Queensland residents who have been to the border zone for essential purposes.

People in quarantine are also permitted to leave their place of quarantine in some circumstances, which include but are not limited to, obtaining essential medical care or in an emergency. This approach ensures the Direction is suitably tailored to address the public health risks associated with COVID-19 while acknowledging there may be individual circumstances that need to be managed appropriately.

Necessary (s 13(2)(d))

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

In particular:

- Applying a quarantine period for everyone, including people from hotspots, wishing to enter Queensland would not be practicable because of the resourcing requirements of policing the number of quarantine orders involved. It would require the availability of appropriate quarantine facilities for travellers that allow a person to access the necessary supplies and services without leaving their accommodation. Allowing people from hotspots to enter Queensland, subject to a quarantine period, also potentially exposes Queensland to the risk of community transmission, or an outbreak, if there is any leakage. Testing 2 to 3 days after the quarantine period ends further reduces the risk of community transmission while releasing travellers from quarantine restrictions.
- Hotel quarantine has been used as a necessary measure to allow people to enter Queensland from hotspots, while minimising the risk of community transmission or an outbreak as they travel from higher risk parts of Australia. However, the number of people accepting hotel quarantine requirements in order to continue to travel between Queensland and other jurisdictions has placed an unmanageable demand on the available hotel quarantine facilities. Genuine emergency requirements, including humanitarian placement of evacuees from Afghanistan, are now at risk as a result of the influx of new residents and returning Queensland residents. Restricting the number of returning and new Queensland residents entering hotel quarantine by requiring that they enter on an allocated day via a designated airport is necessary to allow emergency officers and public health units to triage and prioritise entry into Queensland through hotel quarantine.
- Extending the pause on arrivals for returning and new Queensland residents will also achieve this purpose. However, this will be a stronger infringement on the human rights of these individuals. Requiring returning and new Queensland residents to arrive an allocated day, via a designated airport with a valid border pass enables the proper management of arrivals while allowing returning and new residents to come home.
- Providing an exhaustive list of essential workers that may move between Queensland and the border zone, requiring evidence of COVID-19 vaccination for this group, and allowing them to follow stay at home requirements rather than quarantine, is necessary to manage the risk of transmission while maintaining essential supplies and services to the community. The additional categories of essential worker ensure that pathology services can be maintained, including for essential COVID-19 testing and aged care and disability care workers are available to provide care to vulnerable people. Essential workers will also need to be endorsed as such.
- The requirement for essential workers to have at least one dose of a COVID-19 vaccine to be permitted to enter Queensland took effect from 11.59pm Friday 20 August 2021.
- Requiring masks to be worn, with very limited exceptions, by Queensland residents and border zone residents who have been in the border zone in the last 14 days provides further protection against the risk of transmission from the locked down local government areas in

the border zone. The response is proportionate to the current high risk of transmission from the border zone at this time. Face masks have been used in parts of Queensland to provide an effective response to reducing transmission; requirements have been tailored to the epidemiological risks.

- Relying on other measures such as contact tracing and testing at the border (without border restrictions) would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people arriving from a COVID-19 hotspot with COVID-19 may be asymptomatic, presymptomatic, or produce a false negative. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case can have more than 200 contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.
- Requiring a person who enters Queensland from a COVID-19 hotspot to agree to undergo a COVID-19 test if they develop symptoms and requiring freight and logistics operators to undergo mandatory COVID-19 testing prior to entering Queensland is aimed at addressing the risk presented by COVID-19 in situations where a person is not required to complete mandatory quarantine in a government-nominated premises. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights.

There are exceptions built into the Direction which are designed to protect human rights. For example, the exception for vulnerable children to attend school or childcare, people avoiding injury or escaping risk of harm (such as a domestic or family violence situation) protects the rights to security of person and life (ss 16 and 29(1)). There is also an exception for border zone residents who are unable to wear a mask for medical reasons; they may still enter Queensland without a mask to obtain medical/health care or vaccination. These exceptions are designed to tailor the limits on human rights to those necessary.

Additionally, only those people who have been in a COVID-19 hotspot are required to complete a Queensland Border Declaration Pass. Anyone else entering Queensland is only required to complete the less onerous Queensland Travel Declaration. The Queensland Travel Declaration requires a person to provide less personal information in recognition that the public health risk is lower for a person who has not been in either a COVID-19 hotspot.

Further, the Direction allows the Chief Health Officer, Deputy Chief Health Officer, or their delegate to grant an exemption from refusal of entry or a requirement to quarantine. Any such exemption can be granted subject to conditions. This allows the Chief Health Officer, Deputy Chief Health Officer or their delegate to tailor the limit on human rights only to what is reasonably necessary to achieve the purpose of limiting the risk of COVID-19 spreading into Queensland.

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

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 hotspot, or at their nominated premises such as a hotel room, through private prayer, or participating in religious services in Queensland using remote means.
- As to the limits on the right to privacy, the freedom of expression, and the right to family, the Direction does not prohibit people from communicating in non-physical ways, for example, by telephone or video calls, and special consideration has been given to maintaining parenting and child contact agreements. Further, a person is not prevented from choosing to participate in work more generally, remotely, or from seeking alternative employment. Information is

only required to be provided to the extent necessary to support compliance and reduce the risk of transmission and further outbreaks of COVID-19.

- 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 need to address particular circumstances is considered under the Direction. For example, as NSW's current epidemiological situation indicates there is a potentially lower risk of transmission presented by NSW border zone residents, these residents are permitted to enter Queensland for essential reasons provided they have not left the border zone in the previous 14 days, wear face masks while in Queensland and observe the stay at home requirements rather than quarantining. Existing exceptions to hotel quarantine under the Direction will continue to apply to travellers from other hotspots, for example for domestic air crew, who are permitted to quarantine at their residence in Queensland.

Also, people may continue to enter Queensland to receive essential health care subject to confirmation from a prescribed health practitioner or person in charge of the relevant health facility that the person cannot obtain the treatment elsewhere or where the health care continues an existing clinical relationship.

People attending inpatient appointments or appointments at the Queensland Children's Hospital will be permitted to quarantine at the facility rather than a government nominated hotel. Outpatients will continue to be required to quarantine in a hotel at their own expense but may leave quarantine to attend their appointment. This approach balances the need to ensure people can continue to access essential health care with the wider public health considerations.

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.

A person seeking to enter Queensland from a hotspot may still apply for a pass to enter Queensland, and may seek an exemption from the requirements of the Direction. This allows consideration to be given to the particular circumstances of the person and how their human rights are limited. Exemptions will be considered for emergent and compassionate grounds, and limited entry rights remain for identified categories of people entering from a hotspot. These categories take into account and support human rights such as access to medical treatment, education and protection of the family and children.

In addition, requiring a person upon leaving hotel quarantine to undertake to have a further test on day 16 or 17, and to avoid certain facilities until receiving a negative test result, does not unreasonably restrict the persons movements. The Direction also recognises the hardship that certain persons would face in quarantine, including unaccompanied minors and persons with particular health needs, and allows them to quarantine with another person.

The Chief Health Officer or their delegate has the power to grant an exemption, including in cases where the limit on human rights is disproportionate to the public health need. Nonetheless, the impact on some human rights will be large, in particular, the right to equality for people from either a COVID-19 hotspot or returning from overseas, and the freedom of movement.

Requiring a person to agree to undergo a COVID-19 test is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. The additional testing on day 16 or 17 of a person's quarantine period reflects the heightened risk of community transmission that has impacted Queensland and other jurisdictions, particularly with the recent emergence of the Delta strain. For

example, a person who is released from quarantine may potentially be asymptomatic and there will be no means of confirmation without a test. The person could potentially infect people in the wider community once they are released from quarantine. Tackling such a scenario would require resources for contact tracing (one person could have up to 200 contacts) and may divert resources from other critical areas. The need to address the risk of a potential outbreak or community transmission of COVID-19 in Queensland, outweighs the impact on human rights. A person also has the option of agreeing to the test or remaining in quarantine for a further 14 days.

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

RTI RELEASED