

Public Health Directions – Human Rights Assessment
Mandatory Face Masks Direction (No. 2)

Title	Mandatory Face Masks Direction (No. 2)
Date effective	22 March 2021

Background

The *Mandatory Face Masks Direction (No. 2)* (the Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to mitigate the risk of transmission of COVID-19 in high risk environments to the Queensland community, and to ensure the safety of people who are frequenting high risk environments through a requirement to wear masks. High risk environments have been identified as airports, domestic flights and transport vehicles transporting people required to quarantine to and from quarantine hotels.

On 18 November 2020, Acting Chief Medical Officer Professor Paul Kelly stated that hotel quarantine was now the “major risk” for the reintroduction of COVID-19 into Australia. The effective management of infection control in hotel quarantine is a critical in Queensland’s defence against the risk of COVID-19 transmission and outbreaks in the community. Transport vehicles transporting people required to quarantine to and from quarantine hotels are a key component of the hotel quarantine system and effective infection control measures are necessary in these environments.

On 8 January 2021, National Cabinet agreed to adopt the recommendation of the Australian Health Protection Principal Committee (AHPPC) that all passengers, excluding those with certain exceptions, and air crew must wear masks on domestic commercial flights as an additional preventative measure to prevent geographical spread of COVID-19. In addition, it was agreed mask wearing should be mandatory in indoor areas in domestic airports.

The *Mandatory Face Masks Direction (No. 2)* revokes and replaces the *Mandatory Face Masks Direction*. It takes a least restrictive approach necessary by removing the requirement for face masks to be worn in outdoor areas of an airport, unless it is a passenger transport or passenger waiting area. It also simplifies the definition of 'Queensland airport' to ensure buildings and businesses unrelated to the travel of crew and passengers (e.g. maintenance hangers far away from a terminal, Brisbane DFO) are not captured by the direction. Finally, this Direction provides air crew and airport workers do not need to wear masks if they do not interact directly with passengers.

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

How the Direction achieves the purpose

The Direction requires a person to wear a mask in the following high-risk environments anywhere in Queensland:

- an indoor area of a Queensland airport, including a passenger waiting area, at all times when in the area
- an outdoor passenger transport or passenger waiting area, at all times when in the area (for example, car parks, taxi ranks and public pick-up areas)
- while on an aircraft located at a Queensland airport, including when the aircraft is landing at, or taking off from, the airport
- while on an aircraft is flying in Queensland airspace
- require transport drivers driving passengers to and from quarantine hotels to wear a mask while transporting passengers
- require people who have been directed to quarantine to wear a face mask from the time they leave the airport until they arrive at their allocated room at a quarantine hotel.

The Direction provides for a number of lawful excuses for wearing a mask in the following circumstances:

- for children under 12
- a person eating, drinking or taking medicine
- where visibility of the mouth is essential – for example, a person communicating to someone who is deaf or hard of hearing, a teacher or live broadcasting
- a person with a particular medical condition or disability that may be made worse by wearing a mask – for example, a person who has breathing difficulties, a serious skin condition on their face, a mental health condition or psychological impacts from experienced trauma
- a person undergoing medical treatment – for example, a person receiving first aid
- if a person is asked to remove a face mask to ascertain identity
- if wearing a mask creates a risk to a person's health and safety
- for emergencies or if required under a law
- in any circumstances where it is not safe to wear a face mask.

Air crew or airport workers are also permitted to remove their masks when they are not interacting directly with passengers. This includes if an aircraft has no passengers or if they are in secluded areas – for example, a pilot in the cockpit. It is intended that a crew member or worker must wear a mask if they are in the airport where passengers are present.

If a person removes their face mask under any of the lawful excuses, they must put it back on as soon as practicable.

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

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of expression (section 21)
- Privacy (section 25)

- Right to equality and non-discrimination (section 15)

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

Limitations

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 how a person may express themselves orally or through the garments they wear by requiring them to wear a certain type of face mask in high risks environments in Queensland. A person may still make or purchase a cloth mask of their choosing and is permitted to remove the mask in certain circumstances such as when making announcements, teaching or live broadcasting.

The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and 'personal inviolability' in the sense of 'the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.' See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]. It is arguable that the Direction engages this aspect of the right through the requirement for a person to wear a face mask or potentially be fined. However, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask in certain situations such as to eat, drink, consume medicine or receive medical treatment.

Right to equality and non-discrimination (section 15): The right to equality and non-discrimination protects people from discrimination on the basis of certain attributes such as disability or race. The requirements to wear face masks in high risk environments discriminates against people with a disability. For example, masks may make it harder for people with hearing loss to lip read and communicate. The definition of 'discrimination' under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis certain attributes such as disability or race, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. However, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask such as to communicate with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication. A person is not required to carry or wear a mask in high risk environments if they have a physical or mental health illness or condition, or disability, which makes wearing a face mask unsuitable.

Compatibility with Human Rights

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

The purpose of the Direction is to reduce the spread of COVID-19 from high risk environments to the Queensland community.

Requiring certain people in high risk environments to wear a mask is to confine potential outbreaks. The Direction is in effect for a temporary period, and the restrictions as applying to a person only apply in particular environments. It is unlikely a person would be required to wear a mask for a long period of time under any of the requirements in the Direction. A person can remove their mask when in an

outside area of an airport and air crew may remove masks when not interacting with passengers. Ultimately, the purpose of wearing masks is to limit the opportunity for transmission of COVID-19 from high risk environments to the Queensland community.

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose of protecting public health by limiting the opportunities for transmission of COVID-19 in high risk environments.

The mask wearing requirements and the exceptions to mask wearing requirements have been tailored to the needs of different cohorts. For example, transport drivers who are engaged to transport people who have been directed to quarantine are only required to wear a mask when transporting passengers to and from a quarantine hotel. They are not required to wear a mask when driving a vehicle without any passengers.

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

Necessary (s 13(2)(d))

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

In particular:

- Limiting or prohibiting domestic commercial flights from operating would be more restrictive of human rights.
- Requiring masks to be worn in all outdoor areas of airports would be more restrictive of human rights.
- Air crew and airport workers do not have to wear a mask when not interacting with passengers. This is a less restrictive approach.
- Relying on other measures such as contact tracing would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people in high risk environments such as on aircraft, in airports or travelling in vehicles transporting people who have been directed to quarantine may be asymptomatic or presymptomatic. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case in a busy airport could have hundreds of contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.

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

Given the risk posed by high risk environments based on the people who frequent these environments, including people who may have been in a COVID-19 hotspot or overseas in the last 14

days, the purpose of the Direction can only be reasonably achieved by requiring people to wear masks in these environments unless certain exceptions apply.

Many of the limits on human rights are incidental. For example, although the requirement to wear a face mask limits the right to equality and non-discrimination, people are able to remove their mask to communicate with a person with a disability.

The extent of the limitation on human rights is further reduced in other ways. The Direction is in effect for a temporary period, and the restrictions that apply to a person should in most circumstances only require a person to wear a mask for a short period of time.

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

The limits on human rights by requiring a person to wear a mask in high risk environments or be subject to a fine are justifiable. Requiring a person to wear a mask is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. For example, a person in an airport may potentially be asymptomatic and there will be no means of preventing transmission of COVID-19 to other people in an airport without the use of a face mask. The person could potentially infect people in the wider community once they leave the airport. 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.

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

There will be some impact on human rights, in particular, the right to equality for people with disabilities. 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
Mandatory Face Masks Direction

Title	Mandatory Face Masks Direction
Date effective	12 January 2021

Background

The *Mandatory Face Masks Direction* (the Direction) is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the Direction is to mitigate the risk of transmission of COVID-19 in high risk environments to the Queensland community, and to ensure the safety of people who are frequenting high risk environments through a requirement to wear masks. High risk environments have been identified as airports, domestic flights and transport vehicles transporting people required to quarantine to and from quarantine hotels.

On 18 November 2020, Acting Chief Medical Officer Professor Paul Kelly stated that hotel quarantine was now the “major risk” for the reintroduction of COVID-19 into Australia. The effective management of infection control in hotel quarantine is a critical in Queensland’s defense against the risk of COVID-19 transmission and outbreaks in the community. Transport vehicles transporting people required to quarantine to and from quarantine hotels are a key component of the hotel quarantine system and effective infection control measures are necessary in these environments.

On 8 January 2021, National Cabinet agreed to adopt the recommendation of the Australian Health Protection Principal Committee (AHPPC) that all passengers, excluding those with certain exceptions, and air crew must wear masks on domestic commercial flights as an additional preventative measure to prevent geographical spread of COVID-19. In addition, it was agreed mask wearing should be mandatory in indoor areas in domestic airports.

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

How the Direction achieves the purpose

The Direction requires a person to wear a mask in the following high-risk environments anywhere in Queensland:

- an indoor area of a Queensland airport, including a passenger waiting area, at all times when in the area

- while on an aircraft located at a Queensland airport, including when the aircraft is landing at, or taking off from, the airport
- while on an aircraft is flying in Queensland airspace
- require transport drivers driving passengers to and from quarantine hotels to wear a mask while transporting passengers
- require people who have been directed to quarantine to wear a face mask from the time they leave the airport until they arrive at their allocated room at a quarantine hotel.

The Direction provides for a number of lawful excuses for wearing a mask in the following circumstances:

- for children under 12
- a person eating, drinking or taking medicine
- where visibility of the mouth is essential – for example, a person communicating to someone who is deaf or hard of hearing, a teacher or live broadcasting
- a person with a particular medical condition or disability that may be made worse by wearing a mask – for example, a person who has breathing difficulties, a serious skin condition on their face, a mental health condition or psychological impacts from experienced trauma
- a person undergoing medical treatment – for example, a person receiving first aid
- if a person is asked to remove a face mask to ascertain identity
- if wearing a mask creates a risk to a person's health and safety
- for emergencies or if required under a law
- in any circumstances where it is not safe to wear a face mask.

Air crew or airport workers on domestic aircraft are also permitted to remove their masks when they are not interacting directly with passengers. This includes if the aircraft has no passengers or if they are in secluded areas – for example, a pilot in the cockpit.

If a person removes their face mask under any of the lawful excuses, they must put it back on as soon as practicable.

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

Human rights engaged

The human rights engaged by the Direction are:

- Right to life (section 16)
- Freedom of expression (section 21)
- Privacy (section 25)
- Right to equality and non-discrimination (section 15)

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

Limitations

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 how a person may express themselves orally or through the garments they wear by requiring them to wear a certain type of face mask in high risks environments in Queensland. A person may still make or purchase a cloth mask of their choosing and is permitted to remove the mask in certain circumstances such as when making announcements, teaching or live broadcasting.

The right to privacy also includes a right to bodily integrity (see *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 599] and ‘personal inviolability’ in the sense of ‘the freedom of all persons not to be subjected to physical or psychological interference, including medical treatment, without consent.’ See *PBU v Mental Health Tribunal* (2018 56 VAR 141, 180-1 [128]. It is arguable that the Direction engages this aspect of the right through the requirement for a person to wear a face mask or potentially be fined. However, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask in certain situations such as to eat, drink, consume medicine or receive medical treatment.

Right to equality and non-discrimination (section 15): The right to equality and non-discrimination protects people from discrimination on the basis of certain attributes such as disability or race. The requirements to wear face masks in high risk environments discriminates against people with a disability. For example, masks may make it harder for people with hearing loss to lip read and communicate. The definition of ‘discrimination’ under the *Human Rights Act* is inclusive. Discrimination may include discrimination on the basis certain attributes such as disability or race, as it does with respect to the right to equality under the Canadian Charter, which also contains an inclusive definition of discrimination: *R v Turpin* [1989] 1 SCR 1296. However, the extent of the impact on human rights is reduced by the fact that there a number of lawful excuses for removing a face mask such as to communicate with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication. A person is not required to carry or wear a mask in high risk environments if they have a physical or mental health illness or condition, or disability, which makes wearing a face mask unsuitable.

Compatibility with Human Rights

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

The purpose of the Direction is to reduce the spread of COVID-19 from high risk environments to the Queensland community.

Requiring certain people in high risk environments to wear a mask is to confine potential outbreaks. The Direction is in effect for a temporary period, and the restrictions as applying to a person only apply in particular environments. It is unlikely a person would be required to wear a mask for a long period of time under any of the requirements in the Direction. A person can remove their mask when in an outside area of an airport and air crew may remove masks when not interacting with passengers. Ultimately, the purpose of wearing masks is to limit the opportunity for transmission of COVID-19 from high risk environments to the Queensland community.

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

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

Suitability (section 13(2)(c))

The limits on human rights will help to achieve the intended purpose of protecting public health by limiting the opportunities for transmission of COVID-19 in high risk environments.

The mask wearing requirements and the exceptions to mask wearing requirements have been tailored to the needs of different cohorts. For example, transport drivers who are engaged to transport people who have been directed to quarantine are only required to wear a mask when transporting passengers to and from a quarantine hotel. They are not required to wear a mask when driving a vehicle without any passengers.

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

Necessary (s 13(2)(d))

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

In particular:

- Limiting or prohibiting domestic commercial flights from operating would be more restrictive of human rights.
- Requiring masks to be worn in indoor and outdoor areas of airports would be more restrictive of human rights.
- Air crew and airport workers do not have to wear a mask when not interacting with passengers on flights. This is a less restrictive approach based on the public health risk being lower on aircraft due to their ventilation.
- Relying on other measures such as contact tracing would not be as effective in achieving the purpose of limiting the spread of COVID-19 into Queensland, given the possibility that people in high risk environments such as on aircraft, in airports or travelling in vehicles transporting people who have been directed to quarantine may be asymptomatic or presymptomatic. In addition, one person could have a substantial number of contacts that need to be traced. For example, a single positive case in a busy airport could have hundreds of contacts requiring investigation. This can be an onerous task given there are a limited number of contact tracing officers available.

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

Given the risk posed by high risk environments based on the people who frequent these environments, including people who may have been in a COVID-19 hotspot or overseas in the last 14 days, the purpose of the Direction can only be reasonably achieved by requiring people to wear masks in these environments unless certain exceptions apply.

Many of the limits on human rights are incidental. For example, although the requirement to wear a face mask limits the right to equality and non-discrimination, people are able to remove their mask to communicate with a person with a disability.

The extent of the limitation on human rights is further reduced in other ways. The Direction is in effect for a temporary period, and the restrictions that apply to a person should in most circumstances only require a person to wear a mask for a short period of time.

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

The limits on human rights by requiring a person to wear a mask in high risk environments or be subject to a fine are justifiable. Requiring a person to wear a mask is aimed at addressing the risk presented by COVID-19 and will assist in addressing that risk. For example, a person in an airport may potentially be asymptomatic and there will be no means of preventing transmission of COVID-19 to other people in an airport without the use of a face mask. The person could potentially infect people in the wider community once they leave the airport. 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.

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

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

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 29)

Title	Restrictions on Businesses, Activities and Undertakings Direction (No. 30)
Date effective	XX December 2021

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Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 3029)* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the *Restrictions on Businesses, Activities and Undertakings Direction (No. 3029)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

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

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 298)*. The Direction ~~makes a change to remove the requirement for face masks to be worn by spectators at sports stadiums~~, ~~eases restrictions around business activities and density limits once eighty percent of the Queensland population becomes fully vaccinated against COVID-19~~.

How the Direction achieves the purpose

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

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

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

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

The mandatory use of Check In Qld app is required for all restricted businesses, activities and undertakings in the Direction. Additional non-restricted businesses, including shopping centres, supermarkets, retail stores and public-facing government agencies, are also included in the Direction to require them to collect contact information. From 30 August 2021, the Check In Qld app requirements have included taxis, rideshares and limousines. The Check In Qld app will enable contact tracing to occur quickly where a diagnosed COVID-19 case has been in the community. The Direction provides exceptions for using the Check In Qld app where it would result in safety or liability issues. Where an exception applies, contact information is required to be collected using another method and provided to a health official in the event of an outbreak.

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

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

Human rights engaged

The human rights engaged by the Direction are:

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

- Right to freedom of thought, conscience, religion and belief (section 20): includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing indoor places of worship to have as many people as can be accommodated with 1 person per 2 square metres or 100 per cent seated venue capacity, if the venue can have ticketed and allocated seating. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.
- Right to peaceful assembly and freedom of association (section 22): upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.
- Right to property (section 24): encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. all restricted businesses, activities and undertakings are required to collect contact information from guests, patrons and staff using the Check In Qld app; venues are also restricted by having to comply with occupant density requirements for indoor spaces. Some non-restricted businesses must also comply with the collection of contact information requirements), which is a limitation on the property rights of the owners and operators of these businesses.
- Right to privacy (section 25): The right is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. Interference with privacy may also occur by making a person provide personal details when entering a restricted business, activity or undertaking or some non-restricted businesses via the Check In Qld app, or by another method if permitted, for contact tracing purposes.
- Cultural rights – generally (section 27): protects the rights of all people with particular cultural, religion, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. The Direction may limit a person's ability to engage with others who share their cultural background by restricting the number of people that can congregate in an indoor space for the purpose of cultural expression.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): provides that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people and must not be denied the right, together with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to

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

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

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

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by managing occupant density in certain indoor settings such as restaurants, events and entertainment venues and privately owned and operated premises in order to contain and prevent the spread of the virus.

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

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

Suitability (section 13(2)(c))

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

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

Necessary (s 13(2)(d))

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

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

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

The requirement to provide and collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. The Direction includes safeguards on the collection of contact information, including limiting the purpose for which the information may be used, requiring it to be securely stored and disposed of after an appropriate period of time. The Direction is therefore compatible with the right to privacy.

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

Since 1 May 2021, hospitality businesses are required to collect contact information using the Check In Qld app. However, there are exceptions to this requirement, including for persons who may not be able to use in the Check In Qld app because of age, disability or language barriers, or because of a lack of Internet access by the business. These businesses are still required to transfer the information to an electronic format within 24 hours. With these exceptions, the limitations on human rights due to the electronic collection of contact information are reasonable and justified.

From 9 July 2021, the requirement to use the Check In Qld app to collect contact information has been expanded for people attending all restricted businesses, activities and undertakings and expanded to other businesses including, shopping centres, supermarkets, retail stores and public-facing government agencies (with some exceptions). From 30 August 2021, in

response to the recent case of a COVID positive taxi driver in Cairns, the Check In Qld app will be expanded to taxis, rideshares and limousines to assist contact tracing for people that use these transport services. However, no other restrictions will apply to shopping centres, supermarkets, retail stores and public-facing government agencies, such as, occupant density or having a COVID Safe Checklist. The only requirement that will apply to these extra businesses is collecting contact information.

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

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

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

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

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

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

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

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

The purpose of the Direction is to reduce the spread of COVID-19 within the community. The benefit of achieving this purpose is that by reducing the risk of transmission of COVID-19 to the community the overall increase in the enjoyment of the right to life is measurable. Conversely, a failure to mitigate the risk of transmission is also measurable in loss of life. The benefit also translates to a reduced impact on the health care system by preventing the significant pressure on the health care system caused by the spread of COVID-19 in the community.

Many of the limits on human rights are incidental.

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

The requirement to use the Check In Qld app has been clarified to include taxis, rideshares and limousines. There are nearly 20,000 taxis, rideshares and limousines across Queensland that provide public transport services. This additional precautionary requirement will assist in keeping drivers and the public safe. The requirement is being extended to these public transport services to assist contact tracers to quickly identify where positive cases have been in the community and to reduce the risk of further community transmission in the event of future outbreaks in Queensland.

The Direction also allows for COVID Safe Site Specific Plans and COVID Safe Professional Sporting Code Plans to continue to be used by listed businesses to accommodate these businesses and activities that have complex and specific needs.

The Direction eases the limits on human rights in response to the reduced public health risks by removing the requirement for face mask to be worn at sports stadiums in Queensland. A spectator is no longer required to wear a face mask when attending a sports stadium. The requirements for spectators gathering at sports stadiums is compatible with the purpose of the Direction and human rights to reduce the public health risk of the spread of COVID-19 within the community.

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

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

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

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

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 29)

Title	Restrictions on Businesses, Activities and Undertakings Direction (No. 30)
Date effective	XX December 2021

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Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 3029)* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the *Restrictions on Businesses, Activities and Undertakings Direction (No. 3029)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

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

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 298)*. The Direction ~~makes a change to remove the requirement for face masks to be worn by spectators at sports stadiums,~~ outlines the vaccination requirements and density limits for business activities and undertakings once eighty percent of the Queensland population becomes fully vaccinated against COVID-19.

How the Direction achieves the purpose

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

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

The Direction also outlines the vaccination requirements for persons entering or attending various business or activities

The Direction also provides occupancy density requirements (1 person per ~~42~~ square metres ~~or 100 per cent ticketed and allocated seating~~), physical distancing, collection of contact information for contact tracing, and hygiene requirements some businesses need to meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

The mandatory use of Check In Qld app is required for all restricted businesses, activities and undertakings in the Direction. Additional non-restricted businesses, including shopping centres, supermarkets, retail stores and public-facing government agencies, are also included in the Direction to require them to collect contact information. From 30 August 2021, the Check In Qld app requirements have included taxis, rideshares and limousines. The Check In Qld app will enable contact tracing to occur quickly where a diagnosed COVID-19 case has been in the community. The Direction provides exceptions for using the Check In Qld app where it would result in safety or liability issues. Where an exception applies, contact information is required to be collected using another method and provided to a health official in the event of an outbreak.

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

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

Human rights engaged

The human rights engaged by the Direction are:

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

to comply with occupant density and a **COVID Safe Checklist**, which may limit the way patrons can move in and around the event.

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

- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): provides that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people and must not be denied the right, together with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practice their culture. The Direction may limit people's ability to engage with others to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship and other cultural or social events in indoor spaces.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

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

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by managing occupant density in certain indoor settings such as restaurants, events and entertainment venues and privately owned and operated premises in order to contain and prevent the spread of the virus.

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

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

Suitability (section 13(2)(c))

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

Additionally, the requirement for businesses and patrons to use the Check In Qld app as the method for providing and collecting contact information. However, the Direction provides an exception where the use of the Check In Qld App would result in safety or liability issues, the business, activity or undertaking must collect and store contact information using another

method. This approach balances any safety and liability issues with the potential public health risks of allowing certain people to provide their personal details directly to particular businesses when entering.

Necessary (s 13(2)(d))

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

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

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

The requirement to provide and collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. The Direction includes safeguards on the collection of contact information, including limiting the purpose for which the information may be used, requiring it to be securely stored and disposed of after an appropriate period of time. The Direction is therefore compatible with the right to privacy.

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

Since 1 May 2021, hospitality businesses are required to collect contact information using the Check In Qld app. However, there are exceptions to this requirement, including for persons who may not be able to use in the Check In Qld app because of age, disability or language barriers, or because of a lack of Internet access by the business. These businesses are still required to transfer the information to an electronic format within 24 hours. With these exceptions, the limitations on human rights due to the electronic collection of contact information are reasonable and justified.

From 9 July 2021, the requirement to use the Check In Qld app to collect contact information has been expanded for people attending all restricted businesses, activities and undertakings and expanded to other businesses including, shopping centres, supermarkets, retail stores and public-facing government agencies (with some exceptions). From 30 August 2021, in response to the recent case of a COVID positive taxi driver in Cairns, the Check In Qld app will be expanded to taxis, rideshares and limousines to assist contact tracing for people that use these transport services. However, no other restrictions will apply to shopping centres, supermarkets, retail stores and public-facing government agencies, such as, occupant density or having a COVID Safe Checklist. The only requirement that will apply to these extra businesses is collecting contact information.

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

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

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

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

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

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

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

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

The purpose of the Direction is to reduce the spread of COVID-19 within the community. The benefit of achieving this purpose is that by reducing the risk of transmission of COVID-19 to the community the overall increase in the enjoyment of the right to life is measurable. Conversely, a failure to mitigate the risk of transmission is also measurable in loss of life. The benefit also translates to a reduced impact on the health care system by preventing the significant pressure on the health care system caused by the spread of COVID-19 in the community.

Many of the limits on human rights are incidental.

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

The requirement to use the Check In Qld app has been clarified to include taxis, rideshares and limousines. There are nearly 20,000 taxis, rideshares and limousines across Queensland that provide public transport services. This additional precautionary requirement will assist in keeping drivers and the public safe. The requirement is being extended to these public transport services to assist contact tracers to quickly identify where positive cases have been in the community and to reduce the risk of further community transmission in the event of future outbreaks in Queensland.

The Direction also allows for COVID Safe Site Specific Plans and COVID Safe Professional Sporting Code Plans to continue to be used by listed businesses to accommodate these businesses and activities that have complex and specific needs.

The Direction eases the limits on human rights in response to the reduced public health risks by removing the requirement for face mask to be worn at sports stadiums in Queensland. A spectator is no longer required to wear a face mask when attending a sports stadium. The requirements for spectators gathering at sports stadiums is compatible with the purpose of the Direction and human rights to reduce the public health risk of the spread of COVID-19 within the community.

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

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

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

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

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 29)

Title	Restrictions on Businesses, Activities and Undertakings Direction (No. 30)
Date effective	XX December 2021

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Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 3029)* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the *Restrictions on Businesses, Activities and Undertakings Direction (No. 3029)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

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

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 298)*. The Direction ~~makes a change to remove the requirement for face masks to be worn by spectators at sports stadiums, eases restrictions around business activities and density limits once eighty percent of the Queensland population becomes fully vaccinated against COVID-19.~~

How the Direction achieves the purpose

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

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

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

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

The mandatory use of Check In Qld app is required for all restricted businesses, activities and undertakings in the Direction. Additional non-restricted businesses, including shopping centres, supermarkets, retail stores and public-facing government agencies, are also included in the Direction to require them to collect contact information. From 30 August 2021, the Check In Qld app requirements have included taxis, rideshares and limousines. The Check In Qld app will enable contact tracing to occur quickly where a diagnosed COVID-19 case has been in the community. The Direction provides exceptions for using the Check In Qld app where it would result in safety or liability issues. Where an exception applies, contact information is required to be collected using another method and provided to a health official in the event of an outbreak.

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

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

Human rights engaged

The human rights engaged by the Direction are:

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

- Right to freedom of thought, conscience, religion and belief (section 20): includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing indoor places of worship to have as many people as can be accommodated with 1 person per 2 square metres or 100 per cent seated venue capacity, if the venue can have ticketed and allocated seating. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.
- Right to peaceful assembly and freedom of association (section 22): upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.
- Right to property (section 24): encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. all restricted businesses, activities and undertakings are required to collect contact information from guests, patrons and staff using the Check In Qld app; venues are also restricted by having to comply with occupant density requirements for indoor spaces. Some non-restricted business must also comply with the collection of contact information requirements), which is a limitation on the property rights of the owners and operators of these businesses.
- Right to privacy (section 25): The right is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. Interference with privacy may also occur by making a person provide personal details when entering a restricted business, activity or undertaking or some non-restricted businesses via the Check In Qld app, or by another method if permitted, for contact tracing purposes.
- Cultural rights – generally (section 27): protects the rights of all people with particular cultural, religion, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. The Direction may limit a person's ability to engage with others who share their cultural background by restricting the number of people that can congregate in an indoor space for the purpose of cultural expression.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): provides that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people and must not be denied the right, together with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to

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

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

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

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by managing occupant density in certain indoor settings such as restaurants, events and entertainment venues and privately owned and operated premises in order to contain and prevent the spread of the virus.

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

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

Suitability (section 13(2)(c))

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

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

Necessary (s 13(2)(d))

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

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

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

The requirement to provide and collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. The Direction includes safeguards on the collection of contact information, including limiting the purpose for which the information may be used, requiring it to be securely stored and disposed of after an appropriate period of time. The Direction is therefore compatible with the right to privacy.

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

Since 1 May 2021, hospitality businesses are required to collect contact information using the Check In Qld app. However, there are exceptions to this requirement, including for persons who may not be able to use in the Check In Qld app because of age, disability or language barriers, or because of a lack of Internet access by the business. These businesses are still required to transfer the information to an electronic format within 24 hours. With these exceptions, the limitations on human rights due to the electronic collection of contact information are reasonable and justified.

From 9 July 2021, the requirement to use the Check In Qld app to collect contact information has been expanded for people attending all restricted businesses, activities and undertakings and expanded to other businesses including, shopping centres, supermarkets, retail stores and public-facing government agencies (with some exceptions). From 30 August 2021, in

response to the recent case of a COVID positive taxi driver in Cairns, the Check In Qld app will be expanded to taxis, rideshares and limousines to assist contact tracing for people that use these transport services. However, no other restrictions will apply to shopping centres, supermarkets, retail stores and public-facing government agencies, such as, occupant density or having a COVID Safe Checklist. The only requirement that will apply to these extra businesses is collecting contact information.

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

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

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

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

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

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

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

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

The purpose of the Direction is to reduce the spread of COVID-19 within the community. The benefit of achieving this purpose is that by reducing the risk of transmission of COVID-19 to the community the overall increase in the enjoyment of the right to life is measurable. Conversely, a failure to mitigate the risk of transmission is also measurable in loss of life. The benefit also translates to a reduced impact on the health care system by preventing the significant pressure on the health care system caused by the spread of COVID-19 in the community.

Many of the limits on human rights are incidental.

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

The requirement to use the Check In Qld app has been clarified to include taxis, rideshares and limousines. There are nearly 20,000 taxis, rideshares and limousines across Queensland that provide public transport services. This additional precautionary requirement will assist in keeping drivers and the public safe. The requirement is being extended to these public transport services to assist contact tracers to quickly identify where positive cases have been in the community and to reduce the risk of further community transmission in the event of future outbreaks in Queensland.

The Direction also allows for COVID Safe Site Specific Plans and COVID Safe Professional Sporting Code Plans to continue to be used by listed businesses to accommodate these businesses and activities that have complex and specific needs.

The Direction eases the limits on human rights in response to the reduced public health risks by removing the requirement for face mask to be worn at sports stadiums in Queensland. A spectator is no longer required to wear a face mask when attending a sports stadium. The requirements for spectators gathering at sports stadiums is compatible with the purpose of the Direction and human rights to reduce the public health risk of the spread of COVID-19 within the community.

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

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

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

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

RTI RELEASE

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 29)

Title	Restrictions on Businesses, Activities and Undertakings Direction (No. 30)
Date effective	XX December 2021

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Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 3029)* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the *Restrictions on Businesses, Activities and Undertakings Direction (No. 3029)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

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

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 298)*. The Direction ~~makes a change to remove the requirement for face masks to be worn by spectators at sports stadiums,~~ outlines the vaccination requirements and density limits for business activities and undertakings once eighty percent of the Queensland population becomes fully vaccinated against COVID-19.

How the Direction achieves the purpose

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

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

The Direction also outlines the vaccination requirements for persons entering businesses or attending activities once eighty percent of the Queensland population has been fully vaccinated.

The Direction ~~also provides~~ occupancy density requirements (1 person per ~~42~~ square metres ~~or 100 per cent ticketed and allocated seating~~), physical distancing, collection of contact information for contact tracing, and hygiene requirements some businesses need to meet. Some businesses or activities may also be required to meet additional requirements due to the higher potential risk posed by the business or activity.

The mandatory use of Check In Qld app is required for all restricted businesses, activities and undertakings in the Direction. Additional non-restricted businesses, including shopping centres, supermarkets, retail stores and public-facing government agencies, are also included in the Direction to require them to collect contact information. From 30 August 2021, the Check In Qld app requirements have included taxis, rideshares and limousines. The Check In Qld app will enable contact tracing to occur quickly where a diagnosed COVID-19 case has been in the community. The Direction provides exceptions for using the Check In Qld app where it would result in safety or liability issues. Where an exception applies, contact information is required to be collected using another method and provided to a health official in the event of an outbreak.

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

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

Human rights engaged

The human rights engaged by the Direction are:

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

to comply with occupant density and a **COVID Safe Checklist**, which may limit the way patrons can move in and around the event.

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

- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): provides that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people and must not be denied the right, together with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practice their culture. The Direction may limit people's ability to engage with others to maintain distinctive spiritual, material and economic relationships with land, water and other resources that there is a connection with traditional laws and customs by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship and other cultural or social events in indoor spaces.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

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

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by managing occupant density in certain indoor settings such as restaurants, events and entertainment venues and privately owned and operated premises in order to contain and prevent the spread of the virus.

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

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

Suitability (section 13(2)(c))

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

Additionally, the requirement for businesses and patrons to use the Check In Qld app as the method for providing and collecting contact information. However, the Direction provides an exception where the use of the Check In Qld App would result in safety or liability issues, the business, activity or undertaking must collect and store contact information using another

method. This approach balances any safety and liability issues with the potential public health risks of allowing certain people to provide their personal details directly to particular businesses when entering.

Necessary (s 13(2)(d))

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

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

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

The requirement to provide and collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. The Direction includes safeguards on the collection of contact information, including limiting the purpose for which the information may be used, requiring it to be securely stored and disposed of after an appropriate period of time. The Direction is therefore compatible with the right to privacy.

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

Since 1 May 2021, hospitality businesses are required to collect contact information using the Check In Qld app. However, there are exceptions to this requirement, including for persons who may not be able to use in the Check In Qld app because of age, disability or language barriers, or because of a lack of Internet access by the business. These businesses are still required to transfer the information to an electronic format within 24 hours. With these exceptions, the limitations on human rights due to the electronic collection of contact information are reasonable and justified.

From 9 July 2021, the requirement to use the Check In Qld app to collect contact information has been expanded for people attending all restricted businesses, activities and undertakings and expanded to other businesses including, shopping centres, supermarkets, retail stores and public-facing government agencies (with some exceptions). From 30 August 2021, in response to the recent case of a COVID positive taxi driver in Cairns, the Check In Qld app will be expanded to taxis, rideshares and limousines to assist contact tracing for people that use these transport services. However, no other restrictions will apply to shopping centres, supermarkets, retail stores and public-facing government agencies, such as, occupant density or having a COVID Safe Checklist. The only requirement that will apply to these extra businesses is collecting contact information.

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

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

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

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

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

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

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

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

The purpose of the Direction is to reduce the spread of COVID-19 within the community. The benefit of achieving this purpose is that by reducing the risk of transmission of COVID-19 to the community the overall increase in the enjoyment of the right to life is measurable. Conversely, a failure to mitigate the risk of transmission is also measurable in loss of life. The benefit also translates to a reduced impact on the health care system by preventing the significant pressure on the health care system caused by the spread of COVID-19 in the community.

Many of the limits on human rights are incidental.

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

The requirement to use the Check In Qld app has been clarified to include taxis, rideshares and limousines. There are nearly 20,000 taxis, rideshares and limousines across Queensland that provide public transport services. This additional precautionary requirement will assist in keeping drivers and the public safe. The requirement is being extended to these public transport services to assist contact tracers to quickly identify where positive cases have been in the community and to reduce the risk of further community transmission in the event of future outbreaks in Queensland.

The Direction also allows for COVID Safe Site Specific Plans and COVID Safe Professional Sporting Code Plans to continue to be used by listed businesses to accommodate these businesses and activities that have complex and specific needs.

The Direction eases the limits on human rights in response to the reduced public health risks by removing the requirement for face mask to be worn at sports stadiums in Queensland. A spectator is no longer required to wear a face mask when attending a sports stadium. The requirements for spectators gathering at sports stadiums is compatible with the purpose of the Direction and human rights to reduce the public health risk of the spread of COVID-19 within the community.

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

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

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

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

Public Health Directions – Human Rights Assessment
Restrictions on Businesses, Activities and Undertakings Direction (No. 29)

Title	Restrictions on Businesses, Activities and Undertakings Direction (No. 30)
Date effective	XX December 2021

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Background

The *Restrictions on Businesses, Activities and Undertakings Direction (No. 3029)* is issued by the Chief Health Officer pursuant to the powers under section 362B of the *Public Health Act 2005*.

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

Purpose of the Direction

The purpose of the *Restrictions on Businesses, Activities and Undertakings Direction (No. 3029)* (Direction) is to slow the spread of COVID-19 by providing an operational framework for restricted businesses, activities and undertakings in Queensland.

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

The Direction revokes and replaces the *Restrictions on Businesses, Activities and Undertakings Direction (No. 298)*. The Direction makes a change ~~to remove the requirement for face masks to be worn by spectators at sports stadiums in easing restrictions on business activities once the Queensland population~~

How the Direction achieves the purpose

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

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

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

The mandatory use of Check In Qld app is required for all restricted businesses, activities and undertakings in the Direction. Additional non-restricted businesses, including shopping centres, supermarkets, retail stores and public-facing government agencies, are also included in the Direction to require them to collect contact information. From 30 August 2021, the Check In Qld app requirements have included taxis, rideshares and limousines. The Check In Qld app will enable contact tracing to occur quickly where a diagnosed COVID-19 case has been in the community. The Direction provides exceptions for using the Check In Qld app where it would result in safety or liability issues. Where an exception applies, contact information is required to be collected using another method and provided to a health official in the event of an outbreak.

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

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

Human rights engaged

The human rights engaged by the Direction are:

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

community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to hold a belief is so important that it is considered to be an absolute right, however limits on how a person manifests their belief can be justified. The Direction limits this right by only allowing indoor places of worship to have as many people as can be accommodated with 1 person per 2 square metres or 100 per cent seated venue capacity, if the venue can have ticketed and allocated seating. This limits the ability of people to publicly demonstrate and practice their religion or beliefs as they may not be able to attend a church, mosque, temple or other religious institution to perform their usual religious practice with the occupant density measures in place.

- Right to peaceful assembly and freedom of association (section 22): upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The Direction may limit the right to peaceful assembly through the restrictions placed on businesses, activities and undertaking and the requirements for physical distancing and occupant density measures to be observed.
- Right to property (section 24): encompasses the right to own property and to not be arbitrarily deprived of that property. 'Property' encompasses all real and personal property interests. The right may be limited by restricting how certain businesses may operate for the duration of the Direction (e.g. all restricted businesses, activities and undertakings are required to collect contact information from guests, patrons and staff using the Check In Qld app; venues are also restricted by having to comply with occupant density requirements for indoor spaces. Some non-restricted business must also comply with the collection of contact information requirements), which is a limitation on the property rights of the owners and operators of these businesses.
- Right to privacy (section 25): The right is broadly construed. It encompasses an individual's rights to establish and develop meaningful social relations (*Krake v Mental Health Review Board (General)* (2009 29 VAR 1, [619]-[620]). The right to privacy may also incorporate a right to work of some kind and in some circumstances (*ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]-[95] (Bell J)). The Direction limits this right as it may interfere with people's right to make and maintain social connections at businesses such as gyms, cafes, entertainment venues, clubs and indoor sporting venues through the physical distancing restrictions. The Direction may also limit a person's right to work by restricting the way certain businesses operate and their capacity. Interference with privacy may also occur by making a person provide personal details when entering a restricted business, activity or undertaking or some non-restricted businesses via the Check In Qld app, or by another method if permitted, for contact tracing purposes.
- Cultural rights – generally (section 27): protects the rights of all people with particular cultural, religion, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. The Direction may limit a person's ability to engage with others who share their cultural background by restricting the number of people that can congregate in an indoor space for the purpose of cultural expression.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28): provides that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people and must not be denied the right, together with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practice their culture. The Direction may limit people's ability to engage with others to maintain distinctive spiritual, material and economic relationships with land, water and

other resources that there is a connection with traditional laws and customs by requiring physical distancing or limiting where people congregate for the purpose of worship and fellowship and other cultural or social events in indoor spaces.

Compatibility with Human Rights

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

The limitations on the above human rights arise from the:

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

The purpose of the Public Health Direction is to reduce the spread of the COVID-19 within the broader community, which can only be achieved by managing occupant density in certain indoor settings such as restaurants, events and entertainment venues and privately owned and operated premises in order to contain and prevent the spread of the virus.

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

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

Suitability (section 13(2)(c))

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

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

Necessary (s 13(2)(d))

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

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

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

The requirement to provide and collect contact details is in place to support contact tracing efforts by public health officers, where necessary, in order to reduce the spread of COVID-19. The Direction includes safeguards on the collection of contact information, including limiting the purpose for which the information may be used, requiring it to be securely stored and disposed of after an appropriate period of time. The Direction is therefore compatible with the right to privacy.

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

Since 1 May 2021, hospitality businesses are required to collect contact information using the Check In Qld app. However, there are exceptions to this requirement, including for persons who may not be able to use in the Check In Qld app because of age, disability or language barriers, or because of a lack of Internet access by the business. These businesses are still required to transfer the information to an electronic format within 24 hours. With these exceptions, the limitations on human rights due to the electronic collection of contact information are reasonable and justified.

From 9 July 2021, the requirement to use the Check In Qld app to collect contact information has been expanded for people attending all restricted businesses, activities and undertakings and expanded to other businesses including, shopping centres, supermarkets, retail stores and public-facing government agencies (with some exceptions). From 30 August 2021, in

response to the recent case of a COVID positive taxi driver in Cairns, the Check In Qld app will be expanded to taxis, rideshares and limousines to assist contact tracing for people that use these transport services. However, no other restrictions will apply to shopping centres, supermarkets, retail stores and public-facing government agencies, such as, occupant density or having a COVID Safe Checklist. The only requirement that will apply to these extra businesses is collecting contact information.

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

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

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

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

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

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

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

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

The purpose of the Direction is to reduce the spread of COVID-19 within the community. The benefit of achieving this purpose is that by reducing the risk of transmission of COVID-19 to the community the overall increase in the enjoyment of the right to life is measurable. Conversely, a failure to mitigate the risk of transmission is also measurable in loss of life. The benefit also translates to a reduced impact on the health care system by preventing the significant pressure on the health care system caused by the spread of COVID-19 in the community.

Many of the limits on human rights are incidental.

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

The requirement to use the Check In Qld app has been clarified to include taxis, rideshares and limousines. There are nearly 20,000 taxis, rideshares and limousines across Queensland that provide public transport services. This additional precautionary requirement will assist in keeping drivers and the public safe. The requirement is being extended to these public transport services to assist contact tracers to quickly identify where positive cases have been in the community and to reduce the risk of further community transmission in the event of future outbreaks in Queensland.

The Direction also allows for COVID Safe Site Specific Plans and COVID Safe Professional Sporting Code Plans to continue to be used by listed businesses to accommodate these businesses and activities that have complex and specific needs.

The Direction eases the limits on human rights in response to the reduced public health risks by removing the requirement for face mask to be worn at sports stadiums in Queensland. A spectator is no longer required to wear a face mask when attending a sports stadium. The requirements for spectators gathering at sports stadiums is compatible with the purpose of the Direction and human rights to reduce the public health risk of the spread of COVID-19 within the community.

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

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

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

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

Timeline of COVID-19-related legislative measures

[Minister for Health and Minister for Ambulance Services Queensland, 'Public Health Emergency Order' in Queensland, *Queensland Government Gazette*, No 25, 31 January 2020, 97](#)

- On 29 January 2020, the Minister for Health and Minister for Ambulance Services declared a public health emergency under section 319 of the *Public Health Act 2005* due to the outbreak of COVID-19 (then referred to as '2019-nCoV') within China, its pandemic potential due to cases spreading to other countries and the public health implications within Queensland resulting from recently arrived travellers from the epicentre of the outbreak. The public health emergency was declared for all of Queensland.
- Notice of the declared public health emergency order was published in the Government Gazette on 31 January 2020.

Public Health (Declared Public Health Emergencies) Amendment Act 2020

- On 7 February 2020, the [Public Health \(Declared Public Health Emergencies\) Amendment Act 2020](#) received assent after being passed by Parliament on 5 February 2020. The Act amended section 323 of the *Public Health Act 2005* to allow a declared public health emergency to be extended or further extended for a period of up to 90 days.
- A [Statement of Compatibility](#) was prepared in accordance with part 3 of the *Human Rights Act 2019*.

Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020

- On 19 March 2020, the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* received assent after being passed by Parliament on 18 March 2020.
- The Act strengthened powers of the chief health officer and emergency officers to respond to COVID-19; provided that compensation provisions that apply to declared public health emergencies do not apply to the COVID-19 emergency; and amended the *State Penalties Enforcement Regulation 2014* so that penalty infringement notices can be issued for the offences of failing to comply with a direction made by the chief health officer or an emergency officer in relation to the COVID-19 emergency.
- The Act also amended other legislation to make special arrangements for local government elections, ensure the continued provision of important community services and allow meetings of the Executive Council to be held via remote conferencing technology.
- A [Statement of Compatibility](#) was prepared in accordance with part 3 of the *Human Rights Act 2019*.

COVID-19 Emergency Response Act 2020

- On 23 April 2020, the *COVID-19 Emergency Response Act 2020* received assent after being passed by Parliament on 22 April 2020.
- The Act builds on the emergency response enacted in the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020*. It established a modification framework of general application across the statute book. The legislative modification framework provides for the making of extraordinary regulations and statutory instruments that directly modify (and, if necessary, override) certain provisions of primary legislation where necessary to mitigate the spread of COVID-19 in the community; facilitate the continued functioning of institutions and the economy to the extent possible in the pandemic; and to allow for timely, targeted and flexible responses caused by COVID-19 and public health restrictions, such as social distancing measures.
- A [Statement of Compatibility](#) was prepared in accordance with part 3 of the *Human Rights Act 2019*.

Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020

- On 25 May 2020, the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* received assent after being passed by Parliament on 21 May 2020. The Act addresses a range of matters that cannot be dealt with under the general modification framework established by the *COVID-19 Emergency Response Act 2020*. The Act amends over 20 Acts—including the *Public Health Act 2005*, *Private Health Facilities Act 1999* and *Mental Health Act 2016*—to clarify emergency powers and promote the continued functioning of public institutions and businesses during the COVID-19 public health emergency.
- A [Statement of Compatibility](#) was prepared in accordance with part 3 of the *Human Rights Act 2019*.

Community Services Industry (Portable Long Service Leave) Act 2019

- On 17 June 2020, amendments were moved during consideration in detail to the Community Services Industry (Portable Long Service Leave) Bill 2019 to amend the *Public Health Act 2005* and *Public Health Regulation 2018*. The Bill was passed on 17 June 2020 and received assent on 22 June 2020.
- The amendments inserted new provisions in the Public Health Act to:
 - insert a head of power to allow a fee to be charged for quarantine;
 - allow all or part of the fee to be waived, to enable a hardship scheme to apply.
- The amendments also specify the fees payable under the Public Health Regulation for quarantine as \$135 per night for accommodation and \$65 for meals per adult per day and \$32.50 for meals per child per day.

- The amendments commenced on 1 July 2020.
- A [Statement of Compatibility](#) was prepared in accordance with part 3 of the *Human Rights Act 2019*.

[COVID-19 Emergency Response and Other Legislation Amendment Act 2020](#)

- On 4 December 2020, the *COVID-19 Emergency Response and Other Legislation Amendment Act 2020* received assent after being passed by Parliament on 1 December 2020.
- The Act:
 - extends the operation of all COVID-19 related legislation which is still required to respond to the impacts of the COVID-19 emergency until 30 April 2021 or an earlier date to be prescribed by regulation (referred to as the 'COVID-19 legislation expiry day' throughout);
 - inserts appropriate transitional mechanisms which provide for the ability to return to normal operations in the most effective and efficient way once the COVID-19 related legislation is no longer needed.
- A [Statement of Compatibility](#) was prepared in accordance with part 3 of the *Human Rights Act 2019*.

[Public Health and Other Legislation \(Extension of Expiring Provisions\) Amendment Act 2021](#)

- On 8 March 2021, the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* received assent after being passed by Parliament on 25 February 2021.
- The Act extended the expiry dates for the amendments made to the Health portfolio legislation to support the Queensland Government's health response until 30 September 2021.
- A [Statement of Compatibility](#) was prepared in accordance with part 3 of the *Human Rights Act 2019*.

[COVID-19 Emergency Response and Other Legislation Amendment Act 2021](#)

- On 23 April 2021, the *COVID-19 Emergency Response and Other Legislation Amendment Act 2020* received assent after being passed by Parliament on 20 April 2021.
- The Act extends the operation of all COVID-19 related measures which are still required to respond to the impacts of the COVID-19 public health emergency until 30 September 2021 or an earlier date to be prescribed by regulation.

- A [Statement of Compatibility](#) was prepared in accordance with part 3 of the *Human Rights Act 2019*.

[Public Health and Other Legislation \(Further Extension of Expiring Provisions\) Amendment Act 2021](#)

- On 9 September 2021, the *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021* received assent after being passed in Parliament on 2 September 2021.
- The Act extended the expiry dates for the amendments made to the Health portfolio legislation to support the Queensland Government's health response until 30 April 2022.
- The Act extended the COVID-19 legislation expiry date in the COVID1-9 Emergency Response Act 202 until 30 April 2022.
- A [Statement of Compatibility](#) was prepared in accordance with part 3 of the *Human Rights Act 2019*.

[Regulations that further extended the declared public health emergency](#)

- On 29 January 2020, a public health emergency was declared under section 319 of the *Public Health Act 2005* due to the outbreak of COVID-19 and its pandemic potential (COVID-19 emergency). Chapter 8, part 2, section 323 provides an extension power to make a regulation to extend the declared public health emergency for up to 90 days. Prior to passage of the [Public Health \(Declared Public Health Emergencies\) Amendment Act 2020](#) (listed above) the extension period was seven days.
- To date, the public health emergency has been extended on 10 occasions, as listed below.
- 6 February 2020 - [Public Health \(Further Extension of Declared Public Health Emergency—Coronavirus \(2019-nCoV\)\) Regulation 2020](#)
 - A [Statement of Compatibility](#) was prepared in accordance with part 3 of the *Human Rights Act 2019*.
- 18 February 2020 - [Public Health \(Further Extension of Declared Public Health Emergency—Coronavirus \(2019-nCoV\)\) Regulation \(No. 2\) 2020](#)
 - A [Statement of Compatibility](#) was prepared in accordance with part 3 of the *Human Rights Act 2019*.
- 18 May 2020 - [Public Health \(Further Extension of Declared Public Health Emergency—COVID-19\) Regulation \(No. 3\) 2020](#)
 - A [Statement of Compatibility](#) was prepared in accordance with part 3 of the *Human Rights Act 2019*.
- 13 August 2020 - [Public Health \(Further Extension of Declared Public Health Emergency—COVID-19\) Regulation \(No. 4\) 2020](#)

- A [Statement of Compatibility](#) was prepared in accordance with part 3 of the *Human Rights Act 2019*.
- 2 October 2020 - [Public Health \(Further Extension of Declared Public Health Emergency—COVID-19\) Regulation \(No. 5\) 2020](#)
 - A [Statement of Compatibility](#) was prepared in accordance with part 3 of the *Human Rights Act 2019*.
- 17 December 2020 - [Public Health \(Further Extension of Declared Public Health Emergency—COVID-19\) Regulation \(No. 6\) 2020](#)
 - A [Statement of Compatibility](#) was prepared in accordance with part 3 of the *Human Rights Act 2019*.
- 25 March 2020 - [Public Health \(Further Extension of Declared Public Health Emergency—COVID-19\) Regulation 2021](#)
 - A [Statement of Compatibility](#) was prepared in accordance with part 3 of the *Human Rights Act 2019*.
- 29 June 2021 - [Public Health \(Further Extension of Declared Public Health Emergency—COVID-19\) Regulation \(No. 2\) 2021](#)
 - A [Statement of Compatibility](#) was prepared in accordance with part 3 of the *Human Rights Act 2019*.
- 23 September 2021 - [Public Health \(Further Extension of Declared Public Health Emergency—COVID-19\) Regulation \(No. 3\) 2021](#)
 - A [Statement of Compatibility](#) was prepared in accordance with part 3 of the *Human Rights Act 2019*.
- 2 December 2021 - [Public Health \(Further Extension of Declared Public Health Emergency—COVID-19\) Regulation \(No. 4\) 2021](#)
 - A [Statement of Compatibility](#) was prepared in accordance with part 3 of the *Human Rights Act 2019*.