

Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020 Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Yvette D'Ath MP, Minister for Health and Ambulance Services and Leader of the House make this statement of compatibility with respect to the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020.

In my opinion, the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

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 in 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 (COVID-19 emergency). The COVID-19 emergency was declared for all of Queensland. Under section 323 of the *Public Health Act 2005*, the declared public health emergency has been extended until 31 December 2020 through the making of several regulations and may need to be further extended.

In early 2020, the Legislative Assembly also passed several pieces of legislation to support the Queensland Government's health response to COVID-19. The amendments made to Chapter 8 of the Public Health Act allowed for:

- the Governor-in-Council to extend the declared public health emergency for up to 90 days (*Public Health (Declared Public Health Emergencies) Amendment Act 2020*, which received assent on 7 February 2020);
- increased powers for emergency officers and the Chief Health Officer to limit, or respond to, the spread of COVID-19 in Queensland (*Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020*, which received assent on 19 March 2020);
- the chief executive to delegate their powers to the Chief Health Officer or a person with expertise or experience in public health issues and improving the operation of the provisions of emergency officers (medical) to support the Queensland Government's response to COVID-19 (*Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020*, which received assent on 25 May 2020); and
- allowing a person to be required to enter hotel quarantine at their own cost (*Community Services Industry (Portable Long Service Leave) Act 2020*, which received assent on 22 June 2020).

Amendments were also made to the *Mental Health Act 2016* through the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* to allow:

- declarations to be made about a mental health service through an expediated process; and
- mental health patients to be granted leave to comply with public health directions.

As the above amendments were made through an urgent Bill or amendments during consideration in detail, sunset clauses and expiry provisions were inserted into the amending Acts so that the amendments expired either on 31 December 2020 or in early 2021. The Bill extends the expiry dates of these provisions until the end of the day on 30 September 2021 and also aligns the expiry dates for all the amendments made to Health portfolio legislation to support the Queensland Government's health response to COVID-19.

As at 9 November 2020, the World Health Organization reported a total of 50,266,033 confirmed positive COVID-19 cases reported globally. Australia has experienced a lesser burden from COVID-19 than other countries. However, as at 9 November 2020, the Australian Government Department of Health reported 27,668 confirmed COVID-19 cases, including 907 deaths in Australia. As at 9 November 2020, there had been 1,177 confirmed cases of COVID-19 in Queensland, with six deaths relating to COVID-19 being Queensland residents.

Queensland's management of outbreaks in the community has proven to be rapid and effective. However, with few restrictions now in place on the movement and gathering of people in Queensland, there is still potential for larger scale outbreaks. Queensland Health anticipates that some form of restrictions will need to continue into 2021 and until a vaccine or treatment becomes widely available.

Despite overall low numbers of COVID-19 in Queensland, recent events in other Australian jurisdictions and continued large-scale outbreaks around the world serve as a clear reminder of how rapidly COVID-19 can spread and overwhelm hospital systems. Certain risks for community transmission in Queensland, such as interstate cross-border travel, will remain for as long as the virus continues to circulate in Australia. Having the ability to respond at short notice to an evolving epidemiological situation will continue to ensure public health objectives are met while also balancing the social and economic needs of the community.

The Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020 (Bill) amends various Acts to ensure that any sunset clauses or expiry provisions relating to the amendments made to Chapter 8 of the Public Health Act and Chapter 18B of the Mental Health Act do not take effect until the end of the day on 30 September 2021. A consequence of the extension is that the amendments may continue to impact human rights due to the ongoing ability for emergency powers to be used, such as the issuance of public health directions by the Chief Health Officer or a direction issued by an emergency officer under the Public Health Act. These consequential impacts of the extension of the expiry dates in the sunset clauses and expiry provisions are outlined further below.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights that are relevant to the Bill are:

- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Freedom of expression (section 21)
- Peaceful assembly and freedom of association (section 22)
- Taking part in public life (section 23)
- Right to property (section 24)
- Privacy and reputation (section 25)
- Protection of families (section 26(1))
- Protection of children (section 26(2))
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to liberty and security of person (section 29)
- Right to education (section 36)
- Right to health services (section 37)

Amendments to the *Public Health Act 2005*

Right to life

The Bill continues to provide powers to the Chief Health Officer to issue public health directions and emergency powers to emergency officers that are reasonably necessary to assist in containing, or responding to, the spread of COVID-19 within the community.

The right to life imposes substantive and procedural obligations on the State to take appropriate steps and adopt positive measures to protect life. The protective obligation extends to requiring authorities to put in place measures that would protect an individual from real and immediate risks to their life.

The Bill promotes the right to life by extending the expiry dates for the amendments to support the Queensland Government's health response, including the emergency powers provided to the Chief Health Officer and emergency officers to issue directions to limit, and respond to, the spread of COVID-19 in Queensland.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

(a) the nature of the right

Freedom of movement

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

The continuation of the amendments to the Public Health Act will limit the right to freedom of movement by continuing to authorise the Chief Health Officer and emergency officers to restrict the movement of any person or group of persons to limit, or respond, to the spread of COVID-19 in Queensland; require persons to isolate or quarantine themselves for periods of up to 14 days; require persons to stay at or in, or not to stay at or in, a stated place; restrict contact between groups of persons; and provide other directions that are necessary to protect public health. Freedom of movement may also be restricted by the provisions of the Bill that continue to allow emergency officers to require owners and operators of businesses and undertakings to open, close or limit access to their facilities.

Right to privacy and reputation

The continuation of the amendments to the Public Health Act also engages the right to privacy, which is broadly construed and includes a specific right against interference with a person's physical integrity. However, 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 applies here because the Bill only continues the existing framework which authorises restrictions on movement pursuant to a lawful direction predicated on a reasonable belief that the restriction is necessary to assist in containing, or responding to, the spread of COVID-19.

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

The Bill continues the powers of the Chief Health Officer and emergency officers to issue directions that may restrict the ability of persons to leave their homes or other premises, to enter particular facilities, or to freely move about and engage in activities within the public health emergency area for COVID-19. The Bill also continues to allow for directions to be issued to owners and operators of businesses to open, close or limit access to their facilities for stated purposes. These restrictions may limit the rights of persons to engage and gather with others in the community.

The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to *hold* a belief is so important that it is an absolute right, however limits on how a person *manifests* their belief can be justified. A direction to self-isolate or to otherwise restrict a person's or group's movements, limits the ability of a person's ability to publicly demonstrate and practice their religion or beliefs.

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

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

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

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

Right to property

Every person has the right to own property alone or in association with others and must not be arbitrarily deprived of their property. The requirement to quarantine potentially limits the human right to property to the extent that the proposed policy will require payment of monies. Requirements to quarantine or otherwise restricting a person's movement and entry into Queensland may also restrict a person's use of private property, albeit temporarily.

Taking part in public life

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

A person who is subject to directions to self-isolate, restricted in their movements, or who are affected by restrictions placed on access to particular facilities, will be temporarily limited in the ways in which they can take part in public life.

Right to protection of families and children

Queensland recognises families as the fundamental unit of society entitled to protection. This right encompasses more than non-interference; it is a guarantee of institutional protection of the family by society and the state. 'Family' is interpreted broadly, extending to different cultural understandings of family. Internal limitations of lawfulness and arbitrariness apply to the right of the family.

Physical separation of families could occur under the amendments made to the Public Health Act if, for example, a person is ordered to self-isolate or a facility such as an aged care facility is directed to restrict access to visitors. This limitation would be temporary and would not restrict other means of communication and engagement among family members, for example through phone calls, video conferencing or social media. The limitation on the right to protection of families would also not be arbitrary, as the actions would be taken in an effort to protect the health and safety of family members and the wider community.

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

The exercise of emergency powers has the potential to impact children through, for example, temporarily restricting their movement, restricting the movement of family or other contacts, or restricting their access to certain facilities or events. Also, directions may not consider the child's views or give their views due weight, which does not respect their capacity to influence the determination of their best interests. However, there are other aspects of the child's best interests which weigh in favour of the amendments, such as their right to life and their health and wellbeing.

Right to liberty and security of person

Every person in Queensland has the right to liberty and security and must not be subjected to arbitrary arrest or detention or deprived of their liberty except on grounds, and in accordance with procedures, established by law. The concept of detention includes not only detention in a prison, but all forms of detention, including for the purposes of medical treatment.

The Bill continues the emergency powers of the Chief Health Officer and emergency officers to issue directions that may restrict the ability of persons to leave their homes or other premises. The Bill also extends the time that an emergency officer (medical) can detain a person under a detention order to 14 days. A direction to self-isolate at home or at another premises, or to otherwise restrict a person's movements, may limit the right to liberty and security because preventing a person from leaving their homes or other premises constitutes detention.

This right is subject to a number of internal limitations and qualifications. Relevantly, the detention must not be arbitrary in the sense that it must not be capricious, unpredictable or unjust or otherwise disproportionate to the legitimate aim that is sought. The continuing detention powers are clearly defined and subject to limits, including that the person giving the direction or order must reasonably believe that it is necessary to assist in containing or responding to the spread of COVID-19. In addition, a direction to self-isolate by an emergency officer and a detention order by an emergency officer (medical) can only detain a person for 14 days. The ability to detain a person is also a proportionate response to the risk of COVID-19 spreading unknowingly through the community. Accordingly, the ability to detain a person is not arbitrary.

The right to liberty and security also incorporates a number of procedural elements, including that a person who is detained must be informed at the time of detention of the reason for detention and that a detained person is able to apply to a court for a declaration or order regarding the lawfulness of the person's detention. These procedural aspects of the right will continue to be limited. The requirements for a person to be given notice of the direction or order for detention and the reason for the detention will be clear in the notice. However, there remains no provision for persons subject to a direction or a detention order to appeal the direction or order.

This limitation is necessary and justified because of the high number of people who are expected to be subject to these orders and directions. Allowing a person to appeal could impose a significant burden on the courts and divert resources required to address the public health emergency. Any direction to self-isolate made by an emergency officer or detention order by an emergency officer (medical) is limited in time to 14 days, which means even without an appeal right the detention is for a defined period of time and will not continue indefinitely.

Public health directions made by the Chief Health Officer are not time limited, however the directions must be revoked once the direction is no longer necessary to assist in containing or responding to the spread of COVID-19 in the community.

Right to education

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

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

Right to health services

Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment. The continuation of the amendments does not limit or place any impediments on a person's right to receive health services. While undertaking mandatory quarantine, a person will be provided with the health services they require. As such, this right is not limited by the continuation of the amendments.

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

Emergency powers provided to the Chief Health Officer and emergency officers appointed under the Public Health Act to respond to the declared public health emergency

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

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

Against these indications, there is a need for clear legislative authority to make the health-related interventions necessary to prevent COVID-19 spreading throughout the community, and to mitigate potential adverse economic and social consequences associated with the disruption that will inevitably follow.

Continuation of amendments to the Public Health Act 2005 relating to fees for costs associated with hotel quarantine

The requirement for those returning from overseas to pay a fee for quarantine reflects the fact that they are receiving the benefit of the services provided by the hotels and locations in which they are quarantined, including food and cleaning services being provided. The government is providing these services because they are necessary to enable a person returning from overseas to comply with quarantine requirements and meet their responsibility to protect their families and the community from the spread of COVID-19. It is considered appropriate for those receiving the benefit of these services to contribute to these costs.

In cases where government services are provided, it is standard practice for cost recovery to apply in appropriate cases. In this instance, it is considered a fee should be charged to ensure that costs are born primarily by those receiving the benefits of the services provided rather than by the community as a whole. This will ensure that the costs of quarantine are equitably distributed and will encourage persons who are overseas to carefully consider how and when they will return to Queensland.

The fee is not being imposed arbitrarily. Case authority suggests that ‘arbitrary’ in the human rights context refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. The fee cannot be considered capricious, unpredictable or unreasonable, as it is directly related and proportionate to the legitimate aim of ensuring that the costs of mandatory quarantine are distributed fairly and are payable primarily by those who receive the benefits of the government services provided.

There may be instances where charging a fee could be considered unjust because it would impose a hardship on certain classes of individuals. To mitigate this concern, the amendment to provide for a waiver from the payment of fees will also continue to provide for all or part of the fee to be waived in certain circumstances. As discussed further below, the chief executive will have the discretion to waive all or part of a fee for persons who are vulnerable or facing financial hardship. The hardship scheme will be applied in a way that is consistent, reasonable and proportionate.

Amendment to the Mental Health Act 2016 to allow the Chief Psychiatrist to grant leave from an Authorised Mental Health Service during the COVID-19 emergency

The purpose of the potential limitations on human rights by the continuation of the amendments made to the *Mental Health Act 2016* will ensure that a person can comply with a detention order or public health direction relating to the COVID-19 emergency. The Chief Health Officer makes a public health direction to contain, or respond to, the spread of COVID-19 within the community. A detention order for a person having or suspected of having COVID-19 is made to contain the spread of the disease. Containing the spread of COVID-19 provides a direct health benefit to the broader community.

Protecting the health, safety and wellbeing of people in the Queensland community, including those in the State’s care, from the risk posed by COVID-19 and its spread promotes the right to life in the context of the positive obligations that right places on the State in relation to protecting the health and safety of its citizens. This is a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.

Amendments to the Public Health Act 2005 to delegate powers to authorise the disclosure of confidential information

The purpose of the potential limitation on the right to privacy is to reduce the administrative burden on the chief executive and Chief Health Officer during the COVID-19 emergency. It is not practical for the chief executive and Chief Health Officer to authorise every disclosure of confidential information relating to notifiable conditions in the public interest. The continuation of the amendments is consistent with a free and democratic society based on human dignity, equality and freedom because it facilitates the disclosure of the information in the public interest where the chief executive or Chief Health Officer need to focus on leading the State’s response to the COVID-19 emergency.

Amendments to the Public Health Act 2005 to allow an emergency officer to give a direction to a parent of a child to keep the child isolated

The purpose of the potential limitations on human rights is to ensure compliance with a direction given to a child to isolate for not more than 14 days, especially where the child does not have capacity to understand the direction. This is necessary to assist in containing, or responding to, the spread of COVID-19 within the community.

Protecting the health, safety and wellbeing of people in the Queensland community from the risk posed by COVID-19 and its spread promotes the right to life in the context of the positive obligations that right places on the State in relation to protecting the health and safety of its citizens. This is a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.

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

Emergency powers provided to the Chief Health Officer and emergency officers appointed under the Public Health Act to respond to the declared public health emergency

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

The limitations are incidental to the grant of emergency powers to the Chief Health Officer and emergency officers appointed under the Public Health Act to implement social distancing measures, including regulating gatherings, isolating or quarantining a person suspected or known to have been exposed to COVID-19 and protecting vulnerable populations such as, the elderly. If these measures are not implemented and an outbreak of COVID-19 occurs in Queensland, demand for emergency and life-sustaining treatment could quickly exceed capacity and overwhelm the State's public health infrastructure. In addition to loss of life and serious adverse health impacts, this could potentially cause widespread economic disruption, social panic and civil unrest, further jeopardising the safety and wellbeing of the community.

Continuation of amendments to the Public Health Act 2005 relating to fees for costs associated with hotel quarantine

Any limit on human rights arising from imposing a fee for mandatory quarantine is considered necessary to have a clear and equitable mechanism in place to sustainably manage the costs associated with increasing international arrivals returning to Australia. Given the continued growth of COVID-19 cases globally and advice that international border restrictions are likely to be one of the last restrictions to be lifted, it is considered necessary to require payment of a fee for mandatory quarantine.

Amendment to the Mental Health Act 2016 to allow the Chief Psychiatrist to grant leave from an Authorised Mental Health Service during the COVID-19 emergency

Containing the spread of COVID-19 within the community may be achieved through detention orders and public health directions. This is because COVID-19 is a communicable disease that may be easily transmitted between people. Quarantine and self-isolation are proven ways to slow the transmission of COVID-19, particularly to vulnerable persons who may develop complications or otherwise require emergency or life-sustaining treatment. The continuation of the amendments achieve the purpose by facilitating a requirement of a detention order or public health direction under the Public Health Act.

Amendments to the Public Health Act 2005 to delegate powers to authorise the disclosure of confidential information

The potential limitation achieves the purpose by allowing additional persons to authorise the disclosure of confidential information. This will reduce the administrative burden of the chief executive and Chief Health Officer during the COVID-19 emergency.

Amendments to the Public Health Act 2005 to allow an emergency officer to give a direction to a parent of a child to keep the child isolated

Containing the spread of COVID-19 within the community may be achieved through a direction to quarantine or isolate. This is because COVID-19 is a communicable disease that may be easily transmitted between people. Quarantine and isolation are proven to slow the transmission of COVID-19 and are indispensable to the State's ability to effectively contain and limit the spread of the disease, manage and respond to outbreaks and ensure that the health system has the capacity to provide treatment to vulnerable and other persons who require urgent medical care. The continuation of the amendments achieves the purpose by allowing an emergency officer to give a direction to a parent of a child to keep the child isolated for not more than 14 days. This is the only practicable way to ensure that children comply with quarantine and isolation requirements.

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

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

The extension of the amendments made to the Public Health Act and Mental Health Act, until 30 September 2021, is considered to be the least restrictive and reasonably available way to achieve the purpose of the Bill. As the situation relating to COVID-19 continues to evolve across Australia and internationally, it is difficult to determine with absolute certainty how long the emergency response measures, particularly the emergency powers provided to the chief health officer and emergency officers appointed under the Public Health Act, will be required. However, an extension of the amendments for a further six months is considered the most appropriate approach to allow for the continuation of the Queensland Government's health response to respond to any emerging threats of COVID-19 in Queensland while also considering the impact that a vaccine becoming available may have on limiting the public health risks of COVID-19 in Queensland.

Queensland Health will continue to monitor the situation in relation to COVID-19 and advise the Queensland Government, as required. If it is considered necessary to extend these amendments for a further period, another Bill will be introduced to the Legislative Assembly for consideration of the appropriateness of a further extension of these emergency response measures provided by the amendments to the Public Health Act and Mental Health Act.

The Bill also continues a number of safeguards to ensure that any potential interference with human rights is minimal and no greater than necessary to respond to the COVID-19 pandemic. These include:

- The emergency powers provided to the Chief Health Officer and emergency officers appointed under the Public Health Act are conferred for the COVID-19 public health emergency declared by the Minister on 29 January 2020 and may only be used to assist in containing or responding to the spread of COVID-19 within the community;
- The emergency powers may only be exercised by, as applicable, the Chief Health Officer and emergency officers appointed under the Public Health Act;
- Before issuing a direction, the Chief Health Officer or emergency officer must have a reasonable belief that the direction is necessary to assist in limiting, or responding to, the spread of COVID-19 within the community;
- If at any time the Chief Health Officer or an emergency officer is satisfied that a direction is no longer necessary to contain the spread of COVID-19 within the community, the direction must be revoked;
- Directions to self-isolate or quarantine must be time-limited and may not apply for more than 14 days unless a further lawful direction is made;
- Directions must state the period during which they apply and that non-compliance with the direction is an offence;
- A person who fails to comply with a direction does not commit an offence if they have a reasonable excuse for not complying;
- Directions may include conditions to minimise adverse impacts on human rights and other interests. For example, a person who is required to self-isolate may be permitted to obtain medical supplies or to engage in activities that do not involve close contact with other persons.

The most significant human rights limitations relate to the right to freedom of movement, particularly for persons who are subject to a self-isolation direction. To a lesser extent, restrictions on movement will also limit rights to freedom of thought, conscience, religion and belief; freedom of expression; peaceful assembly and freedom of association; and cultural rights. These limitations are unavoidable and have been mitigated to the greatest extent possible.

As noted above, persons may only be directed to self-isolate if an emergency officer reasonably believes that self-isolation is necessary to contain the spread of COVID-19 within the community. The period of self-isolation will not exceed 14 days, unless a further lawful direction is issued, and the direction must be revoked immediately if at any time the officer is satisfied that the direction is no longer required. In addition, directions may include conditions to minimise interference with persons' freedom of movement and other human rights, such as by providing that persons who are under self-isolation may leave their home or other accommodation to obtain medical care or supplies or to engage in activities that do not involve close contact with other persons.

Continuation of amendments to the Public Health Act 2005 relating to fees for costs associated with hotel quarantine

The amendments to the Public Health Act will continue to include a provision to allow the fee for quarantine, or part of the fee, to be waived by the chief executive. This will allow a hardship scheme to be available for vulnerable cohorts. The hardship scheme will consider two separate cohorts – those facing financial hardship and vulnerable persons. Vulnerable persons may include those with English as a second language, pregnant women, those with newborn babies, unaccompanied minors, those with no home in Australia and those with significant health issues. The inclusion of a hardship scheme is considered to be an appropriate way to ensure that human rights are not unreasonably limited.

In addition to offering a hardship scheme, payment plans will be offered so that persons can enter into an agreement to repay the quarantine fee over time. This will allow a person to pay the fee for quarantine over time, without having to pay the amount upfront, which is considered to also reduce any limitation on human rights.

Amendment to the Mental Health Act 2016 to allow the Chief Psychiatrist to grant leave from an Authorised Mental Health Service during the COVID-19 emergency

If the amendments are not continued, a person who is detained at an authorised mental health service may be unable to comply with a requirement of a detention order or a public health direction under the Public Health Act.

While a person who ordinarily receives inpatient mental health care may receive a lower standard of health care in the community where the person is directed to stay at a place other than an authorised mental health service because of a detention order or public health direction, any difference in the standard of medical care is likely to be minimal and the benefit of protecting the health of the person and broader community outweighs any reduction in standard of care. Further, the power to authorise a person to leave an authorised mental health service will only be used as a last resort where the person cannot be transferred to another authorised mental health service.

Amendments to the Public Health Act 2005 to delegate powers to authorise the disclosure of confidential information

The continuation of the amendment is considered the best way to reduce the administrative burden of the chief executive and Chief Health Officer during the COVID-19 emergency. If the amendments are not continued, the chief executive or Chief Health Officer would need to authorise every instance of a disclosure of confidential information relating to a notifiable condition where the disclosure is in the public interest. Importantly, the delegation power is appropriately restricted to one other person in addition to the Chief Health Officer.

Amendments to the Public Health Act 2005 to allow an emergency officer to give a direction to a parent of a child to keep the child isolated

The only practicable way to ensure compliance with a direction given to a child to quarantine or isolate is to impose a corresponding legal obligation on the child's parent. Ensuring compliance with these directions is essential to slowing the transmission of COVID-19 and protecting the health of the community.

A direction issued by an emergency officer will be for a period of not more than 14 days. Further, the power can only be exercised by emergency officers who are appointed by the chief executive and have the necessary expertise and experience to fulfil the role. The direction can only be given if an emergency officer reasonably believes that it is necessary to assist in containing, or responding to, the spread of COVID-19. The power to give the direction also applies to a limited class of persons (that is, it can only be given to a parent of a child).

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

Continuation of the amendments to the Public Health Act and Mental Health Act

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

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

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

As described in detail above, a number of safeguards exist in the amendments to the Public Health Act and Mental Health Act to ensure that any limitations on human rights are no more onerous than is required to slow the spread of COVID-19. Importantly, the continuation of the amendments to the Public Health Act will only apply for a further 6 months, until 30 September 2021 and the powers of public health officials will return to the status quo. The additional powers are also only available to address the current COVID-19 pandemic. On balance, any limitations on human rights are reasonable and justified to ensure the preservation of life and protection of the community from the worse impacts of a pandemic.

- (f) any other relevant factors

Not applicable.

Conclusion

In my opinion, the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020 is compatible with human rights under the Human Rights Act because it limits the identified human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

YVETTE D'ATH MP
MINISTER FOR HEALTH and AMBULANCE SERVICES
and LEADER OF THE HOUSE

© The State of Queensland 2020