

Public Health Amendment Regulation 2021

Human Rights Certificate

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

In accordance with section 41 of the *Human Rights Act 2019*, I, the Honourable Yvette D'Ath MP, Minister for Health and Ambulance Services and Leader of the House provide this human rights certificate with respect to the *Public Health Amendment Regulation 2021* made under the *Public Health Act 2005*.

In my opinion, the *Public Health Amendment Regulation 2021*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the Human Rights Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

On 29 January 2020, a public health emergency was declared under section 319 of the *Public Health Act 2005* for COVID-19. On 19 March 2020, the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* amended the Public Health Act to include powers for the Chief Health Officer (CHO) to make public health directions to assist in containing, or to respond to, the spread of COVID-19 in the community.

Since 28 March 2020, a CHO public health direction has been in place requiring anyone arriving in Queensland from overseas to self-quarantine in a hotel or other premises nominated by an emergency officer appointed under the Act. The current version of the direction is the Quarantine for International Arrivals Direction (No. 6), which was made on 24 February 2021. The Border Restrictions Direction (No. 23) and its predecessors have also required certain people arriving in Queensland to quarantine in certain circumstances.

The *Community Services Industry (Portable Long Service Leave) Act 2020* amended the Public Health Act to include a head of power for fees to be charged for quarantine and amended the *Public Health Regulation 2018* to prescribe the fees for a person's quarantine. The amendments commenced on 1 July 2020 and were scheduled to expire on 18 March 2021.

On 8 March 2021, the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* (Extension Act) amended the Public Health Act to further extend the period of a declared public health emergency to allow the Queensland Government's health response to continue for a further six months, until 30 September 2021. The Extension Act also extended Chapter 8, part 7AA of the Public Health Act, which includes the head of power for fees to be charged for quarantine fees, to 30 September 2021.

Section 362MC of the Public Health Act provides for a regulation making power, which permits a regulation to prescribe the fees payable for a person who is required to quarantine at a place other than the person's home. These fees include the types of costs associated with the person's quarantine, for example, the cost of accommodation or the cost of meals.

Section 61A of the Public Health Regulation sets out the fees payable for quarantine. The current fees are \$135 for each night of accommodation, including cleaning. A daily fee for meals is also payable with the fee being \$65 per day for adults and \$32.50 per day for children.

In order to ensure fees for hotel quarantine continue to be payable, it is necessary to extend the expiry date for section 61A of the Public Health Regulation, consistent with the extension of the provisions of the Public Health Act.

The proposed amendment to section 61A of the Public Health Regulation omits section 61A(5), which removes the expiry date from the Public Health Regulation. The effect of this amendment is that section 61A will become subject to the expiry date for the head of power in section 362MC of the Public Health Act, which is contained in section 362MG.

Human Rights Issues

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

The proposed amendment made by the Public Health Amendment Regulation 2021, to section 61A of the Public Health Regulation, will omit the expiry date and rely on the expiry for the head of power in section 362MG of the Public Health Act.

The assessment of compatibility with human rights relating to the power to charge fees for services provided to people required to enter hotel quarantine has also been considered in the Human Rights Statements of Compatibility for the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020* and the Amendments during Consideration in Detail for the *Community Services Industry (Portable Long Service Leave) Bill Act 2020*.

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

- Freedom of movement (section 19);
- Property rights (section 24);
- Privacy and reputation (section 25);
- Protection of families (section 26(1));
- Protection of children (section 26(2));
- Right to health services (section 37).

Consideration of reasonable limitations on human rights (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.

The requirement to quarantine potentially limits the human right for freedom of movement to the extent that the movements of people wishing to re-enter Queensland will be hindered, even though only for a set period.

The amendment made by the Public Health Amendment Regulation 2021 only provides for a fee to continue to be charged for the costs of mandatory quarantine but does not impose any requirement to quarantine. Therefore, the amendment does not limit a person's freedom of movement beyond the requirements already in place under a public health direction made by the CHO about quarantine and any lawful requirement made by an emergency officer under the Public Health Act to implement the direction. As such, this right is not limited by the provisions of the Public Health Act or Public Health Regulation, including the amendment proposed to be made by the Public Health Amendment Regulation 2021.

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.

The amendment made by the Public Health Amendment Regulation 2021 allows for a fee to continue to be charged for the costs of mandatory quarantine until Chapter 8, Part 7AA of the Public Health Act expires and therefore, potentially limits this human right.

Right to privacy and reputation

Every person has the right to their privacy, family, home and correspondence and must not be unlawfully or arbitrarily interfered with. The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary,' including interferences that are unreasonable, unnecessary or disproportionate. Further, the right to privacy can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The requirement to quarantine potentially limits the human right to privacy to the extent that the person, by virtue of being placed in quarantine in nominated premises, may feel their privacy, family and/or home may be affected.

The amendment made by the Public Health Amendment Regulation 2021 only provides for a fee to continue to be charged for the costs of mandatory quarantine but does not impose any requirement to quarantine. Therefore, the amendment does not limit a person's right to privacy and reputation beyond the requirements already in place under a public health direction made by the CHO about quarantine and any lawful requirement made by an emergency officer under the PH Act to implement the direction. As such, these rights are not limited by the amendments.

Protection of families and children

Every family has the right to be recognised as the fundamental unit of society and is entitled to protection. The requirement to quarantine potentially limits the human right to privacy to the extent that the accommodation limits may separate or impact upon certain members of the family unit.

The amendment made by the Public Health Amendment Regulation 2021 only provides for a fee to continue to be charged for the costs of mandatory quarantine but does not impose any requirement to quarantine. Therefore, the amendment does not impact on the protection of families and children, beyond the requirements already in place under a public health direction made by the CHO about quarantine and any lawful requirement made by an emergency officer

under the Public Health Act to implement the direction. As such, this right is not limited by the amendment.

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 amendment 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 amendment.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

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 people 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 Public Health Act provides for all or part of the fee to be waived in certain circumstances. As discussed further below, the chief executive has the discretion to waive all or part of a fee for persons who are vulnerable or facing financial hardship. The hardship scheme will continue to be applied in a way that is consistent, reasonable and proportionate.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

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 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.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no alternative or less restrictive way to achieve the purposes of the Public Health Act and Public Health Regulation as the inclusion of the fees in the Public Health Regulation ensure that the fees charged are publicly available, fair and consistently applied in accordance with the law. The amendment will not impact on the provisions of the Public Health Act that allow the fee for quarantine, or part of the fee, to be waived by the chief executive. This allows the hardship scheme to be available for vulnerable cohorts. The hardship scheme considers 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 continue to be offered so that persons can enter into an agreement to repay the quarantine fee over time. This will allow people 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

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

A significant proportion of cases of COVID-19 in Australia originated from overseas. Given this, it is important that Australia continues its policy of requiring mandatory quarantine for overseas arrivals, as this has provided significant protection to the Australian community and helped to lower the rate of transmission compared to other countries. 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 in which they are quarantined, including food and cleaning services being provided. The inclusion of a hardship scheme and payment plans is considered to ameliorate the potential impact on human rights for vulnerable people and those facing financial hardship.

(f) any other relevant factors

Nil.

Conclusion

I consider that the *Public Health Amendment Regulation 2021* is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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

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