

# Public Health (COVID-19) and Other Legislation Amendment Regulation 2020

## 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 Steven Miles MP, Minister for Health and Minister for Ambulance Services provide this human rights certificate with respect to the *Public Health (COVID-19) and Other Legislation Amendment Regulation 2020* made under the *Hospital and Health Boards Act 2011* and *Public Health Act 2005*.

In my opinion, the *Public Health (COVID-19) and Other Legislation Amendment Regulation 2020* as tabled in the Legislative Assembly, 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 Subordinate Legislation

The *Public Health (COVID-19) and Other Legislation Amendment Regulation 2020* (Amendment Regulation) amends the *Public Health Regulation 2018* to:

- prescribe coronavirus (COVID-19) as a contagious condition in schedule 4 to give a person in charge of a school, education and care service or QEC approved service (school or care service) the same powers for COVID-19 as for other contagious conditions under schedule 4, such as diphtheria, gastroenteritis, measles and influenza;
- prescribe police officers as persons who may be appointed as emergency officers (general) under section 333 of the *Public Health Act 2005*; and
- update references to the temporary name of the coronavirus from “2019-nCoV” to refer to its official name “COVID-19”.

The Amendment Regulation also amends the *Hospital and Health Boards Regulation 2012* to correct a typographical error to replace “special registration” with “specialist registration”.

### ***Prescribing COVID-19 as a contagious condition in schedule 4***

Chapter 5 of the Public Health Act establishes a framework to protect children from contagious conditions by requiring a child who has, or is suspected of having, a contagious condition to be excluded from a school or care service. Sections 158 and 160 of the Public Health Act enable a contagious condition and exclusion period for the contagious condition to be prescribed under a regulation.

Schedule 4 of the Public Health Regulation prescribes periods of time during which a child that has, or is suspected of having, a contagious condition, must not attend a school or care service. The prescribed period varies depending on the contagious condition involved. Keeping children away from a school or care service for these periods minimises the likelihood of the spread of contagious conditions within a school or care service.

Existing contagious conditions prescribed under schedule 4 of the Public Health Regulation include conditions such as diphtheria, gastroenteritis illness, haemophilus influenzae type b (invasive) disease, human influenza with pandemic potential, measles and typhoid. These are infectious diseases that can spread from person to person and can cause serious illness and possibly death. Children are at considerable risk of being exposed to a contagious condition when an infectious child attends a school or care service as they are places where close and prolonged contact often occurs between children through playing, eating and classroom activities.

The Public Health Act provides the following powers to protect children that attend a school or care service if a child has, or is suspected of having, a contagious condition:

- Section 161 – Parents that are aware their child has a contagious condition must not send their child to a school or care service for the prescribed period.
- Section 162 – A teacher or educator that has a reasonable belief that a child has a contagious condition must advise the person in charge of a school or care service.
- Sections 163 and 164 – A person in charge of a school or care service may advise a child's parents that the child has, or may have, a contagious condition and direct that the child must not attend the school or care service for the prescribed period.
- Sections 167 and 168 – The chief executive may authorise a doctor to examine children at a school or care service, with a parent's consent. Alternatively, a parent may also organise their own doctor to examine their child.
- Section 172 – The chief executive may request the person in charge of a school or care service to provide information about a child who has, or is suspected of having, a contagious condition.
- Section 181 – The Minister for Health and Minister for Ambulance Services may order the closure of a school or care service for 1 month if there is an outbreak of a contagious condition at the school or care service, or in the community.

The Amendment Regulation prescribes coronavirus (COVID-2019) as a contagious condition in schedule 4, including the prescribed period during which a child who has, or is suspected of having, COVID-19 must not attend a school or care service.

Preventing the spread of COVID-19 among children at a school or care service protects the health of children in Queensland and helps to minimise the spread of the condition in the community.

### ***Prescribing police officers as persons who may be appointed as emergency officers (general)***

Chapter 8 of the Public Health Act includes powers to declare and respond to public health emergencies and emergency notifiable conditions. Section 333 of the Act allows the chief executive to appoint persons as emergency officers (general) for a public health emergency including public service officers and employees, health service employees, local government employees, SES members and persons prescribed under a regulation. Under section 61 of the Public Health Regulation, ambulance officers are already prescribed as persons who may be appointed emergency officers (general). It is proposed to also prescribe police officers as persons who may be appointed emergency officers (general).

During a public health emergency, an emergency officer (general) has emergency powers to respond to a declared public health emergency as provided under the Public Health Act. These powers are subject to the direction of the chief executive and may be limited by conditions on the appointment.

The Amendment Regulation prescribes police officers as an additional category of person who may be appointed an emergency officer (general). Prescribing police officers as persons who may be appointed as emergency officers (general) will provide additional operational flexibility to respond to COVID-19 and any future declared public health emergencies.

### ***Updating references to official name of COVID-19***

The *Public Health (Coronavirus (2019-nCoV)) Amendment Regulation 2020* (SL1 of 2020) prescribed coronavirus 2019-nCoV as a notifiable condition in schedule 1 of the Public Health Regulation and as a condition requiring immediate notification in schedule 2.

On 11 February 2020, the World Health Organization gave the coronavirus 2019-nCoV the official name ‘COVID-19’, meaning coronavirus disease originating in 2019. It is necessary to update the references to ‘2019-nCoV’ in the Public Health Regulation to refer to the official name ‘COVID-19’.

## **Human Rights Issues**

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

#### **Protection from medical or scientific experimentation or treatment without consent**

Section 17(c) of the Human Rights Act provides that a person must not be subjected to medical or scientific experimentation or treatment without the person’s full, free and informed consent.

Clause 10 of the Amendment Regulation prescribes the coronavirus (COVID-19) as a contagious condition in schedule 4 of the Public Health Regulation, which activates a range of powers in the Public Health Act. Section 167 of the Public Health Act enables the chief executive to authorise a doctor to examine children at a school or care service. However, this power is subject to a number of important safeguards, including:

- Section 167(1) – The chief executive must reasonably suspect some or all children attending a school or care service should be examined by a doctor because a child attending the school or service has, or may have, a contagious condition. The chief executive must also consult the person in charge of the school or service about the proposed medical examination.
- Section 167(2) – The purpose of the medical examination must be to decide whether the children have, or may have, the contagious condition.
- Section 167(4) – A child cannot be examined without the consent of a parent of the child.
- Section 167(3) – The chief executive must give a notice about the proposed medical examination, including the date and time it is to occur, the contagious condition for which the examination is to be done, details of the children to be examined and the name and contact details of the doctor who is to conduct the examination.
- Section 168 – The chief executive must notify at least 1 of the child’s parents of the proposed date and time of the examination, the contagious condition for which the examination is to be done, the name and contact details of the doctor who is to conduct the examination, that the child’s parents may be present when the child is examined, that the examination may not be conducted without the consent of the parent and that the parent may have their child examined by another doctor to decide whether the child has or may have the condition.

As the child's parent must consent to the examination, it is clear that the examination can only occur with consent. Also, as the purpose of the examination is to decide if a child has a contagious condition, it is clear that the examination is not for the purpose of medical or scientific experimentation or treatment, but rather to assist the person to know if they have a contagious condition and to prevent its potential transmission to other persons. For these reasons, the amendment does not engage the human right to protection from medical or scientific experimentation or treatment. Even if the right were engaged, it is clear from its purpose and the substantial safeguards described above that the amendment is compatible with human rights.

### **Freedom of movement and right to liberty and security of person**

Section 19 of the Human Rights Act provides that every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it. Section 29 of the Human Rights Act provides that every person has the right to liberty and security.

Clause 10 of the Amendment Regulation prescribes the coronavirus (COVID-19) as a contagious condition in schedule 4 of the Public Health Regulation, which activates a range of powers in the Public Health Act. These powers include requirements that a child who has, or may have, a contagious condition must not attend a school or care service for the period prescribed by regulation. These requirements have the potential to impact on freedom of movement and right to liberty for the prescribed period during which the child must not attend a school or care service.

### **Privacy and reputation and protection of families and children**

Section 25 of the Human Rights Act provides that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Section 26 of the Human Rights Act provides families are the fundamental group unit of society and are entitled to be protected by society and the State and that every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child.

Clause 10 of the Amendment Regulation prescribes the coronavirus (COVID-19) as a contagious condition in schedule 4 of the Public Health Regulation, which activates a range of powers in the Public Health Act. These powers include restrictions on a child's ability to attend a school or care service if they have, or are suspected of having, a contagious condition and the chief executive requiring information about children who have, or may have been exposed to, a contagious condition. These requirements have the potential to impact on privacy and reputation and protection of families and children.

### **Right to education**

Section 36 of the Human Rights Act provides that every child has the right to have access to primary and secondary education appropriate to the child's needs.

Clause 10 of the Amendment Regulation prescribes the coronavirus (COVID-19) as a contagious condition in schedule 4 of the Public Health Regulation, which activates a range of powers in the Public Health Act. These powers include requirements that a child who has, or may have, a contagious condition must not attend a school or care service for the period

prescribed by regulation. These requirements may limit the right to have access to education for the prescribed period during which the child must not attend a school or care service.

### **Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)**

#### **Freedom of movement and right to liberty and security of person**

(a) the nature of the right

The right to freedom of movement places an obligation on the State not to act in a way that unduly restricts free movement, but does not require the State to take positive steps to promote freedom of movement. Freedom of movement and right to liberty are fundamental rights that Queenslanders use each day so they can go about their daily lives.

(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 purpose of the limitations on these human rights is to prevent and minimise the spread of COVID-19 among children at a school or care service, protect the health of children in Queensland and help to minimise the spread of the condition in the community. Maintaining the health and safety of children and the community in general is consistent with a free and democratic society based on human dignity, equality and freedom.

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

The Amendment Regulation activates powers in the Public Health Act that will place limitations on freedom of movement and right to liberty of children who have, or may have, a contagious condition by restricting their attendance at a school or care service for the period prescribed by regulation. The limitations may also impact indirectly on the child's family, as they may be required to stay home to care for the child. However, these limitations help to directly achieve the purpose of preventing or minimising the spread of COVID-19 among children and help to minimise the spread of the condition in the community.

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

The Amendment Regulation prescribes the period during which a child must not attend a school or care service. The prescribed period for COVID-19 is based on information published in *The Communicable Diseases Network of Australia (CDNA) National Guidelines for Public Health Units Coronavirus Disease 2019 (COVID-19)* (COVID-19 National Guidelines). The COVID-19 National Guidelines summarise national recommendations for surveillance, infection control, laboratory testing and contact management for COVID-19.

The COVID-19 National Guidelines have been endorsed by the Australian Health Protection Principal Committee, the key decision-making committee for health emergencies comprised of all State, Territory and Commonwealth Chief Health Officers. The prescribed period is based on the criteria in the COVID-19 National Guidelines for releasing a confirmed case or a contact of a confirmed case from isolation.

As the prescribed period during which a child must be excluded from a school or care service is based on the best medical advice available, it is considered there are no less restrictive or reasonably available ways to achieve the purpose.

- (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

It is considered that the overall need to prevent and minimise the spread of COVID-19 in the community, schools and care services and to protect the health and safety of children, outweighs the limitations on human rights that will apply to particular individuals. In this case, it is considered the human rights of the community as a whole to safety and wellbeing outweigh the restrictions placed on individuals.

### **Privacy and reputation and protection of families and children**

- (a) the nature of the right

The right to privacy protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally. For example, the right to privacy protects the individual against interference with their physical and mental integrity, freedom of thought and conscience, legal personality, sexuality, family and home, and individual identity (including appearance, clothing and gender).

The protection of families and children entitles families to protection by both the State and society. It also recognises that children have the same rights as adults, but with additional protections according to their best interests and the fact that they are children. One of the underlying principles of the International Convention on the Rights of the Child is that 'the best interests of the child' shall be a primary consideration in all actions concerning children.

- (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 purpose of the limitations on these human rights is to prevent and minimise the spread of COVID-19 among children at a school or care service, protect the health of children in Queensland and help to minimise the spread of the condition in the community. The limitations also assist families to assess and take steps to prevent risks of illness. Maintaining the health and safety of children and the community in general is consistent with a free and democratic society based on human dignity, equality and freedom.

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

The Amendment Regulation activates powers in the Public Health Act that will place limitations on a child's ability to attend a school or care service if they have, or are suspected of having, a contagious condition. It also activates powers for the chief executive to require information about children who have, or may have been exposed to, a contagious condition.

Sharing information about children who have, or may have been exposed to, a contagious condition enables schools and care services to assess whether another child may have a

contagious condition. It also enables families to assess whether their own child may have been exposed and whether the child or other members of the family may need to seek medical advice or treatment. By sharing information and ensuring an open and transparent process, it ensures anyone who may have been exposed can consider their level of risk and seek medical advice or treatment accordingly.

The limitations on these human rights help to directly achieve the purpose of preventing or minimising the spread of COVID-19 among children and help to minimise the spread of the condition in the community.

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

The sharing of information is necessary during the outbreak of a contagious condition to protect children and families and ensure further transmission of a contagious condition is minimised. It is considered there are no less restrictive or reasonably available ways to achieve the purpose.

(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

It is considered that the overall need to prevent and minimise the spread of COVID-19 in the community, schools and care services and to protect the health and safety of children, outweighs the limitations on human rights that will apply to particular individuals. In this case, it is considered the human rights of the community as a whole to safety and wellbeing outweigh the restrictions placed on individuals.

### **Right to education**

(a) the nature of the right

The right to education provides the right of every child to primary and secondary education appropriate to the child's needs. The right to education has been interpreted in international jurisprudence as encompassing the key elements of availability, accessibility, acceptability and adequacy.

(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 purpose of the limitations on this human right is to prevent and minimise the spread of COVID-19 among children at a school or care service, protect the health of children in Queensland and help to minimise the spread of the condition in the community. Maintaining the health and safety of children and the community in general is consistent with a free and democratic society based on human dignity, equality and freedom.

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

The Amendment Regulation activates powers in the Public Health Act that will place limitations on the right to education by restricting attendance at a school or care service for the period prescribed by regulation by a child who has, or may have, a contagious condition. The limitation on this right will be mitigated by schools providing appropriate educational materials

and activities for students to do while not attending school. This already occurs in a variety of contexts if a student is unable to attend school.

The limitations on this human right help to directly achieve the purpose of preventing or minimising the spread of COVID-19 among children and help to minimise the spread of the condition in the community.

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

The limitation on this right will be mitigated by schools providing appropriate educational materials and activities for students to do while not attending school. This will minimise lost learning opportunities and avoid disadvantaging children who cannot attend school.

The Amendment Regulation prescribes the period during which a child must not attend a school or care service. The prescribed period for COVID-19 is based on information published in *The Communicable Diseases Network of Australia (CDNA) National Guidelines for Public Health Units Coronavirus Disease 2019 (COVID-19)* (COVID-19 National Guidelines). The COVID-19 National Guidelines summarise national recommendations for surveillance, infection control, laboratory testing and contact management for COVID-19.

The COVID-19 National Guidelines have been endorsed by the Australian Health Protection Principal Committee, the key decision-making committee for health emergencies comprised of all State, Territory and Commonwealth Chief Health Officers. The prescribed period is based on the criteria in the COVID-19 National Guidelines for releasing a confirmed case or a contact of a confirmed case from isolation.

As the prescribed period during which a child must be excluded from a school or care service is based on the best medical advice available, it is considered there are no less restrictive or reasonably available ways to achieve the purpose.

(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

It is considered that the overall need to prevent and minimise the spread of COVID-19 in the community, schools and care services and to protect the health and safety of children, outweighs the limitations on human rights that will apply to particular individuals. In this case, it is considered the human rights of the community as a whole to safety and wellbeing outweigh the restrictions placed on individuals.

## Conclusion

I consider that the *Public Health (COVID-19) and Other Legislation Amendment Regulation 2020* 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.

**STEVEN MILES**  
MINISTER FOR HEALTH and MINISTER FOR AMBULANCE SERVICES

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