

# State Penalties Enforcement Amendment Regulation (No. 1) 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, Yvette D'Ath, Attorney-General and Minister for Justice provide this human rights certificate with respect to the State Penalties Enforcement Amendment Regulation (No. 1) 2020 made under the *State Penalties Enforcement Act 1999* (SPE Act).

In my opinion, the State Penalties Enforcement Amendment Regulation (No. 1) 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

On 29 January 2020, under the *Public Health Act 2005* (the Public Health Act), the Minister for Health and Minister for Ambulance Services made an order declaring a public health emergency in relation to coronavirus disease (COVID-19). The COVID-19 public health emergency has been extended by regulation to 17 August 2020 and may be further extended.

As at 30 June 2020, the World Health Organization recorded more than 10 million COVID-19 cases worldwide. Australia has recorded 7,834 cases of COVID-19. Queensland has recorded 1,067 cases of COVID-19, including 6 fatalities. As at 30 June 2020, Queensland only had two active cases of COVID-19. The last confirmed case in Queensland that has no epidemiology link to interstate or overseas transmission or another confirmed case (known as community transmission) was notified on 26 May 2020, with symptom onset on 2 May 2020. In Queensland, 79 per cent of cases are related to overseas or interstate travel compared to 63 per cent nationally.

In Queensland, the spread of COVID-19 has been managed through a number of important public health controls including public health directions made by the Chief Health Officer. Under section 362B of the Public Health Act, the Chief Health Officer may give a public health direction to assist in containing, or to respond to, the spread of COVID-19 within the community.

#### ***Queensland border restrictions***

Border controls help prevent COVID-19 cases entering the Queensland community from places where there is more COVID-19 in the community and/or people are at greater risk of getting COVID-19. Queensland has border restrictions in place for people arriving from overseas and from within Australia. The State Penalties Regulation Amendment Regulation (No. 1) 2020 relates to the restrictions on Queensland's domestic borders. In Queensland, 79 per cent of cases are related to overseas or interstate travel compared to 63 per cent nationally. This indicates a significantly lower proportion of community transmission, likely as a result of Queensland's domestic border measures and effective monitoring of individuals in self-quarantine.

Queensland's domestic borders were closed on 28 March 2020. On that date, the Chief Health Officer made the Public Health Direction – Border Restrictions. This public health direction required any person arriving in Queensland to quarantine for 14 days unless the person was an exempt person. The public health direction has been revised a number of times. As at 30 June 2020, under the Public Health Direction – Border Restrictions (No. 5), which came into effect on 1 May 2020, a person who arrives in Queensland from another state or territory of Australia is not be allowed to enter Queensland, unless they are an exempt resident or exempt person. Some exempt residents and exempt persons must self-quarantine for 14 days if they have been in a COVID-19 hotspot within Australia. COVID-19 hotspots are declared by the Chief Health Officer as high-risk areas for the transmission of COVID-19. Since 21 June 2020, all COVID-19 hotspots have been located in Victoria.

An acute public health risk has been identified in Victoria. An unacceptably high number of new cases have been identified in Victoria in June. There have been fourteen consecutive days of double-digit case growth in Victoria with 321 active cases. There is a continuing and concerning number of cases associated with transmission in households and families. There have been 281 confirmed cases of coronavirus in Victoria that have been acquired through community transmission. The increase in locally acquired cases in Victoria is driven by multiple epidemiologically linked outbreaks, across a range of settings including between and within households, hotels providing quarantine services, retail businesses, schools, childcare centres, health care practices and an aged care facility. This is a significant public health concern to Queensland because of the risk of transmission of a case from Victoria to Queensland if appropriate public health controls are not put in place. Other states and territories have not reported any significant community transmission in recent weeks.

Queensland's very low active case numbers and low rate of community transmission means that the highest risk of COVID-19 entering Queensland is from people who have been in a COVID-19 hotspot or overseas in 14 days before entering Queensland, who have COVID-19 or who have had contact with a confirmed case of COVID-19 in the 14 days before entering Queensland.

On 30 June 2020, the Premier announced that from 3 July 2020, anyone who has been in Victoria in the past 14 days and enters Queensland will be required to quarantine for 14 days at their own expense. It is proposed that if a person who enters Queensland has been in Victoria (or any other COVID-19 hotspot, should others emerge) in the past 14 days, the person will be required to quarantine at their own cost. In addition, a person will be required to quarantine for 14 days if they have been outside Australia in the previous 14 days, had known contact with a person who has a confirmed case of COVID-19 in the last 14 days or had symptoms consistent with COVID-19 in the last 14 days. Requiring these people to quarantine will ensure that those individuals who have the highest risk of bringing COVID-19 into Queensland do not spread the disease to the wider community.

In order to ensure that the Queensland Police Service and other emergency officers under the Public Health Act can identify those persons that are required to quarantine, all persons entering Queensland from 3 July 2020 will be required to provide information about whether, in the previous 14 days, the person has been outside Australia, has been in a COVID-19 hotspot or has had known contact with a person who has a confirmed case of COVID-19; the persons' name, address and phone number; details of where the person intends to stay while in Queensland; whether the person has had any COVID-19 symptoms in the past 14 days; and any other information required by an emergency officer (public health).

As it is crucial that border officials receive complete and accurate information to enable them to make reliable risk assessments and effectively enforce quarantine requirements, persons entering Queensland will also be required to provide a declaration stating that the information they have provided is true and correct to the best of their knowledge. A person who knowingly provides false or incorrect information will be in breach of the public health direction and liable for a fine. A person will also breach the direction if they fail to quarantine for 14 days or enter Queensland in contravention of the direction.

***Fines for breaching the Public Health Direction – Border Restrictions (No. 5) and its successors***

Under section 362D of the Public Health Act, a person who fails to comply with a public health direction without a reasonable excuse commits an offence with a maximum penalty of 100 penalty units. An offence under section 362D is an infringement notice offence under the *State Penalties Enforcement Regulation 2014*. Under the SPE Act, infringement notice offences can be enforced by an on-the-spot fine known as an infringement notice. The infringement notice fine for breaching section 362D of the Public Health Act is 10 penalty units for an individual (\$1,335) and 50 penalty units for a corporation (\$6,673).

The State Penalties Enforcement Regulation will be updated to increase the infringement notice fine for breaching the Public Health Direction – Border Restrictions (No. 5) and its successors (collectively, Border Restrictions Public Health Directions). The policy objective of this amendment is to provide a strong deterrent to persons who may breach the Border Restriction Public Health Directions and, as a consequence, increase the risk of COVID-19 being re-introduced into the community and an outbreak occurring. Given Queensland's low case numbers and low rates of community transmission, people bringing COVID-19 into Queensland from elsewhere is a significant public health risk. It is appropriate that breaches of the Border Restrictions Public Health Directions be subject to a higher penalty than other public health directions to reflect the high level of risk to the public health of Queensland.

To achieve the policy objectives, the regulation amends the State Penalties Enforcement Regulation to increase the infringement notice fine for breaching the Border Restrictions Public Health Directions to 30 penalty units for an individual (\$4,004). The penalty for a corporation will remain at 50 penalty units.

The increase in the fine for breaching the Border Restrictions Public Health Directions from \$1,335 to \$4,004 will be a significant deterrent to persons who may provide false information to allow them to enter Queensland without quarantine or to break quarantine once they have gained entry to Queensland.

## **Human Rights Issues**

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

An analysis of the subordinate legislation indicates that it may engage the human right of a fair hearing under section 31, rights in criminal proceedings under section 32, and property rights under section 24 of the *Human Rights Act 2019*.

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

***Property rights, Right to a fair hearing and rights in criminal proceedings (sections 24, 31 and 32 Human Rights Act 2019)***

(a) the nature of the right

The right to property protects the right of all persons to own property (alone or with others) and provides that people have a right not be arbitrarily deprived of their property. The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom.

The right includes the protection from the deprivation of property. The term ‘deprived’ is not defined by the HR Act, however deprivation in this sense is considered to include the substantial restriction on a person’s use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use his or her property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it or deriving profits from it).

Property is likely to include all real and personal property interests recognised under general law (for example, interests in land, contractual rights, money and shares) and may include some statutory rights (especially if the right includes traditional aspects of property rights, such as to use, transfer, dispose and exclude).

The Regulation limits the right to property by imposing an increased fine on a person who is alleged to have not complied with the relevant Chief Health Officer direction relating to restrictions in effect at the Queensland border.

Any potential limit on the right is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Further detail supporting this conclusion is set out below.

The right to a fair hearing facilitates procedural fairness and protects natural justice. It provides a right for parties to be heard and to respond to allegations made against them, and requires courts be unbiased and independent.

The rights in criminal proceedings protect the right to be presumed innocent until proven guilty and sets out a number of minimum guarantees for criminal proceedings including the right of accused persons to be informed of the nature and reason for a charge and to defend themselves personally or through legal assistance. The Regulation engages these two rights through the increase in the penalty payable under a penalty infringement notice issued under the SPE Act for the offence of contravening a direction of the Chief Health Officer given under the Public Health Act.

However, it is conceivable that these rights would not likely be limited by the Regulation. The SPE Act gives an individual issued with a penalty infringement notice an option, preserved in legislation, to have the matter determined in a Magistrates Court instead of paying the penalty amount. As the penalty is significantly increased to 30 penalty units, this may incentivise the use of that option.

However, in the alternative, if the rights are limited, any potential limit is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Further detail supporting this conclusion is set out below.

(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 Regulation is to provide a penalty that would deter a person from giving untrue or incorrect information about their potential exposure to COVID-19 or similarly untrue information about any diagnosis they may have received in relation to COVID-19. This is necessary to ensure that the spread of COVID-19 is limited to the greatest extent possible to the health of the greater Queensland community.

Protecting public health is a legitimate objective. Moreover, protecting the health, safety and wellbeing of people in the Queensland community from the risk posed by COVID-19 and its spread also promotes the right to life (protected under section 16 of the HR Act) in the context of the positive obligations that right place on the State in relation to protecting the health and safety of its citizens. Protecting and promoting human rights is necessarily consistent with a free and democratic society based on human dignity, equality and freedom.

By continuing to utilise the enforcement framework of the SPE Act increased demand in the criminal courts in Queensland may be managed while maintaining the right to a fair hearing and a person's rights in criminal proceedings.

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

There is a rational relationship between a potential limitation and the purpose of the Regulation. The penalty set by the Regulation encourages compliance with the Chief Health Officer's direction to prevent the spread of COVID-19 throughout the Queensland community. A regulatory benefit is also provided to the court system by enabling the administrative enforcement regime under the State Penalties Enforcement Act 1999 to apply to alleged contraventions of the relevant Chief Health Officer direction.

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

No less restrictive and reasonably available ways of achieving the purpose have been identified. The penalty of 30 penalty units applying to contraventions of the relevant Chief Health Officer direction is a reasonable penalty given the potential public health consequences of a failure to provide true and correct information.

Individuals retain the capacity to elect to have the matter heard in court instead of paying the penalty amount. On one view, the right to a fair hearing and rights in criminal proceedings are facilitated through the availability of the SPE Act framework. This is particularly so if, as identified above, there is an increase in the number of alleged offenders seeking to have the charge determined in a Magistrates Court.

(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

The Regulation imposes a significant penalty for a person contravening the relevant Chief Health Officer direction by providing information which was not true or correct about their potential exposure to COVID-19 or any previous diagnosis in relation to COVID-19.

While the penalty provided for under the Regulation is significant, on balance, it is considered that the importance of maintaining effective enforcement mechanisms that are proportionate to the risk created by the offending behaviour outweighs any potential limitations imposed on property rights.

## **Conclusion**

I consider that the State Penalties Enforcement Amendment Regulation (No. 1) 2020 is compatible with the human rights under the *Human Rights Act 2019* because to the extent that it imposes any limitation on a human right, that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**YVETTE D'ATH**  
ATTORNEY-GENERAL AND  
MINISTER FOR JUSTICE

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