

Planning (COVID-19 Vaccination Service) 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, Steven Miles, Deputy Premier and Minister for State Development, Infrastructure, Local Government and Planning provide this human rights certificate with respect to the *Planning (COVID-19 Vaccination Service) Amendment Regulation 2021* (Amendment Regulation) made under the *Planning Act 2016* (Planning Act).

In my opinion, the Amendment Regulation, 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 Australian COVID-19 Vaccination Policy describes the framework for implementing a COVID-19 vaccination program and outlines the roles and responsibilities of the Australian, state and territory governments. The Australian Government is responsible for the selection, procurement and regulatory approval for COVID-19 vaccines, and for distribution of vaccines from point-of-arrival to point-of-administration across the country. State and territory governments will be primarily responsible for an appropriately qualified and trained workforce for vaccines delivered at their vaccination sites and providing sites where vaccinations can safely take place.

Implementation of a Queensland COVID-19 vaccination program in 2021 is a significant undertaking well beyond any previous vaccination program. A coordinated whole-of system approach will be required to ensure a successful implementation.

On 22 February 2021, the first phase of the vaccination roll out commenced across the state at 'Pfizer hospital hubs' (facilities that can accommodate the cold storage requirements of the vaccine). The Pfizer hospital hubs are located at the Gold Coast University Hospital; the Princess Alexandra Hospital; Surgical Treatment and Rehabilitation Services at the Royal Brisbane and Women's Hospital; the Sunshine Coast University Hospital; the Townsville University Hospital; and the Cairns Hospital. Queensland Health (QH) commenced establishment of 'AstraZeneca hospital hubs' from 8 March 2021. There are now more than 30 of these services in operation across Queensland in hospitals and other health facilities.

To date, the facilities have only been open to Phase 1a priority groups (approximately 37,000 eligible Queenslanders, excluding 88,000 residential aged and disability care workers and residents vaccinated in place). As QH prepares to open up to other groups, a significant increase in capacity to vaccinate Queenslanders is required.

The option of ‘commissioning’ mass vaccination centres, large vaccination centres and smaller/mobile vaccination centres in key locations is anticipated to assist in building capacity, with these centres being required as soon as this month in some locations. QH will use existing facilities where possible, however the use of additional facilities that are not currently used for health services is likely. Where health facilities are not available or appropriate for use, QH would seek out other state or local government owned facilities as a preference over privately owned facilities.

While some COVID-19 vaccination centres may be lawfully established without the need for a development approval (for example, where the planning scheme provides that the vaccination centre use is accepted development in particular zones), others may require approval from local government.

The objective of the Amendment Regulation is to support the timely roll out of the COVID-19 vaccination program by streamlining statutory planning processes for the establishment of health care services that provide COVID-19 vaccination services by or for the Commonwealth, State or a public sector entity.

Human Rights Issues

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

In my opinion, the human rights under the *Human Rights Act 2019* that are relevant to the Amendment Regulation are:

- Recognition and equality before the law (section 15)
- Freedom of expression (section 21)
- Right to health services (section 37).

For the reasons outlined below, I am of the view that the Amendment Regulation is compatible with each of these human rights.

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

Recognition and equality before the law (section 15)

(a) the nature of the right

Section 15 of the *Human Rights Act 2019* provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination.

The Planning Act contains provisions that allows a regulation to prescribe certain development that may not be made assessable by a local planning instrument, or that is accepted development.

The Amendment Regulation seeks to include a COVID-19 vaccination service as a type of development which may not be made assessable under a local planning scheme, and that is

accepted development. This classification will only apply where the development is carried out by the Commonwealth or for the state or a public sector entity and will only apply until 31 December 2021.

(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 Amendment Regulation is constrained to vaccination services that are established by or for the Commonwealth, state or a public sector entity. The purpose of this limitation is to protect public interest by allowing for the establishment of temporary COVID-19 vaccination services.

The community expectation would be for the planning framework to quickly respond to the roll out of Queensland's COVID-19 vaccination program by ensuring the establishment of certain uses that provide an essential community need are able to operate during this time. The proposal ensures community needs can be met during the roll out of the COVID-19 vaccination program.

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

The limitation is fundamental to the delivery of the Queensland's COVID-19 vaccination program and meeting community need. The limitation is key to achieving the purpose of the Amendment Regulation.

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

Less restrictive limitations to the identified human rights would change the intent of the Amendment Regulation. Given the purpose of the Amendment Regulation is to enable the timely roll out of the Queensland's COVID-19 vaccination program, there are no other less restrictive or reasonably available ways to achieve this 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

The need to provide certainty, efficiency and transparency to the land use planning and development system during the roll out of the Queensland's COVID-19 vaccination program is reasonable and demonstrably justifies the minor limitation to human rights.

Right to freedom of expression (section 21)

(a) the nature of the right

Section 21 of the *Human Rights Act 2019* provides that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information of all kinds. It protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas (including verbal and non-verbal communication).

The human right of freedom of expression is relevant to the Amendment Regulation as the establishment of a COVID-19 vaccination service no longer requires the lodgement of a development application under the Planning Act where one may have been required.

This means that any opportunity to view, comment or in certain circumstances appeal a development application for a COVID-19 vaccination service does not apply. The impact of this on the community is lessened given the Amendment Regulation will only apply until 31 December 2021 and where the service is carried out by or for the Commonwealth, state or a public sector entity.

The temporary nature of the COVID-19 vaccination service means that any planning impacts are anticipated to be minor. QH intends to minimise planning impacts of the COVID-19 vaccination services on surrounding areas through the application of an Assurance Plan which must be complied with in order to establish and operate COVID-19 vaccination services in accordance with the COVID-19 vaccination code under the *Health (Drugs and Poisons) Regulation 1996*.

(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 limitation on the human rights to freedom of expression is to protect public interest by allowing for the establishment of a temporary COVID-19 vaccination service.

The community expectation would be for the planning framework to quickly respond to the roll out of Queensland's COVID-19 vaccination program by ensuring the establishment of certain uses that provide a community need are able to operate during this time. The proposal ensures community needs can be met during the COVID-19 vaccination program.

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

The limitation to freedom of expression by not providing for third parties to view, comment or appeal a development application for a temporary COVID-19 vaccination service is justifiable to respond to the delivery of the Queensland's COVID-19 vaccination program and to meet community need. To allow broader freedom of expression in the Amendment Regulation would be contrary to the intent to provide certainty for service providers and to provide for the timely roll out of the Queensland COVID-19 vaccination program.

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

Less restrictive limitations to the identified human rights would change the intent of the Amendment Regulation. Given the purpose of the Amendment Regulation is to enable the timely roll out of the Queensland's COVID-19 vaccination program, there are no other less restrictive or reasonably available ways to achieve this purpose without the potential to disrupt the delivery of the COVID-19 vaccination program.

(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 need to provide certainty, efficiency and transparency to the land use planning and development system during the roll out of the Queensland's COVID-19 vaccination program is reasonable and demonstrably justifies the minor limitation to human rights.

Right to health services (section 37)

(a) the nature of the right

Section 37 of the *Human Rights Act 2019* provides that every person has the right to access health services without discrimination.

(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 Amendment Regulation will ensure the Planning Act does not restrict the timely delivery of the COVID-19 vaccination program. The Amendment Regulation does not include any provisions which discriminates a persons' right to access health services. Rather it is supported by allowing for the timely roll out of the COVID-19 vaccination program and providing more facilities equipped to administer COVID-19 vaccinations.

Conclusion

I consider that the *Planning (COVID-19 Vaccination Service) Amendment Regulation 2021* is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justified in in a free and democratic society based on human dignity, equality and freedom.

STEVEN MILES MP
Deputy Premier and Minister for State Development,
Infrastructure, Local Government and Planning

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