

Public Health Amendment Regulation (No. 2) 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 (No. 2) 2021* made under the *Public Health Act 2005*.

In my opinion, the *Public Health Amendment Regulation (No. 2) 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

Quarantine fees – increase

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. 9)*, which was made on 6 May 2021.

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.

On 8 March 2021, the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* 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 daily accommodation fees are \$135 per room, including a \$15 linen service fee. A daily fee for meals is also payable with the fee being \$65 per day for adults and \$32.50 per day for children.

The quarantine fee was linked to these rates, which were negotiated in March 2020 following discussions with the then Queensland Department of Tourism, Innovation and Sport and hotel industry partners as an acceptable rate in the initial stages of the Quarantine Hotel program.

To support costs for hotel quarantine continuing to be sustainably managed, it is necessary to increase the daily accommodation room fee. The new daily accommodation fees will be \$165 per room, including linen service, an increase of \$30 per night, effective 1 July 2021.

The quarantine fee daily meal rate for children 13 years or older will be increased and charged at the daily rate for adults, to align with the meal costs charged by hotels. Children aged three years or older, but under 13 years, will be charged the current rate of \$32.50 per day, with no increase to the current charge. Children aged under three years will not be charged for meals.

Respiratory syncytial virus (RSV)

Chapter 3 of the Public Health Act deals with notifiable conditions and establishes the notifiable conditions register. The notifiable conditions register is an important tool to manage and contain the spread of communicable diseases within Queensland. The Public Health Act requires doctors, persons in charge of hospitals and directors of pathology laboratories to notify the chief executive of Queensland Health when a person may have or has a notifiable condition. The notice must comply with the requirements prescribed in a regulation.

The conditions that are required to be notified in Queensland are listed in Schedule 1 of the Public Health Regulation. Section 31 of the Public Health Regulation provides that each medical condition listed in Schedule 1, column 1 is a notifiable condition.

Section 64 of the Act provides that a notifiable condition is a medical condition prescribed under a regulation as a notifiable condition. Section 64 also requires the Minister to be satisfied the condition is a significant risk to public health before recommending to the Governor in Council that a condition be prescribed as a notifiable condition.

Respiratory syncytial virus (RSV) is one of the leading potentially preventable cause of mortality in children with acute lower respiratory tract infection during their initial five years of life. RSV is of significant public health concern, causing significant mortality and morbidity, particularly in young children, the elderly population, and those with pre-existing conditions. RSV remains one of a few major causes of childhood acute lower respiratory infections with no available vaccine. As a single RSV infection does not result in long-lasting protective immunity, symptomatic illness tends to occur repetitively in children.

Currently, there is not a comprehensive understanding of RSV's patterns of emergence, evolution and spread. Making RSV a notifiable condition will allow health professionals to develop a better understanding of the burden and epidemiology of this disease. This will subsequently provide data to assist in the development of public health control strategies.

The Amendment Regulation amends schedule 1 of the Public Health Regulation to prescribe RSV as a notifiable condition.

Human Rights Issues

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

Quarantine fees – increase

The proposed amendment made by the Public Health Amendment Regulation (No. 2) 2021, to section 61A of the Public Health Regulation, will increase the daily accommodation fee for hotel quarantine to \$165 per room.

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 increase of fees for hotel quarantine 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).

Respiratory syncytial virus (RSV)

The proposed amendment made by the Public Health Amendment Regulation (No. 2) 2021, to schedule 1 of the Public Health Regulation, will include RSV as a notifiable condition.

In my opinion, the human rights that are relevant to the inclusion of RSV as a notifiable condition are:

- Privacy and reputation (section 25).

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

(a) the nature of the right

Quarantine fees – increase

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 (No. 2) 2021 increases the fee 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 (No. 2) 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 (No. 2) 2021 increases the fee for the costs of mandatory quarantine 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 (No. 2) 2021 increases the fee 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 Public Health 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 (No. 2) 2021 increases the fee 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 amendments.

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.

Respiratory syncytial virus (RSV)

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 amendment made by the Public Health Amendment Regulation (No. 2) 2021 limits this human right, as it will require clinicians and pathologists to disclose confidential information such as patient details to the notifiable conditions register for patients with RSV. The approved form for notifying a notifiable condition includes details such as the patient's name, address, date of birth, and phone number. It also requires the patient's workplace, school, childcare or other institution to be provided, the country where the condition was acquired and the likely source of exposure.

(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

Quarantine fees – increase

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 linen 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 the fee for quarantine should be increased to ensure that the costs of providing hotel quarantine incurred by the Queensland Government are borne 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.

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 as part of the fee waiver scheme. The fee waiver scheme will continue to be applied in a way that is consistent, reasonable and proportionate.

Respiratory syncytial virus (RSV)

The limitation on the right to privacy by prescribing RSV as a notifiable condition under the Public Health Act and Public Health Amendment Regulation (No. 2) 2021 is for the purpose of protecting the health of the public to manage any potential outbreak of RSV. It is reasonable, necessary and proportionate to limit the privacy of a person who has or is suspected of having RSV in order to protect the health of the public.

Limitations on the right to privacy exist for other health conditions prescribed as notifiable conditions. It is considered the notification of certain diseases acquired by individuals to public health authorities improves the overall management of public health, which 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

Quarantine fees – increase

Any limit on human rights arising from increasing the fee for mandatory quarantine is considered necessary to have a clear and equitable mechanism in place to sustainably manage the increased costs associated with providing hotel quarantine for 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 increase the fee for mandatory quarantine to sustainably manage the financial impact of Queensland’s Hotel Quarantine Network.

Respiratory syncytial virus (RSV)

Currently, there is not a comprehensive understanding of RSV’s patterns of emergence, evolution and spread. Making RSV a notifiable condition will allow health professionals to develop a better understanding of the burden and epidemiology of this disease. This will subsequently provide data to assist in the development of public health control strategies.

By making RSV a notifiable condition, additional information and data will become available that will assist in improving public health in future.

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

Quarantine fees – increase

There are no alternative or less restrictive way to achieve the purposes of the Public Health Act and Public Health Regulation as the increase to quarantine 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 fee waiver to be granted. The fee waiver scheme considers four separate cohorts – those who had a confirmed international arrival date into Queensland before midnight on 17 June 2020, even if they arrived after 1 July 2020, those facing financial hardship, on grounds of vulnerability and other extenuating circumstances. 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 fee waiver scheme is considered to be an appropriate way to ensure that human rights are not unreasonably limited.

In addition to offering a fee waiver 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.

Respiratory syncytial virus (RSV)

Restricting the right to privacy and reputation of a person who has or is suspected of having RSV would assist in protecting the public's health as it would ensure that Queensland Health is able to understand the epidemiology of RSV, which can be used to develop strategies to protect public health. There are no other less restrictive ways to achieve this purpose.

Section 77 of the Public Health Act provides a general duty of confidentiality for persons who are or were involved in the administration or enforcement of the notifiable conditions register. A maximum penalty of 50 penalty units applies for disclosing confidential information. Sections 78 to 88 of the Act allow for disclosure of confidential information in limited circumstances.

(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

Quarantine fees – increase

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 an increased 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 linen services. The inclusion of a fee waiver scheme and payment plans is considered to ameliorate the potential impact on human rights.

Respiratory syncytial virus (RSV)

The benefits of the amendment associated with protecting public health outweigh the impact on the right to privacy and reputation of individual citizens.

(f) any other relevant factors

Nil.

Conclusion

I consider that the *Public Health Amendment Regulation (No. 2) 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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