

# ***Planning (Public Health Accommodation Facility) 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 (Public Health Accommodation Facility) 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**

### *Background*

On 29 January 2020, a public health emergency was declared for the whole of Queensland, under section 319 of the *Public Health Act 2005*, due to the outbreak of COVID-19.

For the COVID-19 declared public health emergency, Queensland's Chief Health Officer (CHO) has powers to implement extensive public health measures, including isolating or quarantining people suspected or known to have been exposed to COVID-19. In particular, the public health directions mandating quarantine in government managed or nominated facilities has become a critical component of Queensland's COVID-19 public health response.

The present situation across Australia, with the COVID-19 Delta strain being more easily transmitted, places further demand on Queensland's hotel quarantine network, noting on 22 July 2021 hotel quarantine spaces in Queensland were exhausted. To effectively address the demand and limit COVID-19 transmissions, there is a real need to expedite, as a priority, a purpose-built Queensland quarantine facility.

Self-isolation and quarantine requirements are implemented through public health directions of the CHO and emergency officer made under section 362B and 362H respectively of the *Public Health Act 2005*. Broadly speaking, all persons required to quarantine must complete the quarantine period in government nominated quarantine accommodation, unless a relevant exception or exemption applies, to ensure the highest possible levels of quarantine compliance and minimal risk of transmission to the broader Queensland community.

Since January 2021, the Queensland Government has requested the Australian Government provide a purpose-built quarantine facility to effectively manage COVID-19 related illnesses. Queensland subsequently put forward a proposal for a regional solution - a fit for purpose, scalable facility, at the Wellcamp Business Park, adjacent to the Toowoomba airport.

On 25 August 2021 the Premier and Minister for Trade announced a pause to inter-state traveller arrivals being able to access hotel quarantine for a two-week period unless an exemption had been granted due to ongoing pressures on the hotel quarantine system. The current Queensland hotel quarantine is running at capacity.

On 26 August 2021, the Premier and Minister for Trade, the Deputy Premier and Minister for State Development, Infrastructure, Local Government and Planning and the Minister for Health and Ambulance Services announced a 1,000 bed dedicated regional quarantine facility at Wellcamp with the first stage operational before the end of 2021.

### Purpose

The objective of the Amendment Regulation is to support the urgent delivery of a public health accommodation facility at Wellcamp Business Park and alleviate increasing pressure on the hotel quarantine system in Queensland. The Amendment Regulation will provide that a ‘public health accommodation facility’ that is owned by, or operated by or on behalf of, the State or a public sector entity at Wellcamp requires no further planning approvals.

The Planning Act contains provisions that allow 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 removes the need for planning approval by local government for a public health accommodation facility where:

- located on the Lot 4 on SP296105 (the Land) and;
- owned by, or operated by or on behalf of, the State or a public sector entity; and
- for accommodating people to whom a direction under section 362B(2)(b) or a section 362H(1) or (1A) of the Public Health Act applies;
- development external to the Land is limited to:
  - uses ancillary to the facility on the Land. This may include for example staff accommodation, food preparation, medical services, security services or emergency services;
  - other development necessary for the facility.

The development of a public health accommodation facility is intended to be a use of a temporary nature aligned with the COVID-19 pandemic declaration. While not including a sunset clause, the use can only be undertaken by or for the State or a public sector entity for the purpose of a public health directive for COVID-19 pandemic.

A public health accommodation facility is intended to be linked to the public health directions under section 362B and 362H of the *Public Health Act 2005* whereby the CHO or an emergency officer require a person to quarantine in a specified location.

## **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)
- Right to freedom of movement (section 19)
- Right to freedom of expression (section 21)
- Property rights (section 24)
- Right to health services (section 37).

### **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 human right of recognition and equality before the law has been identified as relevant because under the Amendment Regulation, regulatory assessment requirements have been reduced for a particular use on a particular site. Specifically, a ‘public health accommodation facility’ will not require development approval where it is:

- located on the Lot 4 on SP296105 (the Land) and;
- owned by, or operated by or on behalf of, the State or a public sector entity; and
- for accommodating people to whom a direction under section 362B(2)(b) or a section 362H(1) or (1A) of the Public Health Act applies;
- development external to the Land is limited to:
  - uses ancillary to the facility on the Land. This may include for example staff accommodation, food preparation, medical services, security services or emergency services;
  - other development necessary for the facility.

This arrangement will not exist for other land uses or private proponents.

Although this right is relevant, the Amendment Regulation itself does not directly limit or restrict the human right (recognition and equality before the law) as:

- it does not remove the ability of other proponents to apply through the usual planning framework to establish a quarantine facility on other land;
- the reduced assessment requirements are applied for a specific reason:
  - to enable the timely establishment of a public health accommodation facility that is owned by, or operated by or on behalf of, the State or a public sector entity;
  - in the context of the exhaustion of current hotel quarantine places; and
  - noting the reduced assessment requirements only apply where the public health accommodation facility is:
    - located on the Lot 4 on SP296105 (the Land) and;
    - owned by, or operated by or on behalf of, the State or a public sector entity; and

- for accommodating people to whom a direction under section 362B(2)(b) or a section 362H(1) or (1A) of the Public Health Act applies;
- development external to the Land is limited to:
  - uses ancillary to the facility on the Land. This may include for example staff accommodation, food preparation, medical services, security services or emergency services;
  - other development necessary for the facility.
- the Amendment Regulation does not have any impact on the circumstances under which individuals must self-isolate or quarantine, as these matters are dealt with under the public health directions.

To the extent that the Amendment Regulation limits the human right by providing a different regulatory regime for a public health accommodation facility as compared with a private one, or a facility on different land, the purpose of this limitation is further explained 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 ultimate purpose of the Amendment Regulation is to facilitate the implementation of the public health directions concerning quarantine arrangements. These directions are themselves directed at protecting public safety by managing the risk of further outbreaks of COVID-19. The Amendment Regulation operates to reduce the level of assessment required for the development of a specific quarantine facility for a purpose connected to a public health direction as outlined above. The facility is urgently required due to the exhaustion of current hotel quarantine places and the State or a public sector entity is best placed to address this situation.

The community expectation would be for the planning framework to quickly respond to enable the State or a public sector entity to provide an urgently required facility of this nature. The proposal ensures community needs and expectations can be met in a timely manner.

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

As mentioned above, the application of the provisions to one site that is owned by, or operated by or on behalf of, the State or a public sector entity, helps to achieve the purpose of urgently providing a public health accommodation facility. Further, as mentioned above, the Amendment Regulation is aimed at facilitating the implementation of the public health directions concerning quarantine arrangements, which themselves are aimed at the broader public interest during the declared COVID-19 public health emergency.

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

As mentioned in para (a) above, the Amendment Regulation is confined a particular use on a particular site as outlined above. This is considered to be the least restrictive way to achieve the purpose of the limitation. The usual planning framework applies on all other land and for all other proponents.

(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

As mentioned above, it is likely that the Amendment Regulation itself does not directly limit or restrict the human right (recognition and equality before the law). The only way in which there may be an indirect limitation is because it provides a different regulatory regime for a public health accommodation facility as compared with a private one undertaken on different land.

The overarching public interest in preventing the outbreak of COVID-19 and supporting the public health directions is paramount. Given the urgency surrounding the exhaustion of existing quarantine facilities it is appropriate that the State or a public sector entity be authorised to establish a public health accommodation facility in the most efficient and timely manner, with reduced assessment requirements.

Overall, the provisions in the Amendment Regulation strike a fair balance between protecting the public interest during the COVID-19 public health emergency and only amending the planning assessment framework in the least intrusive way.

*Right to freedom of movement (section 19)*

(a) the nature of the right

Section 19 of the *Human Rights Act 2019* provides that every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it and has the freedom to choose where to live.

The human right of freedom of movement is relevant to the Amendment Regulation as its provisions will authorise the establishment of a purpose-built public health accommodation facility. The associated restriction of the movement of a person who is ordered to self-isolate and quarantine occurs through a public health direction of the CHO or Emergency officer made under section 362B or 362H respectively of the *Public Health Act 2005*.

In broad terms, all persons required to quarantine must complete the quarantine period in government nominated quarantine accommodation, unless a relevant exception or exemption applies, to ensure the highest possible levels of quarantine compliance and minimal risk of transmission to the broader Queensland community.

(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 limitation of the human right of freedom of movement occurs through the public health direction, rather than arising directly from the Amendment Regulation.

The Amendment Regulation supports the public health direction and operates to reduce the level of assessment required to facilitate the urgent establishment of a specific quarantine facility is owned by, or operated by or on behalf of, the State or a public entity. The facility is urgently required due to exhaustion of current hotel quarantine places.

By enabling people suspected or known to have been exposed to COVID-19 to successfully self-isolate and quarantine in a purpose-built public health accommodation facility provides confidence and freedom of movement for other Queenslanders. Freedom of movement for

those directly impacted by COVID-19 is only restricted for a relatively short period of time while in quarantine.

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

The limitation on this right occurs as a result of the CHO public health directions concerning isolation or quarantining to prevent the spread of COVID-19. The limitation on the right to freedom of movement via the public health directions is directed at stopping the spread of COVID-19 and the limitation will help to achieve that purpose.

The Amendment Regulation facilitates the public health directions by reducing regulatory assessment requirements for the establishment of a specific quarantine facility. The Amendment Regulation does not of itself limit freedom of movement.

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

The Amendment Regulation protects the public interest by allowing for the urgent establishment of a public health accommodation facility to assist with managing further outbreaks of COVID-19 and support the public health directions. The Amendment Regulation reduces assessment requirements applicable to a public health accommodation facility on a specific lot that is or is owned by, or operated by or on behalf of, the State or a public sector entity for the purpose of a public health direction.

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 expedite the delivery of a purpose-built public health accommodation facility to manage further outbreaks of COVID-19, 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 Amendment Regulation facilitates the urgent establishment of a public health accommodation facility by making the development accepted development (i.e. not assessable by a local government) to support public health directions. This responds to ongoing concerns about overseas arrivals and COVID-19 variants, widespread lockdowns across Australia to deal with the Delta variant, high demand for and the lack of capacity in Queensland's hotel quarantine network and the risk associated with potential breaches and resultant community transmission.

The importance of the public health directions (and their link to human health and safety) during a declared public health emergency outweighs any temporary limitation on the right to freedom of movement associated with the quarantining process. As mentioned above, the limitation on the right arises from the public health directions which the Amendment Regulation will support.

*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 purpose-built public health accommodation facility would not require the lodgement of a development application under the Planning Act where one may have been required. This means that any opportunity for the public to view, comment, or in certain circumstances, appeal a development application for a purpose-built public health accommodation facility does not apply.

(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 right to freedom of expression is to protect public interest by allowing for the streamlined and immediate establishment of a purpose-built public health accommodation facility.

The limitation is consistent with a free and democratic society based on human dignity, equality and freedom because the community expectation would be for the planning framework to quickly respond to further outbreaks of COVID-19. The Amendment Regulation does this by reducing regulatory burden to ensure the efficient establishment of a purpose-built public health accommodation facility.

(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 purpose-built public health accommodation facility is justifiable to respond to the COVID-19 public health emergency to meet community need and expectations. To allow broader freedom of expression in the Amendment Regulation would be contrary to the intent to provide certainty and timely delivery of an urgent public health accommodation facility.

The impact of this limitation is lessened given the Amendment Regulation will only apply to a public health accommodation facility that is:

- located on the Lot 4 on SP296105 (the Land) and;
- owned by, or operated by or on behalf of, the State or a public sector entity; and
- for accommodating people to whom a direction under section 362B(2)(b) or a section 362H(1) or (1A) of the Public Health Act applies;
- development external to the Land is limited to:
  - uses ancillary to the facility on the Land. This may include for example staff accommodation, food preparation, medical services, security services or emergency services;
  - other development necessary for the facility.

Further, the proposed development is considered low risk as it is located in an industrial precinct away from other sensitive uses and receptors. This is being undertaken on one site, due to the urgent nature of response for the COVID-19 and the need to provide additional quarantine capacity.

Engagement with Toowoomba City Council is occurring to ensure development standards consistent with the requirements of the Council are included in the associated contractual arrangements to support the use of the site and facility by the State of Queensland.

(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 urgent delivery of a purpose-built public health accommodation facility to manage further outbreaks of COVID-19, 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

As mentioned above, the current Queensland hotel quarantine is running at capacity.

The Amendment Regulation will facilitate an urgent need for quarantine spaces to allow for more interstate and international travellers the ability to comply with public health directives and visit or return to Queensland safely.

The need to urgently deliver a purpose-built public health accommodation facility to manage further outbreaks of COVID-19 is paramount. This purpose is reasonable and demonstrably justifies the minor limitation to human rights.

*Property rights (section 24)*

Section 24 of the *Human Rights Act 2019* provides that all persons have the right to own property alone or in association with others and a person must not be arbitrarily deprived of the person's property.

The Amendment Regulation contains provisions that change the level of assessment required to undertake particular development on a particular lot (Lot 4 on SP296105). As outlined above, the use of 'public health accommodation facility' is to be accepted development (not requiring local government approval) where the facility is:

- located on the Lot 4 on SP296105 (the Land) and;
- owned by, or operated by or on behalf of, the State or a public sector entity; and
- for accommodating people to whom a direction under section 362B(2)(b) or a section 362H(1) or (1A) of the Public Health Act applies;
- development external to the Land is limited to:



- uses ancillary to the facility on the Land. This may include for example staff accommodation, food preparation, medical services, security services or emergency services;
- other development necessary for the facility.

For any other type of development on Lot 4 on SP296105, the usual planning framework applies to development and the Amendment Regulation does not change this.

As such the Amendment Regulation may enhance property rights in terms of adding a use that may be established on Lot 4 on SP296105 without the need for a development approval (noting it is only a specific use as described above). The Amendment Regulation does not contain any provisions that affect an individual's right to own property, nor does it arbitrarily deprive any person of their property. Accordingly, property rights are not limited by the Amendment Regulation.

*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. This right has been identified as relevant to the Amendment Regulation because the public health directions (that the Amendment Regulation will facilitate) are aimed at enhancing and ensuring Queenslanders' right to access health services during the COVID-19 public health emergency. This is because further outbreaks will be able to be managed and maintained by virtue of the urgent delivery of a purpose-built public health accommodation facility to manage further outbreaks of COVID-19 and public safety.

(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 urgent delivery of a purpose-built public health accommodation facility. The Amendment Regulation does not include any provisions which limit or restrict a persons' right to access health services.

## Conclusion

I consider that the *Planning (Public Health Accommodation Facility) Amendment Regulation 2021* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified 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