

# Commissioner, Queensland Fire & Emergency Services – Mandatory COVID-19 Vaccination Direction 2021

## Compatibility Assessment

The *Human Rights Act 2019* requires all public entities in Queensland to give proper consideration to, and act compatibly with, human rights when making decisions. The Commissioner of Queensland Fire and Emergency Services (QFES) is a public entity.

In line with requirements under the *Human Rights Act 2019*, consideration has been given to the compatibility with human rights of the proposed decision to issue the Mandatory COVID-19 Mandatory Vaccination Direction 2021+ (the Direction) ~~dated XXXXX~~.

The decision is compatible with the human rights protected by the *Human Rights Act 2019* based on the following.

### Overview of the decisions

On 29 January 2020, the Minister for Health and Minister for Ambulance Services declared a public health emergency under section 319 of the *Public Health Act 2005* (PH Act) in relation to the outbreak of COVID-19. The COVID-19 emergency was declared for all of Queensland and has been extended.

On 11 March 2020, the Director-General of the World Health Organisation (WHO) declared COVID-19 a global pandemic.

To effectively respond to the pandemic, which includes the protection of all persons in Queensland, the Chief Health Officer (CHO) has issued a number of public health directions under section 362B of the PH Act. It is a legal requirement to comply with public health directions.

The Direction will require the following people (QFES workers) to be vaccinated against COVID-19, including by receiving any necessary booster doses of a COVID-19 vaccine, unless they fall within an exemption:

- all QFES officers appointed on a permanent basis pursuant to section 25 of the *Fire and Emergency Services Act 1990*;
- all QFES auxiliary firefighters appointed pursuant to section 25 of the *Fire and Emergency Services Act 1990*;
- all QFES employees appointed on a permanent basis pursuant to the *Fire and Emergency Services Act* and/or sections 110, 119, 147 and 148 of the *Public Service Act 2008*, and employees appointed on a casual or permanent basis as a Fire Communications Officer under the *Fire and Emergency Services Act 1990*;
- all personal currently seconded to QFES and undertaking the role of either a QFES officer, QFES auxiliary firefighter and/or QFES employee.

The Direction does not apply to volunteers or an employees who isare absent from the workplace, for example, on long term leave or on secondment to another department, or are not currently undertaking their usual role. An employee in this situation would be expected to comply with a vaccination requirement prior to returning to their usual role.

~~, or auxiliary firefighters employed under the *Fire and Emergency Service Act*.~~

Exemptions are available for QFES workers who are unable to be vaccinated due to a medical contraindication, a genuine religious objection or because other exceptional circumstances apply.

The Direction will also require the above QFES workers to carry and wear a face mask where required to do so in accordance with any public health direction in effect under section 362B of the *Public Health Act 2005*.

Further, when working, the Direction requires QFES workers, who have not received at least two doses of a COVID-19 vaccine, or who are exempt, to:

- carry a face mask at all times;
- wear a face mask covering the nose and mouth at all times if in an indoor space; and,
- wear a face mask covering the nose and mouth all times if they are in an outdoor space and it is not possible to practice physical distancing.

Certain exemptions apply such as where a QFES worker has a diagnosed physical or mental health condition which makes wearing a face mask unsuitable.

Failure to comply with the Direction may result in QFES workers being removed from operational duties and may result in termination of employment.

### ATAGI Advice

Recent advice from the Australian Technical Advisory Group on Immunisation (ATAGI) has set out the current evidence around COVID-19 vaccination and the use of booster shots. ATAGI notes that the two groups with the highest priority to receive booster doses are those with risk factors for severe COVID-19 or increased occupation risk.<sup>1</sup>

ATAGI currently supports the use of a single booster dose at 4 months after receiving the primary vaccine course (to be reduced to 3 months in the future).<sup>2</sup> The benefits of receiving a booster dose include increasing immunity from contracting COVID-19, as well as protecting against severe cases of COVID-19.<sup>3</sup>

<sup>1</sup> Australian Technical Advisory Group on Immunisation (ATAGI), 'ATAGI recommendations on the use of a booster dose of COVID-19 vaccine' (27 October 2021) 1 ('ATAGI advice').

<sup>2</sup> ATAGI, 'ATAGI Statement on the Omicron variant and the timing of COVID-19 booster vaccination' (24 December 2021).

<sup>3</sup> ATAGI advice, 3.

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Studies have shown that the risks associated with the booster shots are comparable to the risks of the primary vaccine doses. Current evidence suggests serious and rare side effects are no more likely than the risk after the second dose of the vaccine.<sup>4</sup>

## Human Rights Issues

### Human rights relevant to the Direction

The implementation of the Direction may engage the following human rights:

- Recognition and equality before the law (section 15, *Human Rights Act 2019*)
- Right to life (section 16, *Human Rights Act 2019*)
- Right to protection from torture and cruel, inhuman or degrading treatment (section 17, *Human Rights Act 2019*)
- Freedom of thought, conscience, religion and belief (section 20, *Human Rights Act 2019*)
- Taking part in public life (section 23, *Human Rights Act 2019*)
- Privacy and reputation (section 25, *Human Rights Act 2019*)

### Human rights protected and promoted

The proposed decisions would protect and promote the right to life under section 16 of the *Human Rights Act*. Section 16 provides that every person has the right to life and has the right not to be arbitrarily deprived of life. The right to life may require the state to 'take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity', including 'the prevalence of life-threatening diseases'.<sup>5</sup>

The virus that causes COVID-19 is highly virulent and can cause serious illness or death, particularly in vulnerable cohorts of the population with whom QFES workers may interact. Vaccination is shown to reduce the transmission and likelihood of serious illness or death from COVID-19. Ensuring QFES workers are vaccinated as far as possible protects and promotes the right to life of QFES workers, volunteers and the community. Vaccination also fulfills the right to the highest attainable standard of health under article 12(1) of the *International Covenant on Economic, Social and Cultural Rights*.<sup>6</sup>

Similarly, the use of face masks has been shown to significantly reduce the risk of transmitting and contracting COVID-19.<sup>7</sup> Ensuring QFES workers follow the relevant public health directions as to face masks, and requiring unvaccinated QFES workers to wear face masks when working (regardless of the public health directions in force), protects and promotes the right to life of QFES workers, volunteers and the community.

### Human rights limited

#### **Consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)**

The Commissioner has identified the following human rights that may potentially be limited by the Direction.

**Recognition and equality of the law** – There are a number of distinct rights to equality and freedom from discrimination in section 15. Relevant to this decision is section 15(2) and (4).

Section 15(2) provides that every person has the right to enjoy the person's human rights without discrimination. Section 15(4) provides that every person has the right to equal and effective protection against discrimination.

Discrimination includes direct and indirect discrimination on the basis of a protected attribute under the *Anti-Discrimination Act 1991*, such as pregnancy, impairment or religious belief. Because the definition is inclusive, discrimination under the *Human Rights Act* also likely covers additional analogous grounds,<sup>8</sup> which may include conscientious belief (though not vaccination status as this is not an immutable characteristic). The Direction may result in people with protected attributes being treated differently (for example, having their employment terminated).

However, it is considered that the Direction does not directly or indirectly discriminate on any of those grounds. As to direct discrimination, the Direction does not require people to vaccinate or wear masks because they have one of those attributes. Broadly, indirect discrimination is an unreasonable requirement that applies to everyone but has a disproportionate impact on people with an attribute. In this sense, the requirement imposed on unvaccinated QFES workers (or those who have an exemption, including for religious beliefs) to wear a face mask while on duty may amount to indirect discrimination if the requirement is unreasonable. However, the requirements under the Direction are unlikely to be unreasonable in light of the public health rationale. The right to non-discrimination is therefore engaged (that is relevant), but it is unlikely to be limited.

Other rights in section 15 are not relevant. In particular, the right to equality before the law in section 15(3) is directed to non-arbitrary application of the law, and the right to equal protection of the law without discrimination in section 15(3) is directed to the legislature and the content of laws.<sup>9</sup>

### **Right to life**

Section 16 provides that every person has the right to life and the right not to be arbitrarily deprived of life. As with any medical intervention, there is a risk (however small) of unintended side effects of the vaccination, some of which may be life-threatening. Presently, in Australia, the Therapeutic Goods Administration has found that 9 deaths were linked to a COVID-19 vaccination (of the more than 37.7 million doses that have been administered so far).<sup>10</sup> Human rights cases in Europe have held that the possibility that a small number of fatalities may occur does not mean

<sup>4</sup> Ibid.

<sup>5</sup> UN Human Rights Committee, *General comment No. 36 – Article 6: right to life*, 124<sup>th</sup> sess, UN Doc CCPR/C/GC/36 (3 September 2019) 6 [26].

<sup>6</sup> Although this aspect of the right to health has not been translated to s 37 of the *Human Rights Act*, the right may nonetheless be taken into account: *Vavrička v The Czech Republic* (European Court of Human Rights, Grand Chamber, Applications nos. 47621/13 and 5 others, 8 April 2021) [2] (concurring judgment of Judge Lemmens); *ZD v Secretary, Department of Health and Human Services* [2017] VSC 806, [108] n 35; *PBU v Mental Health Tribunal* (2018) 56 VR 141, 167-8 [93]-[95].

<sup>7</sup> N Scott et al, 'The introduction of a mandatory mask policy was associated with significantly reduced COVID-19 cases in a major metropolitan city' (2021) 16(7) *PLOS ONE* e0253510 <<https://doi.org/10.1371/journal.pone.0253510>>.

<sup>8</sup> *Miron v Trudel* [1995] 2 SCR 418, 496-7 [148]; *Quebec (Attorney-General) v A* [2013] 1 SCR 61, 144 [144].

<sup>9</sup> *Re Lifestyle Communities Ltd [No 3]* (2009) 31 VAR 286, 344 [285]-[288].

<sup>10</sup> <<https://www.tga.gov.au/periodic/covid-19-vaccine-weekly-safety-report-18-11-2021>>.

that the right to life is limited by a compulsory vaccination scheme.<sup>11</sup> Arguably, the right to life is engaged (that is relevant), but not limited, by the proposed decisions.

**Right to protection from torture and cruel, inhuman or degrading treatment** – Section 17(c) provides that a person must not be subjected to medical or scientific experimentation or treatment without the person's full, free and informed consent. Medical treatment includes administering a drug for the purpose of treatment or prevention of disease.<sup>12</sup> The right is directed to treatment of any kind, 'even that which is beneficial to the individual'.<sup>13</sup>

QFES workers cannot be vaccinated without their consent. Arguably this means that the right in section 17(c) is not limited.<sup>14</sup> However, international human rights cases suggest the right may be limited in circumstances where a person is left with little practical choice but to receive the treatment.<sup>15</sup> It is possible that the proposed direction will leave a QFES worker with little practical choice but to receive a vaccine, so that while consent is given, that consent may not be full and free.

**Freedom of thought, conscience, religion and belief** – Section 20 provides that every person has the right to freedom of thought, conscience, religion and belief, including the freedom to have or to adopt a religion or belief of the person's choice; and the freedom to demonstrate the person's religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.

A QFES worker may have a conscientious belief about vaccines. A conscientious belief for the purposes of s 20 of the *Human Rights Act* encompasses 'views based on strongly held moral ideas of right and wrong'.<sup>16</sup> However, in the context of vaccinations, case law in Europe suggests that there will need to be clear evidence of a deeply ingrained belief before freedom of conscience is engaged.<sup>17</sup> A person may also have a genuinely-held religious belief about vaccines.<sup>18</sup>

The proposed Direction will treat people with a religious objection to vaccination on a case-by-case basis. However, conscientious belief (alone) will not be an exemption from the requirement to be vaccinated or wear a mask. This may result in a person with a conscientious or religious objection to vaccines being suspended from duties, being removed from operational duties, being relieved of duties, and possibly being required to access leave to cover absence. This means that the freedom of conscience will be limited, and the freedom of religion may be limited.

Freedom of religion in section 20 also encompasses a right not to be coerced or restrained in a way that limits the person's freedom to have or adopt a religion or belief. Similarly, freedom of expression in section 21 encompasses a right to hold an opinion without interference. At international law these are absolute rights. However, nothing in the Direction would coerce a person to believe a particular thing or not to hold a particular opinion. They would only limit a person's manifestation of that belief or opinion. Accordingly, those aspects of those rights are not limited by the proposed decisions.

**Taking part in public life** – Section 23(2)(b) states that every eligible person has the right, and is to have the opportunity, without discrimination, to participate have access, on general terms of equality, to the public service and to public office. Dismissal from the public service may engage this right.<sup>19</sup>

The right also interacts with the general right to equality and includes that the criteria and processes for appointment, promotion, suspension and dismissal within the public service must be objective and reasonable, and non-discriminatory.

A mandatory vaccination and mask wearing policy may have consequences for a QFES worker's continued employment with the QFES if they refuse to comply. To the extent that the right to property (section 24) or the right to privacy (section 25) might protect aspects of a person's work,<sup>20</sup> any impacts on those rights would not add to the limit already imposed on section 23(2)(b).

**Right to privacy and reputation** – Section 25 provides that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and not to have the person's reputation unlawfully attacked.

The scope of the right to privacy is very broad. It protects personal information and data collection, for example, as well as a person's private life more generally.

The right to privacy may include a right to bodily integrity.<sup>21</sup> This right will be engaged by compulsory vaccination, whether as an involuntary treatment,<sup>22</sup> or where there are repercussions for failing to vaccinate.<sup>23</sup> Likewise, a requirement to wear a face mask may engage the right to bodily integrity.

The Direction will also require a QFES worker to share their vaccination status to allow for the purpose of the Direction to be achieved. Requiring a person to disclose personal information, such as personal medical information, interferes with privacy.<sup>24</sup>

The right to privacy in section 25(a) will only be limited if the interference with privacy is 'unlawful' or 'arbitrary'. As these raise questions that are addressed in considering whether any limit is justified, it is convenient to consider these questions next.<sup>25</sup>

### **Compatibility with Human Rights**

<sup>11</sup> *Application X v United Kingdom* (1978) 14 Eur Comm HR 31, 32-3; *Boffa v San Marino* (1998) 92 Eur Comm HR 27, 33.

<sup>12</sup> *De Bruyn v Victorian Institute of Forensic Mental Health* (2016) 48 VR 647, 707 [158]-[160].

<sup>13</sup> *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 123 [576].

<sup>14</sup> *Kassam v Hazzard* [2021] NSWSC 1320, [55]-[70]; *Larter v Hazzard [No 2]* [2021] NSWSC 1451, [99].

<sup>15</sup> *GF v Minister of COVID-19 Response* [2021] NZHC 2526, [70]-[72]; *Harding v Sutton* [2021] VSC 741, [161].

<sup>16</sup> *Roach v Canada (Minister of State for Multiculturalism and Culture)* [1994] 2 FC 406, [25].

<sup>17</sup> *Vavřička v The Czech Republic* (European Court of Human Rights, Grand Chamber, Applications nos. 47621/13 and 5 others, 8 April 2021) [323].

<sup>18</sup> *BST Holding LLC v Occupational Safety and Health Administration, United States Department of Labor* (United States Court of Appeals Fifth Circuit, No 21-60845, 12 November 2021) 19 n 21.

<sup>19</sup> UN Human Rights Committee, *Communication No 203/1986*, 34th sess, UN Doc Supp No 40 (A/44/40) Appendix (4 November 1988) [4] ('*Hermoza v Peru*').

<sup>20</sup> *Legal and General Assistance Ltd v Kirk* [2002] IRLR 124, [41] (property); *ZZ v Secretary, Department of Justice* [2013] VSC 267, [82]-[95] (privacy).

<sup>21</sup> *Pretty v United Kingdom* (2002) 35 EHRR 1, [61]; *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 126 [599]; *PBU v Mental Health Tribunal* (2018) 56 VR 141, 179 [125].

<sup>22</sup> *Solomakhin v Ukraine* [2012] ECHR 451, [33].

<sup>23</sup> *Boffa v San Marino* (1998) 92 Eur Comm HR 27, 34; *Vavřička v The Czech Republic* (European Court of Human Rights, Grand Chamber, Applications nos. 47621/13 and 5 others, 8 April 2021) [263].

<sup>24</sup> *DPP (Vic) v Kaba* (2014) 44 VR 526, 564 [132].

<sup>25</sup> As in *Minogue v Thompson* [2021] VSC 56, [86], [140].

Human rights may be limited under law only where the limit is reasonable and can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom (section 13 (1)). In deciding whether the limitation is reasonable and justifiable the following factors may be relevant:

- the nature of the human right (section 13(2) (a));
- 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 (section 13(2) (b));
- the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose (section 13(2) (c));
- whether there are any less restrictive and reasonably available ways to achieve the purpose (section 13(2) (d));
- the importance of the purpose of the limitation (section 13(2) (e));
- the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right (section 13(2) (f)); and
- the balance between the matters mentioned in paragraphs (e) and (f).

#### Is the Direction made under law

At common law, employers have authority to give lawful and reasonable directions of their employees, which fall within the scope of their employment. As part of the Commissioner's role in ensuring QFES is able to perform its functions under section 7A of the *Fire and Emergency Services Act*, as well as their responsibility for the employment of public service employees under section 11 of the *Public Service Act*, the Commissioner has authority to provide QFES officers [\(including auxiliary firefighters\)](#) and employees with a lawful and reasonable direction to achieve that end.

#### The nature of the rights

Health care decisions are often informed by a range of cultural, religious, philosophical and physiological factors. Outside identified exemptions, the nature of the rights limited by the Direction concern the ability of QFES workers, to make decisions about what is ostensibly a private health care matter regarding their body and could be considered as interfering with the inherent dignity and worth of QFES workers.

#### The purpose of the limitation

The key purpose of the Direction is to minimise the risk of transmission of COVID-19 to and from QFES workers. The purpose of including a requirement to receive a booster shot in the Direction is to combat waning immunity and protection against infection in accordance with ATAGI's advice.<sup>26</sup>

This ultimately serves to ensure QFES can meet its positive obligations to protect the right to life and to continue to deliver its services while interacting with the community.

QFES has undertaken an analysis of its critical services and assessed these services against four key risk exposure vectors relative to COVID-19: possible prolonged contact with the public, indoor delivery of services, large numbers of people in contact and long duration for the delivery of services. QFES considers that most of its critical service delivery has a high number of these potential risk exposure vectors. These are elevated during times of disaster response.

QFES has also undertaken a WHS risk assessment (attached) ahead of any consideration for mandatory COVID-19 vaccination. The WHS risk register is rolled up at a high-level staff level. This is largely related to the potential interactions between QFES service streams and members of the public during normal business ~~as usual~~ and operations. The key considerations for the WHS risk assessment were:

- Corporate staff have been included in the risk assessment as they are utilised as surge workforce (in QFES and across Queensland Government i.e. Community Recovery) and they interact regularly with both QFES operational service streams and members of the public.
- QFES is currently operating under Operations ~~Paratus 2021 (bushfire)~~; Exigent (COVID-19) and Kurrabana (severe weather season) with the requirement for operational readiness and surge workforce a key requirement to meet critical service delivery.
- Some of QFES critical services are delivered to venues which ~~will be~~ covered by the public health and social measures which ~~are expected to come~~ into effect 17 December 2021.

#### Whether the limits achieve their purposes

Requiring QFES workers to be vaccinated will achieve these purposes by:

- protecting our community, including its ~~most vulnerable~~ members by ensuring their risk of transmission of COVID-19 from QFES workers is as low as possible whilst they are delivering essential government services;
- ensuring that users of essential government services will feel safe while doing so; and
- ensuring service delivery levels can be maintained.

The available evidence to date is that vaccination against COVID-19 helps to reduce the risk of being infected and transmitting the virus on to others (even if the vaccine is not 100 percent effective).<sup>27</sup> This means vaccinated QFES workers will be less likely to be infected by members of community. Further, they are less likely to transmit the virus to others within QFES or to the community. If they do contract COVID-19, their symptoms will be less severe, requiring less time away from work.

A booster dose of COVID-19 vaccine has also been demonstrated to augment the immune responses and is anticipated to increase protection against infection.<sup>28</sup> ATAGI advises that a booster dose may also reduce the potential for infected individuals to transmit the virus to others.<sup>29</sup> Accordingly, on the available evidence, the booster shot requirement will help to ensure QFES workers maintain a level of protection against contracting or transmitting COVID-19 commensurate with that obtained by the original two dose regime.

<sup>26</sup> ATAGI, 'ATAGI recommendations on the use of a booster dose of COVID-19 vaccine' (27 October 2021).

<sup>27</sup> Australian Technical Advisory Group on Immunisation (ATAGI), *Clinical guidance on use of COVID-19 vaccine in Australia in 2021 (v7.2)* (9 September 2021) 27-31.

<sup>28</sup> ATAGI, 'ATAGI recommendations on the use of a booster dose of COVID-19 vaccine' (27 October 2021).

<sup>29</sup> Ibid.

The rational connection is not undermined by providing exemptions for people with a contraindication or religious objection.<sup>30</sup> Even with those exemptions, it is still the case that a greater proportion of QFES workers will be vaccinated.

Mandatory face mask use will also help to achieve the purpose of minimise the risk of transmission of COVID-19 to and from QFES workers, as well as protecting the right to life. Current evidence indicates that the use of face masks helps to reduce the risk of transmission and infection of COVID-19. This means QFES workers who are wearing a mask will be less likely to be infected with COVID-19 and are less likely to transmit the virus.

Are any less restrictive and reasonably available ways to achieve the purpose

The following less restrictive alternatives have been considered:

- educating and allowing QFES workers to take up vaccination voluntarily;
- applying the decisions to fewer categories of QFES workers;
- implementing other control measures such as physical distancing, improving ventilation, encouraging good hygiene, wearing masks and rapid antigen testing; and,
- allowing wider categories of exemptions.

The first alternative of allowing QFES workers to take up vaccinations voluntarily has not been as effective to date in ensuring that a sufficient proportion of QFES workers are vaccinated and frontline ready. The best way to protect QFES workers and others is to ensure that as many QFES workers as possible are vaccinated.

As to the second alternative, QFES considers it is necessary to apply the Direction to *all* QFES workers, unless an exemption applies, for the following reasons:

- front-line officers (including auxiliary firefighters) are not in a position to undertake their roles from home or alternate roles;
- uniformed office-based staff are required to be front-line ready;
- non-uniformed staff often perform dual roles in regard to providing surge capability for the State Disaster Coordination Centre;
- some QFES facilities are co-located with other front-line agencies that already have mandates in place;
- QFES incident response requires QFES to work closely with both Queensland Health and the Queensland Police Service;
- there is a ~~the~~ risk of infection from non-frontline staff (e.g. corporate staff) to operational or surge staff, which is heightened -due to the nature of the Omicron strain is extremely high;
- QFES has obligations to protect the health and safety of its workers.

As to the third alternative, QFES has already implemented a number of control measures (such as physical distancing in offices and other facilities). However, these alternative control measures, alone or in combination, are unlikely to be equally as effective as a vaccination requirement for QFES workers.<sup>31</sup> The precautionary principle applied by epidemiologists provides that, 'from a purely public health perspective, all reasonable and effective measures to mitigate th[e] risk should ideally be put in place',<sup>32</sup> not merely some of those measures. In any event, during disasters (such as bushfire or severe weather events), QFES workers will not necessarily be able to physically distance or wear masks.

Finally, it is not possible to allow for any wider categories of exemptions (such as a conscientious objection) without undermining the purpose of reducing the risk of COVID-19 transmission. The Direction is already tailored to confine the impacts on human rights to the extent strictly required, by allowing exemptions for people with a medical contraindication and a genuine religious objection.

The requirement to wear a face mask reflects recent requirements under public health directions issued by the Chief Health Officer. However, under the Direction unvaccinated QFES workers will need to wear a face mask even if a public health direction does not apply. One alternative might be to only require QFES workers (whether vaccinated or not) to wear a face mask in circumstances required by the public health directions. However, this would not be as effective in reducing the risk of spreading COVID-19. The risk of infection and transmission of COVID-19 is higher in unvaccinated persons,<sup>33</sup> and face masks have been shown to reduce the risk of transmission.<sup>34</sup> In addition, the requirement to wear a face mask under the direction is subject to a number of exceptions, including where the worker is able to practise physical distancing, or they have a relevant diagnosed condition. This means that the requirement to wear a face mask is tailored to its purpose of protecting health.

Accordingly, there are no less restrictive ways to minimise the spread of COVID-19 to and from QFES workers that are reasonably available. The limits on human rights are therefore necessary to achieve the purposes of the Direction.

Fair balance between purpose of decisions and impact on human rights

In considering the impacts on human rights, it is noted that a requirement to be vaccinated may:

- expose some people to suffer side effects from receipt of the vaccine, which can range from mild to potentially serious;
- removes a person's ability to make a decision about their vaccination status unfettered; and,
- may potentially force some QFES workers to go against their deeply-held conscientious or religious beliefs.

However, the extent of the harm to human rights is greatly reduced by the exemptions for QFES workers with a contraindication, genuine religious objection, or other exceptional circumstance. The health risk to the individual presented by vaccines is overwhelmingly outweighed by the health risk of COVID-19 to all of us. Similarly, the extent of any harm to human rights caused by requiring face masks is mitigated by the exceptions built into the direction.

These impacts on human rights are considered to be outweighed by a number of benefits sought to be achieved by the Direction including:

- the risk of COVID-19 infection having significant health impact on QFES workers would be minimised;
- the number of QFES workers unable to perform their duties for protracted periods would be minimised;
- the risk of transmission from QFES workers in the workplace and in the community would be minimised;
- members of the community who access QFES services would have certainty regarding the vaccination status of its workforce;
- the broader impacts associated with QFES unable to deliver services, particularly during significant disaster events would be minimised.

<sup>30</sup> *Taylor v Newfoundland and Labrador*, 2020 NLSC 125, [440]-[451].

<sup>31</sup> *Taylor v Newfoundland and Labrador*, 2020 NLSC 125, [467]-[471].

<sup>32</sup> *Palmer v Western Australia [No 4]* [2020] FCA 1221, [79].

<sup>33</sup> Australian Technical Advisory Group on Immunisation (ATAGI), *Clinical guidance on use of COVID-19 vaccine in Australia in 2021 (v7.2)* (9 September 2021) 27-31.

<sup>34</sup> N Scott et al, 'The introduction of a mandatory mask policy was associated with significantly reduced COVID-19 cases in a major metropolitan city' (2021) 16(7) *PLOS ONE* e0253510 <<https://doi.org/10.1371/journal.pone.0253510>>.

This has direct impacts on the ability of QFES to minimise risk to life, property and the environment during these events.

On balance the risk that an unvaccinated workforce presents to the community and the ability of QFES to deliver critical functions which seek to promote the right to life outweighs the limit placed on human rights by the Direction.

## Conclusion

The Direction is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom to ensure that the critical services provided by both paid and volunteer personnel can continue to be delivered across Queensland, with minimal to no impacts to the community.

Because the justification of the limits on human rights depends on the circumstances that currently apply, the Direction will be reviewed regularly to ensure that the limits imposed on human rights remain justified.

When making individual exemption decisions under the Direction, the Commissioner (or delegate) will need to separately consider human rights and act compatibly with human rights under section 58 of the *Human Rights Act*. However, because comprehensive consideration has already been given to human rights in this compatibility assessment, the consideration given to human rights for each exemption decision will not need to be as detailed.<sup>35</sup>

[DATE 2022]

sch.3(7) - Legal Professional Privilege

**GREG LEACH**

Commissioner, Queensland Fire & Emergency Services

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<sup>35</sup> *Minogue v Thompson* [2021] VSC 56, [61], [75], [78].



# Leadership Board

MINUTES

Queensland Government CEO Leadership Board

<b>DATE:</b>	Wednesday 9 March 2022
<b>TIME:</b>	10.30am – 12.30pm
<b>LOCATION:</b>	Multifunction Room 1 & 2, Level 41, 1 William Street
<b>APOLOGIES:</b>	<p>Damien Walker Director-General, Department of State Development, Infrastructure, Local Government and Planning</p> <p>Paul Stewart Commissioner, Queensland Corrective Services</p> <p>Bob Gee Director-General, Department of Agriculture and Fisheries</p> <p>Mark Cridland Associate Director-General, Department of the Premier and Cabinet</p>
<b>MEMBERS ATTENDING:</b>	<p>Rachel Hunter Director-General, Department of the Premier and Cabinet (Chair)</p> <p>Robert Setter Commission Chief Executive, Public Service Commission</p> <p>Toni Power Coordinator-General, Department of State Development, Infrastructure, Local Government and Planning</p> <p>Leon Allen Under Treasurer, Queensland Treasury</p> <p>Michael De'Ath Director-General, Department of Education</p> <p>John Wakefield Director-General, Queensland Health</p> <p>Shaun Drummond Chief Operating Officer, Queensland Health</p> <p>Neil Scales Director-General, Department of Transport and Main Roads</p> <p>Paul Martyn Director-General, Department of Energy and Public Works</p> <p>David Mackie Director-General, Department of Justice and Attorney-General</p> <p>Katarina Carroll Commissioner, Queensland Police Service</p> <p>Gary McCahon Acting Commissioner, Queensland Corrective Services (<b>Proxy</b>)</p> <p>Greg Leach Commissioner, Queensland Fire and Emergency Services</p> <p>John Lee Director-General, Department of Tourism, Innovation and Sport</p> <p>Clare O'Connor Director-General, Department of Communities, Housing and Digital Economy</p> <p>Mary-Anne Curtis Associate Director-General, Department of Communities, Housing and Digital Economy</p> <p>Graham Fraire Director-General, Department of Regional Development, Manufacturing and Water</p> <p>Warwick Agnew Director-General, Department of Employment, Small Business and Training</p> <p>Chris Sarra Director-General, Department of Seniors and Disability Services and Aboriginal and Torres Strait Islander Partnerships</p> <p>Mike Kaiser Director-General, Department of Resources</p> <p>Jamie Merrick Director-General, Department of Environment and Science</p> <p>Deidre Mulkerin Director-General, Department of Children, Youth Justice and Multicultural Affairs</p> <p>Filly Morgan Associate Director-General, Department of the Premier and Cabinet</p>
<b>GUESTS ATTENDING:</b>	<p>Peter Coaldrake Review of culture and accountability in the public sector</p> <p>Megan Applegarth Review of culture and accountability in the public sector</p> <p>Ben Gordon Executive Director, Office of the Director-General, Department of the Premier and Cabinet</p> <p>Beth Philipson Principal Advisor, Office of the Director-General, Department of the Premier and Cabinet</p>

## s.73 - Irrelevant information

### Outcomes of Meeting

#### Item 1 – Welcome, apologies and proxies

- Members, proxies and guests noted welcome from the Chair.

## s.73 - Irrelevant information



## s.73 - Irrelevant information



QUEENSLAND GOVERNMENT  
RTI/20017





ACTION No.	ACTION	AGENCY	DATE RAISED	DUE DATE	STATUS
<b>s.73 - Irrelevant information</b>					
11	Commission Chief Executive, Public Service Commission to provide advice to Leadership Board on vaccination becoming an employment condition for recruitment.	PSC	18 February 2022	4 March 2022	In progress