

2020

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

PUBLIC HEALTH AMENDMENT BILL 2020 (NO 2)

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
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Minister for Health**

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PUBLIC HEALTH AMENDMENT BILL 2020 (NO 2)

The Bill is **not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

BACKGROUND

In December 2019, China reported cases of a viral pneumonia caused by a previously unknown pathogen in Wuhan City, in the Hubei Province of China. The pathogen was identified as a novel coronavirus genetically related to the virus that caused the outbreak of Severe Acute Respiratory Syndrome in 2003. The new strain of coronavirus is called SARS-CoV-2 and the disease it causes is called COVID-19. COVID-19 is presently understood to most likely spread from person-to-person contact. The current estimates of the time it takes for symptoms to develop after being exposed to the virus that causes COVID-19 is a range of 2 to 14 days. At this stage, there is no known vaccine or antiviral against COVID-19.

On 30 January 2020, the Director-General of the World Health Organisation (WHO) declared the outbreak of COVID-19 a Public Health Emergency of International Concern. On 11 March 2020, the Director-General of the WHO declared COVID-19 a global pandemic. The WHO requested that every country urgently take necessary measures to ready emergency response systems.

On 16 March 2020, the Minister for Health declared a public health emergency under section 119 of the *Public Health Act 1997* due to the public health risk to the ACT community posed by COVID-19.

As of 19 July 2020, the WHO has reported that there are 14,043,176 cases of COVID-19 worldwide, and the Australian Government has reported 11,802 confirmed cases in Australia and 122 deaths as a result of COVID-19. As of 19 July 2020, the ACT had 113 confirmed cases and 3 people had died from COVID-19.

OVERVIEW OF THE BILL

For overseas travellers who arrive in the ACT, a requirement to undertake mandatory quarantine has been in place since 19 March 2020 under the *Public Health (Returned Travellers) Emergency Direction 2020* and subsequent extensions. To date, the Territory has taken responsibility for the costs associated with quarantine, which includes costs in relation to accommodation, food, personal-related expenses, health screening, transport, and security. The Territory has incurred quarantine costs, regardless of which state or territory the returning traveller normally resides.

The *Public Health Amendment Bill 2020 (No 2)* establishes a power for the Minister to determine a quarantine fee. The Bill clarifies the Minister's power to determine fees under section 137 of the *Public Health Act 1997* to include the ability for the Minister to determine the fee payable by individuals who are required to quarantine in a place outside of their home . The quarantine fee determination will be limited to recovery of costs incurred by the Territory for the quarantine of individuals. Implementing a quarantine fee scheme gives effect to National Cabinet's decision that States and Territories are to be responsible for introducing their own charging or recovery schemes for costs associated with the mandatory quarantine.

To impose the quarantine fee scheme, the Minister will be required to make a determination under the new section 137 (1A) of the *Public Health Act 1997*. The determination will be made in-line with quarantine fee schemes in other jurisdictions and will be consistent with the national principles to be determined by the Board of Treasurers Working Group. The determination will be in accordance with the requirements under Part 6.3 of the *Legislation Act 2001*, and will include:

- a. the fee structure, including the costs that are included in the fee;
- b. that the fee will be payable to the Territory;
- c. who is required to pay the fee; and
- d. any other information that will provide clarity and transparency to the quarantine fee scheme.

The new section 137 (1B) requires the Minister to take into account the individual's personal circumstances, including financial hardship, when deciding whether to waive, defer or decide an instalment plan.

As a disallowable instrument, the determination will be subject to scrutiny by the Legislative Assembly once it is presented and may be disallowed or amended by the Legislative Assembly.

CONSULTATION ON THE PROPOSED APPROACH

The Bill was prepared through consultation between the ACT Health Directorate, Chief Minister, Treasury and Economic Development Directorate, and Justice and Community Safety Directorate.

Although the Minister possesses an existing power to make a fee determination under section 137 of the *Public Health Act 1997*, an amendment has the effect of removing any doubt in relation to the Minister's power to determine quarantine fee.

CONSISTENCY WITH HUMAN RIGHTS

The majority of all confirmed cases in Australia were acquired overseas. As of 19 July 2020, 42.9% (5,059 cases) of the total cases in Australia were acquired from overseas travel. Mandated quarantine is therefore a reasonable and proportionate measure to maintain public health safety not only within the ACT, but also throughout Australia.

International repatriation flights are expected to continue for an extended period with a continuing requirement for mandatory quarantine on arrival in the ACT. To be long-term sustainable for the Government, a portion of quarantine costs must be recovered from individuals who are required to quarantine in the ACT. This will allow the Government to direct resources to crucial areas, such as health care resources and public health safety campaigns, to assist with the ACT's response to the COVID-19 pandemic.

Rights Engaged

The Bill engages and promotes section 9 (right to life) under the *Human Rights Act 2004* (the HR Act).

The Bill engages and limits section 8 (recognition and equality before the law) under the HR Act.

Rights Promoted

The Bill engages and promotes section 9 of the HR Act – the right to life. Establishing a quarantine fee scheme provides a sustainable solution to the distribution of the Government's resources, directing resources to crucial areas, such as health care resources and public health safety campaigns. In turn, this ensures that the Government's resources will be focused on the ACT's health care response to the COVID-19 pandemic.

Evidence showing that the majority of all confirmed cases in Australia of COVID-19 were acquired overseas supports mandatory hotel quarantine as a reasonable and proportionate measure aimed at controlling the spread of the virus. Allowing the ACT

Government to recover costs incurred supports the overall sustainability of the measure and by extension the right to life under the Human Rights Act

Rights Limited

The Bill engages and limits section 8 of the HR Act – recognition and equality before the law.

The nature of the right affected and the limitation (s 28 (2) (a) and (c))

Section 8 of the HR Act states:

- (1) Everyone has the right to recognition as a person before the law.
- (2) Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind.
- (3) Everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.

Examples of discrimination

Discrimination because of race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.

The Bill limits the right to recognition and equality before the law because it potentially discriminates against race and social origin. The determination, which will be created under the Minister's fee-making power, may disproportionately adversely affect people who:

- a) are of a different race and/or nationality and had travelled overseas to visit family and friends; and
- b) are of a lower socio-economic background who may have difficulty paying the quarantine fee.

Legitimate purpose (s 28 (2) (b))

The underlying policy outcome of the Bill is to manage the use of Government resources to prioritise public health concerns. The Bill creates a power for the Minister to determine a quarantine fee scheme to apply to returned travellers who enter the ACT and are required to quarantine in a place outside of their home. Due to the rapid transmission of COVID-19 and the high risk of acquiring the virus while overseas, a requirement to undertake mandatory quarantine has been in place since 19 March 2020 under the *Public Health (Returned Travellers) Emergency Direction 2020* and subsequent extensions. Quarantine is essential for public health

safety, and protects the ACT community from exposure and uncontrolled spread of COVID-19.

To date, the Territory has been paying for the cost of quarantine, which includes costs in relation to accommodation, food, personal-related expenses, health screening, transport, and security. International repatriation flights are expected to continue for an extended period with a continuing requirement for mandatory quarantine on arrival in Australia. It is expected that the ACT will continue to host some of the international repatriation flights. Bearing quarantine-related costs in the long-term will not be sustainable for the Government, and may divert resources from crucial areas, such as health care resources to assist with the ACT's response to the COVID-19 pandemic.

Rational connection between the limitation and the purpose (s 28 (2) (d))

Creating a power to allow the Minister to make a determination in relation to quarantine fees will achieve the objective of creating a quarantine fee scheme payable by individuals who undertake mandated quarantine in the ACT outside of their home.

Proportionality (s 28 (2) (e))

This Bill provides an approach that is the least restrictive way of creating a quarantine fee scheme for the ACT. This Bill builds on an existing power under section 137 and clarifies that the Minister's power extends to making a quarantine fee.

Other jurisdictions, such as Queensland, the Northern Territory, New South Wales, Western Australia, and South Australia, have legislated for the setting of quarantine fees. The more prescriptive legislative approaches taken in other jurisdictions was not necessary because the ACT has existing mechanisms in place under section 137 of the *Public Health Act 1997* and Part 6.3 of the *Legislation Act 2001* that allow for the creation of a quarantine fees to be determined by a disallowable instrument. Inserting a power for the Minister to be able to make a determination in relation to a quarantine fee is the most appropriate method to clarify the Minister's power to determine such a fee.

The provision contains a safeguard that aims to minimise the limitation on the right to recognition and equality before the law. The provision requires that the Minister consider a person's circumstances, including whether they are suffering financial hardship, when deciding whether to waive, defer or decide an instalment plan. This aims to assist those individuals who, for example, are not currently employed due to COVID-19, or those who were required to travel overseas on compassionate grounds.

The determination will be a disallowable instrument. This will allow the determination to be considered by the Legislative Assembly and if appropriate, disallowed or amended.

Public Health Amendment Bill 2020 (No 2)

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Public Health Amendment Bill 2020 (No 2)**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004*.

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Gordon Ramsay MLA
Attorney-General

Public Health Amendment Bill 2020 (No 2)

Detail

Clause 1 — Name of Act

This is a technical clause that names the short title of the Act. The name of the Act will be the *Public Health Amendment Act 2020 (No 2)*.

Clause 2 — Commencement

This clause provides that the Act will commence on the day after it is notified on the ACT Legislation Register.

Clause 3 — Legislation Amended

This clause lists the legislation amended by this Bill. This Bill will amend the *Public Health Act 1997*.

Clause 4 — Determination of fees – New section 137 (1A) and (1B)

This clause inserts a power for the Minister to determine fees in relation to quarantine costs, payable by individuals who are required to quarantine in the ACT in a place that is not their home. The requirement to quarantine is provided by the current *Public Health (Returned Travellers) Emergency Direction 2020*, made under section 120 of the *Public Health Act 1997*, in response to containing the spread of COVID-19 within the ACT.

Section 137 contains an existing power for the Minister to determine fees under the *Public Health Act 1997*, which could extend to quarantine costs. Nevertheless, this clause was inserted because it provides certainty that the Minister's power extends to determining a quarantine fee scheme. The clause additionally limits the Minister's power to create a quarantine fee scheme to costs incurred, or will be incurred, by the Territory in relation to the quarantine of returned travellers.

A determination under section 137 (1A) will be a disallowable instrument. Part 6.3 of the *Legislation Act 2001* will apply to determining a fee under section 137 (1A). The determination will be subject to scrutiny by the Legislative Assembly once it is notified on the ACT Legislation Register and tabled in the ACT Legislative Assembly.

The clause also contains a safeguard that allows the Minister to consider the individual's financial or personal circumstances in deciding whether to waive or defer the fee, or decide an instalment plan. This clause was inserted to minimise potential adverse effects of the fee resulting from a person's disadvantage.