

CHIEF HEALTH OFFICER STATEMENT:
CONSIDERATION OF HUMAN RIGHTS IMPLICATIONS OF IMPOSED
PUBLIC HEALTH EMERGENCY DIRECTIONS

As the ACT's Chief Health Officer I am mindful that Section 40B of the *Human Rights Act 2004* (the Act) requires all public authorities to give proper consideration to human rights in decision making, and to ensure that their decisions are compatible with human rights. I also recognise that section 30 of the Act requires that all Territory laws be interpreted in a human rights compatible way, in so far as it is possible to do so consistently with its purpose, and that section 28 of the Act permits limits to be placed on rights which are demonstrably justifiable in a free and democratic society.

I have been guided by these provisions and these principles in the preparation of each Public Health Emergency Direction under section 120 of the *Public Health Act 1997*. The intention of the Directions which I have imposed is to reduce the spread of COVID-19 through such measures as:

- quarantine and self-isolation,
- restrictions on the conduct of non-essential businesses and undertakings that enforce stronger social distancing in settings in which people would ordinarily gather; and
- restrictions on movement, including entry to settings that are at greater risk from COVID-19 due to the presence of vulnerable persons (such as aged care facilities), and on entry into the ACT from identified COVID-19 hotspots.

I have given due consideration that each Direction imposed has engaged several human rights protected under the Act, and in particular:

- the right to consent to medical treatment in section 10 of the Act;
- the right to privacy under section 12 of the Act;
- the right to freedom of movement under section 13 of the Act;
- the right to freedom of religion under section 14 of the Act;
- the right to freedom of assembly and association under section 15 of the Act.

I have also given due consideration to whether a limitation on these rights is reasonable having regard to:

- the objective to be served by the measure;
- the interests that are protected by the right;
- the extent to which that right may be limited;
- the effectiveness of the measure in achieving the objective;
- the availability of other less restrictive measures;
- the procedural and other safeguards surrounding the measure.

In this regard the right to freedom of movement and the right to practice religion may be subject to restrictions which serve permissible purposes, such as the protection of public health.

I also acknowledge that most of the Directions engage the right to privacy of individuals in their private capacity and in their professional capacity as owners of businesses, as employers or employees and as contractors. Nevertheless, as reflected in the ACT's COVID-19 Roadmap, the restrictions imposed on this right by the Directions have been the least restrictive necessary and proportionate to the public health risks at each stage of the public health emergency thus far. I recognise that failure to comply with the Directions is an offence, however I also note that the offence is subject to an exception where the person is able to establish a reasonable excuse.

As Chief Health Officer I nevertheless place particular emphasis on the fact that human rights principles include positive obligations, including the taking of steps within the power and control of the Territory to protect the community against the public health risks posed by COVID-19.

In so doing, I have considered the need to secure other human rights protected by the Act:

- the right to life in section 9 of the Act;
- the right to security of the person in section 18 of the Act.

Accordingly, each of the Directions is demonstrably necessary, and indeed essential, to protect the lives of the ACT community from the significant public health risks posed by the spread of COVID-19. The scale of the risk posed by COVID-19 is demonstrated by:

- the empirical experience from overseas as to the increasing incidence across the globe of COVID-19, its morbidity rate, and the impact it has had on health services,
- the evolving scientific understanding of the virus, including as to the effectiveness of preventative steps to arrest its spread in the absence of a vaccine and effective treatments; and,
- the challenges that Australia has faced to date in efforts to suppress the spread of the virus to date

For these reasons I am satisfied that the Directions I have issued are compatible with the rights in the Act.