Parliamentary Committees



Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020

Report No. 4, 57th Parliament
Health and Environment Committee
February 2021

Health and Environment Committee

Chair	Mr Aaron Harper MP, Member for Thuringowa
Deputy Chair	Mr Robert (Rob) Molhoek MP, Member for Southport
Members	Mr Stephen (Steve) Andrew MP, Member for Mirani
	Ms Ali King MP, Member for Pumicestone
	Ms Joan Pease MP, Member for Lytton
	Dr Mark Robinson MP, Member for Oodgeroo

Committee Secretariat

Telephone	+61 7 3553 6626
Fax	+61 7 3553 6699
Email	hec@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6601
Committee Web Page	www.parliament.qld.gov.au/HEC

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All web address references are current at the time of publishing.

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Abbreviations

AHPPC	Australian Health Protection Principal Committee
AMA Queensland	Australian Medical Association Queensland
Bill	Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020
CCIQ	Chamber of Commerce and Industry Queensland
CHO	Chief Health Officer
committee	Health and Environment Committee
COTA Queensland	Council of the Ageing Queensland
department	Queensland Health
GCCC	Gold Coast Central Chamber of Commerce
HRA	*Human Rights Act 2019*
LSA	*Legislative Standards Act 1992*
Mental Health Act	*Mental Health Act 2016*
NPAQ	Nurses Professional Association of Queensland
Public Health Act	*Public Health Act 2005*
QHA	Queensland Hotels Association
QNMU	Queensland Nurses and Midwives' Union
QTIC	Queensland Tourism Industry Council
RANZCP	Royal Australian and New Zealand College of Psychiatrists
SDA	Shop Distributive and Allied Employees Association

Chair's foreword

This report presents a summary of the Health and Environment Committee's examination of the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and Queensland Health.

I commend this report to the House.

Aaron Harper MP

Chair

Recommendations

The committee recommends the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020 be passed.

1 Introduction

1.1 Role of the committee

The Health and Environment Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility include:

- Health and Ambulance Services
- Environment, Great Barrier Reef, Science and Youth Affairs.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the *Human Rights Act 2019* (HRA)
- for subordinate legislation – its lawfulness.[2]

The committee also has oversight functions in relation to the Health Ombudsman and the health service complaints management system.

The Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020 (Bill) was introduced into the Legislative Assembly and referred to the committee on 3 December 2020. The committee was required to report to the Legislative Assembly by 12 February 2021.

1.2 Inquiry process

On 4 December 2020 the committee invited stakeholders and subscribers to make written submissions on the Bill. The committee received 124 submissions. A list of submitters is provided at Appendix A.

The committee received a written briefing about the Bill from Queensland Health (department) on 18 December 2020.

The committee also received written advice from the department in response to matters raised in submissions.

The committee held a public hearing on 22 January 2021 (see Appendix B for a list of witnesses).

The submissions, correspondence from the department and transcripts of the hearing are available on the committee's webpage.

1.3 Policy objectives of the Bill

The objectives of the Bill are to amend Chapter 8 of the *Public Health Act 2005* (Public Health Act) to allow for:

- the Governor-in-Council[3] to extend the declared public health emergency for up to 90 days (*Public Health (Declared Public Health Emergencies) Amendment Act 2020*, which received assent on 7 February 2020);

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1 *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

2 *Parliament of Queensland Act 2001*, s 93; and *Human Rights Act 2019* (HRA), ss 39, 40, 41 and 57.

3 The term 'Governor-in-Council' means 'the Governor acting with the advice of the Executive Council', who comprise the Ministry and Cabinet. See:

- increased powers for emergency officers and the Chief Health Officer (CHO) to limit, or respond to, the spread of COVID-19 in Queensland (*Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020*, which received assent on 19 March 2020);
- the chief executive to delegate their powers to the Chief Health Officer or a person with expertise or experience in public health issues and improving the operation of the provisions of emergency officers (medical) to support the Queensland Government's response to COVID-19 (*Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020*, which received assent on 25 May 2020); and
- a person to be required to enter hotel quarantine at their own cost *(Community Services Industry (Portable Long Service Leave) Act 2020*, which received assent on 22 June 2020).[4]

The policy objectives of the Bill also include amendments to the *Mental Health Act 2016* (Mental Health Act) through the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* to allow:

- declarations to be made about a mental health service through an expedited process; and
- mental health patients to be granted leave to comply with public health directions.[5]

The Bill extends the expiry dates of these provisions for a further six months until the end of September 2021 and also aligns the expiry dates for all the amendments made to Health portfolio legislation.[6]

1.4 Government consultation on the Bill

According to the explanatory notes, external consultation on the provisions in the Bill was not possible due to its urgent nature.[7] However, the explanatory notes state Queensland Health's commitment to continued consultation with businesses and industries and public messaging about the emergency powers, social distancing requirements and the Queensland Government's response.[8]

The former Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee also highlighted the importance of stakeholder consultation in its Report No. 43, 56th Parliament - Interim Report: Inquiry into the Queensland Government's health response to COVID-19. It recommended:

> That Queensland Health continues to engage with stakeholders to provide information about future Public Health Directions and other changes to government policy related to the COVID-19 health response.[9]

In its submission to this inquiry, the Queensland Mental Health Commission made the following comment:

https://www.parliament.qld.gov.au/documents/explore/education/factsheets/Factsheet_4.2_ExecutiveCouncil.pdf

4 Explanatory notes, p 1.

5 Explanatory notes, p 1.

6 Explanatory notes, p 2.

7 Explanatory notes, p 3.

8 Explanatory notes, p 3.

9 Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee: Report No. 43, 56th Parliament - Interim Report: Inquiry into the Queensland Government's health response to COVID-19, p 38.

> While the Commission appreciates the implications of the ongoing pandemic for the MHA2016, we encourage consultation with people with a lived experience of mental ill-health who are strongly impacted by these changes.[10]

In its response to submissions, Queensland Health advised that 'due to the timeframes, ordinary consultation processes with industry stakeholders and individuals were not able to be undertaken prior to the introduction of the Bill to the Legislative Assembly.'[11]

Committee comment

The committee acknowledges the considerable effort of the CHO and other employees of Queensland Health to consult and inform stakeholders in relation to public health directions, COVID safe plans and difficulties involved in living with and managing the pandemic.

The committee appreciates the importance of this Bill in protecting the health of all Queenslanders. Given the Queensland Government's commitment to best practice policy and legislative development, it is essential that stakeholder consultation be undertaken on draft legislation. While the initial legislation was urgent, this Bill, is a continuation of those initial emergency provisions and therefore provided an opportunity for consultation to occur.

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020 be passed.

[10] Submission 6, p 1.

[11] Queensland Health, correspondence, 21 January 2021, attachment, p 7.

2 Background to the Bill

On 29 January 2020, a public health emergency was declared under section 319 of the Public Health Act due to the outbreak of COVID-19 in China.[12]

As at 1 February 2021, the World Health Organisation reported a total of 102,083,344 confirmed positive COVID-19 cases and 2,209,195 deaths globally.[13] Australia has experienced a lesser burden from COVID-19 than other countries. In Queensland as at 1 February 2021, there were 1,310 confirmed cases of COVID-19 in Queensland, with 6 deaths relating to COVID-19 of Queensland residents.[14]

The explanatory notes state:

> Despite overall low numbers of COVID-19 in Queensland, recent outbreaks both here and in other Australian jurisdictions and continued large-scale outbreaks around the world demonstrate how rapidly COVID-19 can spread and overwhelm hospital systems. Certain risks for community transmission in Queensland, such as such as interstate cross-border travel, will remain for as long as the virus continues to circulate in Australia. [15]

Additionally, the emergence of new COVID-19 variants will present further challenges for community containment. The CHO stated 'our best approach is ensuring potential cases are detected where they pose no risk to other Queenslanders'.[16] Queensland Health anticipates that some form of restrictions will need to continue into 2021 and until a vaccine or treatment becomes widely available and distributed.[17]

According to the explanatory notes, the Bill proposes to provide the ability to respond at short notice to an evolving epidemiological situation to ensure public health objectives are met while also balancing the social and economic needs of the community.[18]

2.1 Overview of the Bill

During 2020 the Queensland Parliament passed several amendments to the Public Health Act and Mental Health Act to support the Queensland Government's health response to COVID-19. The amendments to the Public Health Act include the following:

Table 1: Legislative amendments made to the *Public Health Act 2005* and *Mental Health Act 2016* in 2020

Amendments	Amendment Act	Expiry date
Increased powers for the Governor in Council to extend a declared public health emergency for up to 90 days (instead of 7 days)	*Public Health (Declared Public Health Emergencies) Amendment Act 2020*	Start of the day on 7 February 2021
Increased powers for emergency officers and the Chief Health Officer to limit, or respond to, the spread of COVID-19 in Queensland	*Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020*	Start of the day on 19 March 2021

12 Explanatory notes, p 1.

13 World Health Organisation, 'WHO Coronavirus Disease (COVID-19) Dashboard', https://covid19.who.int/.

14 Queensland Government, 'Queensland COVID-19 statistics', https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19.

15 Explanatory notes, p 2.

16 Queensland Health, Dr Jeannette Young, Chief Health Officer, 'Queensland COVID-19 update – second case of South African variant confirmed', media release, 1 January 2021.

17 Queensland Health, correspondence, 18 December 2020, p 2.

18 Explanatory notes, p 2.

Allowing the chief executive to delegate their powers to the Chief Health Officer or a person with expertise or experience in public health issues and improvements to the operation of the provisions about emergency officers (medical) appointed under Chapter 8 of the *Public Health Act 2005*	*Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020*	Start of the day on 19 March 2021
Powers to allow for the recovery of costs for the provision of accommodation and food to a person required to enter hotel quarantine	*Community Services Industry (Portable Long Service Leave) Act 2020*	End of the day on 18 March 2021

Source: Queensland Health, correspondence, 18 December 2020, p 2.

The department stated:

> The above amendments were made through urgent Bills or as amendments during consideration in detail, sunset clauses and expiry provisions were included in the amending Acts. These amendments will expire between February and April 2021. The Bill proposes to extend all the expiry dates for the amendments made to Public Health Act and Mental Health Act to support the Queensland Government's health response until the end of the day on 30 September 2021.[19]

2.1.1 Continuation of the powers provided to the Governor-in-Council to extend a declared public health emergency for up to 90 days

Prior to the COVID-19 pandemic, a declaration of a public health emergency under section 319 of the Public Health Act could be extended for a period of up to 7 days with an expiry of 14 days after it was first declared.[20] In February 2020, in response to the COVID-19 pandemic, amendments were made to section 323 to provide for an extension period of 90 days with an expiry at the end of the period stated in the declaration or if repealed.[21] According to the explanatory notes, the Bill proposes to amend various Acts:

> to ensure that any sunset clauses or expiry provisions relating to the amendments made to Chapter 8 of the Public Health Act and Chapter 18B of the Mental Health Act do not take effect until the end of the day on 30 September 2021.[22]

Queensland Health advised:

> The amendments made to section 323 of the Public Health Act to allow the Governor-in-Council to make a regulation to extend a declared public health emergency for up to 90 days has been critical to providing certainty to the public about how long the emergency measures will continue.
>
> Enabling the Governor-in-Council to extend the public health emergency for up to 90 days, rather than 7 days, has avoided the need for weekly regulations to be made. If the amendments had not been made, between 29 January 2020 and 18 December 2020, approximately 45 regulations would have been required to allow the emergency response to continue. To date, the Governor-in-Council has made a total of six extension regulations.[23]

In addition, clause 13 of the Bill provides a new section 323 to commence on 1 October 2021 which, in effect reverts to the provisions that existed before the COVID-19 pandemic.[24]

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19 Queensland Health, correspondence, 18 December 2020, p 2.

20 *Public Health Act 2005*, s 323(4) as at 1 July 2019.

21 Public Health Act, s 323(3) as at 7 February 2020.

22 Explanatory notes, p 6.

23 Queensland Health, correspondence, 18 December 2020, pp 2-3.

24 Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020, cl 13 and Public Health Act (as at 1 July 2019) s 323.

2.1.2 Continuation of the public health emergency powers to allow the Chief Health Officer and emergency officers to make directions to limit, or respond to, the spread of COVID-19 in Queensland

Queensland Health stated that there is still a risk of the virus spreading throughout Queensland, particularly as international arrivals return to Queensland where high numbers of cases continue to occur.[25] The department also expressed the view that the mandatory 14-day quarantine for overseas arrivals is a critical factor in Queensland's and Australia's successful response to COVID-19, as a large proportion of positive cases have been from overseas arrivals.[26]

The Bill provides for the continuation of public health emergency powers[27] to emergency officers to issue directions to limit and respond to the spread of COVID-19 to allow for quarantine notices to be issued to people where one of the following apply:

- the person tested positive for COVID-19.
- the person is a close contact of someone who has tested positive for COVID-19.
- the person has been in a hotspot in the previous 14 days.
- the person arrived from overseas.[28]

To date, the COVID-19 public health emergency declaration has been extended by regulation on six occasions. As a result, all active public health directions issued by the state's Chief Health Officer, Dr Jeannette Young, have been extended until 19 March 2021.[29]

The Bill proposes that these measures continue until 30 September 2021.[30]

Section 362B of the Public Health Act grants power to the CHO to make public health directions and also provides that the public health direction can be made by notice published on the department's website or in the gazette rather than through the subordinate legislation regulation making processes.

As at 1 February 2021 there were 19 public health directions in force in Queensland. Current public health directions relating to COVID-19 include:

- Aged Care Direction (No. 22)
- Border restrictions Direction (No. 22)
- COVID-19 Testing for Quarantine Facility Workers Direction (No. 3)
- Declared Hotspots Direction
- Disability Accommodation Services Direction (No. 13)
- Hospital Visitors Direction (No. 16)
- Mandatory Face Masks Direction
- Movement and Gathering Direction (No. 7)
- Quarantine and COVID-19 Testing for International Air Crew Direction (No. 6)
- Quarantine for International Arrivals Direction (No. 4)
- Restrictions on Businesses, Activities and Undertakings Direction (No. 12)

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25 Queensland Health, correspondence, 18 December 2020, p 3.

26 Queensland Health, correspondence, 18 December 2020, p 4.

27 These measures were enacted by the *Public Health (Declared Public Health Emergencies) Amendment Act 2020*. See Queensland Health, correspondence, 18 December 2020, p 5.

28 Queensland Health, correspondence, 18 December 2020, p 4.

29 Queensland Health, correspondence, 18 December 2020, p 1.

30 Queensland Health, correspondence, 18 December 2020, p 5.

- Self-isolation for Diagnosed Cases of COVID-19 Direction (No. 4).[31]

Queensland Health advised, that if the Chief Health Officer's powers under the Public Health Act to make public health directions were not extended, there would be no ability to enforce hotel quarantine for overseas arrivals.[32]

2.1.3 Continuation of requirements for people to pay their own costs associated with hotel quarantine

Part 7AA of the Public Health Act provides for a person who is required to enter hotel quarantine to pay any costs associated with the person's quarantine. Clause 11 of the Bill extends the expiry date of this provision until 30 September 2021.

Owing to the number of cases of COVID-19 internationally, there will be an ongoing requirement for hotel quarantine. The Bill will enable the State to recover costs incurred in relation to food and accommodation.[33] Queensland Health advised that a hardship scheme exists to waiver costs in certain circumstances to support vulnerable cohorts.[34]

2.1.4 Other amendments made to the *Public Health Act 2005*

The Bill proposes to amend the Public Health Act by amending provisions made in the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* by postponing the commencement of part 16 division 3 until 1 October 2021. The effect of these changes is to extend the current provisions, including provisions which assist the operations of the Queensland Government's health response to COVID-19 by:

> … clarifying the powers of emergency officers and allowing the chief executive to delegate powers to ensure that decisions about sharing of information to assist contact tracing do not solely rely on the chief executive. [35]

Queensland Health advised that 'it is also considered necessary to further extend these complementary and supporting amendments to the Act' along with the other amendments to the Public Health Act.[36]

2.1.5 Amendments made to the *Mental Health Act 2016*

Amendments made in 2020 to the Mental Health Act allow the Chief Psychiatrist to:

- approve a leave of absence for certain patients from an authorised mental health service if satisfied the absence is necessary to allow a patient to comply with a detention order or public health direction given under the Public Health Act and does not result in unacceptable risks to the person's safety and welfare, or to the safety of the community [37]
- declare a health service, or part of a health service, to be an authorised mental health service and appoint a person as the administrator of an authorised mental health service

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31 Queensland Government, Queensland Health, 'Chief Health Officer public health directions', https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers.

32 Queensland Health, correspondence, 18 December 2020, p 5.

33 Queensland Health, correspondence, 18 December 2020, p 5.

34 Queensland Health, correspondence, 18 December 2020, p 5.

35 Queensland Health, correspondence, 18 December 2020, p 5.

36 Queensland Health, correspondence, 18 December 2020, p 5.

37 *Mental Health Act 2016*, s 800I.

by notice published on the department's website instead of making the declaration or appointment by gazette notice.[38]

Clauses 7 and 8 of the Bill propose that these amendments expire on 30 September 2021.

Queensland Health stated that the amendments to the Mental Health Act are intended to operate only as a last resort, in circumstances where the application of the standard provisions may result in a conflict with a direction or order given under the Public Health Act.[39]

Additionally as at 18 December 2020, Queensland Health noted that these provisions have not been used to date.[40]

2.2 Recent developments

Since the Bill was introduced, an outbreak of COVID-19 was identified when a cleaner working at the Hotel Grand Chancellor (a hotel quarantine facility) tested positive to a variant of the virus commonly referred to as the UK variant. The CHO explained that the variant was up to 70% more infectious than other strains.[41] On 8 January 2021, a 3-day lockdown was introduced for Greater Brisbane to provide for contact tracing to ensure the UK variant of COVID-19 was not circulating in the community.[42]

People in the local government areas of Brisbane, Moreton Bay, Ipswich, Redlands and Logan were restricted from leaving their principal place of residence except for, a number of permitted purposes such as:

- to obtain essential goods and services
- to exercise
- to receive healthcare.[43]

Gatherings were limited as was the number of visitors permitted at a residence. Access to impacted areas was also restricted and compulsory wearing of facemasks was introduced.[44]

The lockdown lifted on 12 January 2021. However, to protect the health of Queenslanders, the wearing of a face mask remained mandatory in impacted areas and in particular settings anywhere in Queensland. In impacted areas residents were required to carry facemasks and wear them in the following circumstances:

- on public transport
- in indoor spaces
- when entering or leaving major sporting stadiums

38 Mental Health Act, s 800J.

39 Queensland Health, correspondence, 18 December 2020, p 6.

40 Queensland Health, correspondence, 18 December 2020, p 6.

41 Queensland Health, Dr Jeannette Young, Chief Health Officer, 'Positive case confirmed with UK strain of COVID-19', media release, 7 January 2021.

42 Queensland Health, Dr Jeannette Young, Chief Health Officer, 'Greater Brisbane lockdown: clarifying movement restriction', media release, 8 January 2021.

43 Queensland Government, Queensland Health, 'Superseded - Restrictions for Impacted Areas Direction', https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/restrictions-impacted-areas.

44 Queensland Government, Queensland Health, 'Superseded - Restrictions for Impacted Areas Direction', https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/revoked/restrictions-impacted-areas.

- if experiencing symptoms consistent with COVID-19.[45]

Restrictions were also placed on businesses including restrictions on movement and gatherings which included a limit of 20 people per gathering, limits on occupant density, and dancing was permitted only at weddings and dance class studios.[46]

When two new cases of COVID-19 were recorded in hotel quarantine and linked to the same floor in the Hotel Grand Chancellor as the previous cases, taking the cluster total to 6 cases, hotel quarantine individuals were moved to other hotels and some had their time in quarantine extended. People who worked at the hotel since 30 December 2020 were also asked to quarantine for 14 days since they last worked in the hotel and be tested.[47]

Submissions to the inquiry closed on 13 January 2021 and many submitters referred to these recent events in their submissions.

The restrictions were eased on Friday 22 January 2020. The requirement to wear masks in crowded places was no longer mandatory and restrictions on gatherings eased so that businesses including cafes and restaurants were permitted to have one customer for every 2 square metres, up to 200 guests were permitted at weddings, and dancing was again permitted.[48]

45 Queensland Government, Queensland Health, 'Restrictions for Impacted Areas Direction No. 2', https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/restrictions-impacted-area.

46 Queensland Government, Queensland Health, Restrictions for Impacted Areas Direction No. 2, https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/restrictions-impacted-area.

47 Queensland Health, 'Incident response set up following confirmation of Brisbane hotel cluster', media release, 13 January 2021.

48 Hon Annastacia Palaszczuk MP, Premier and Minister for Trade, and Hon Yvette D'Ath MP, Minister for Health and Ambulance Services, 'Greater Brisbane restrictions set to ease', joint statement, 21 January 2021 https://statements.qld.gov.au/statements/91322.

3 Stakeholder views on the Bill

3.1 Stakeholder support for the Bill

Support for the Bill was generally expressed on the basis that Queensland's Chief Health Officer (CHO) Dr Jeannette Young was competent, professional and trustworthy and was responsible for keeping Queenslanders safe from the COVID-19 pandemic. There was also recognition, particularly at the public hearing, that without a strong health response, the economic impact would far exceed the current economic difficulties being experienced in Queensland.[49]

The Bill was supported by professional organisations in the health sector. The Australian Medical Association Queensland (AMA Queensland) expressed overall support for extending the CHO's powers until 30 September 2021 and extending the amendments to the Mental Health Act and the Public Health Act (hotel quarantine). The AMA Queensland congratulated the Queensland Government on the work done to manage the COVID-19 pandemic in Queensland, noting that:

> … Queensland acted quickly in enforcing lockdown restrictions and closing borders to the states with high community transmission rates, leading to no community transmission in Queensland to date. While the act of closing the borders was highly criticised by other states and territories, the Queensland Government continued to act in the best interests of the health of Queenslanders and follow the CHO's evidence-based medical advice.[50]

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) noted its support for extending the date of the declared public health emergency (due to the COVID-19 outbreak) for a further six months until the end of September 2021. It also 'endorsed the proposal to align the expiry dates for all amendments made to Chapter 8 of the Public Health Act health portfolio legislation'.[51] In addition, the RANZCP stated:

> We do wish to emphasise that any amendments to the *Mental Health Act 2016* should provide for safeguards and appropriate checks and balances to ensure the rights of consumers who are subject to involuntary treatment orders are preserved.[52]

The Lung Foundation Australia submitted:

> We acknowledge, the success the Government has achieved in limiting the spread and impact of COVID-19 in Queensland. In part this is due to the agility and timeliness of the government in recognising what needed to be done and then doing it.
>
> It is in this regard that we provide support for those measures set out in the Bill that strengthen the ability of experts to take timely and decisive action based on current and emerging evidence to prevent the spread of COVID-19 in Queensland in 2021.[53]

The Nurses Professional Association of Queensland (NPAQ) submitted that the delegation of authority to the CHO during the pandemic was an important mechanism and had ensured a timely and effective response to COVID-19.[54]

At the public hearing, witnesses expressed overwhelming support for the Bill.[55]

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49 Public hearing transcript, pp 9, 61.

50 Submission 5, p 1.

51 Submission 4, p 1.

52 Submission 4, p 1.

53 Submission 71, p 1.

54 Submission 103, p 2.

55 Public hearing transcript, pp 1, 2, 10, 13, 14, 20, 25, 29, 37, 48, 50, 54, 60.

The Queensland Mental Health Commissioner, Ivan Frkovic, outlined the need for the emergency provisions:

> A pandemic of this nature requires special and sometimes urgent measures to ensure appropriate, quick and effective responses to ensure public health and safety. Such responses can have whole-of-life and whole-of-population mental health wellbeing impacts … Queensland has managed the pandemic extremely well. The legislative extensions and amendments to the Public Health Act to support the government's health response appear to be measured and appropriate.[56]

In addition, the Queensland Human Rights Commissioner, Scott McDougall, commented in reference to the CHO's emergency powers:

> Clearly, the Queensland government has taken its obligation to take positive steps to protect the right to life very seriously and in this regard we acknowledge the work of the CHO in making directions that have prioritised the preservation of life.[57]

Health Consumers Queensland compared the situation in Queensland to that in the United Kingdom and the United States of America and attributed the success of the Queensland approach to a response based on medical advice.

> In the UK there are 1,800 deaths a day where we in Queensland have had six. The US has now lost more lives than the Second World War, Korea and Vietnam wars combined. How many people's loved ones could have been saved by an approach such as Queensland's and Australia's?
>
> Countries have done much better where their responses have been led by medical expertise. This has been protective against the politicisation of the issue given the deep expertise that is needed to form a comprehensive response.[58]

Similarly, Public Health Association of Australia and the Council on the Ageing Queensland expressed their support for both the Bill and the Queensland Government's response to the pandemic.[59] Council on the Ageing Queensland stated:

> We would also like to further express our deepest gratitude to all those in the health, emergency and other sectors who continue to work tirelessly to safeguard, care and support fellow Queenslanders during this global pandemic. The Chief Health Officer, Jeannette Young, and her team have worked professionally to manage the health response to COVID and have worked tirelessly to prevent and contain the spread from occurring in this state.[60]

Both the Queensland Hotels Association (QHA) and the Queensland Tourism Industry Council (QTIC), supported the Bill. At the public hearing, QHA expressed its support for the need to extend the Chief Health Officer's ability to restrict the operation of businesses, on that basis that: 'it is fair to all Queenslanders'.[61]

Similarly QTIC commented:

> … as an organisation and under the current circumstances, we will not raise objections to the passing of this bill. Nevertheless, we do have an acute interest in the government finding the appropriate balance between public health imperatives and other policy priorities, including the economy, civil liberties and transparent government.[62]

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56 Public hearing transcript, p 2.

57 Public hearing transcript, p 1.

58 Public hearing transcript, p 25.

59 Public hearing transcript, pp 20, 25, 29.

60 Public hearing transcript, p 29.

61 Public hearing transcript, p 9.

62 Public hearing transcript, p 60.

Additionally, in its submission, the Chamber of Commerce and Industry Queensland (CCIQ) outlined its support for the extension of powers to extend a public health emergency.[63] It also supported the increased powers for emergency officers and the Chief Health Officer to limit, or respond to, the spread of COVID-19 in Queensland. However, it suggested amendments in relation to consultation.[64]

The Shop Distributive and Allied Employees Association (SDA) supported the Bill,[65] as did the QNMU stating:

> … the QNMU commends the government and its officers on Queensland's pandemic response to date. The QNMU broadly supports the legislation, recognising that these are unusual times and there is a need to balance the public good with the freedoms that we would ordinarily enjoy.[66]

The Queensland Police Service explained the need for the Bill from a policing perspective:

> If we did not have those sorts of powers, we would not have had the authorities we need to do what we have done at the borders to keep people from coming out of those hotspots or into quarantine … We are seeing daily the positive cases that are emerging in our hotel quarantine. If we did not have that regime, those people would be walking around our community infecting others and we would be in a very different place. Without that, we could not operationalise what we need to do to be able to control the spread of the virus in Queensland.[67]

A number of individual submitters expressed support for the Bill and congratulated the CHO for protecting Queenslanders from COVID-19.[68] Michael Kiss argued:

> Definitely extend the powers. Dr Young has been amazing. In Jeanette, we trust!
>
> We are very confident in the CHO's integrity and capability.[69]

Carole Baxter submitted that her family was supportive of Dr Jeannette Young and the Premier's approach in protecting the health and safety of Queensland citizens. Ms Baxter also argued that the protection of elderly residents in small regional communities was critical:

> Woodgate is a village of around 1000 people though more than double that during school holidays. The majority of people residing in Woodgate are elderly, i.e., over 65, and many suffer health issues, keeping us safe is vital.[70]

Irene Henley stated:

> Our Chief Medical Officer and her team, our emergency officers, their teams and services have all met the challenges this past year and we now need to continue this leadership into the future. Our Chief Medical Officer knows the complexity of health care from many perspectives and this continuity is vital for our health and economic recovery.[71]

The CHO made the following statement in relation to her powers under the Public Health Act:

> The powers provided to me and all emergency officers under the Public Health Act, along with other measures—including those provided to support the mental health sector—are essential to ensure Queensland can continue to provide a world-leading health response to limit the spread of COVID-19. I am confident that the current framework enables the rapid response Queensland needs to continue to

63 Submission 124, p1.

64 Submission 124, p1.

65 Public hearing transcript, p 13.

66 Public hearing transcript, p 14.

67 Public hearing transcript, p 48.

68 See submissions 14, 26, 27, 30, 40, 52, 90.

69 Submission 15, p 1.

70 Submission 20. p 1.

71 Submission 114, p 2.

> succeed in limiting and containing the spread of the virus. These powers have been tested at multiple points in this pandemic where swift actions were required to manage and contain the spread of COVID-19 detected within our community, proving them essential to enabling us to stop the spread of infection before it gets out of control.[72]

Committee comment

The committee notes the strong support for the Bill and that key stakeholders and members of the Queensland community support the Queensland government's health response to COVID-19.

The committee congratulates Queensland Health and the CHO for their successful and professional approach to keeping Queenslanders safe during the COVID-19 pandemic and acknowledges the work of all health professionals to support this effort.

3.2 Stakeholder concerns about the Bill

While the vast majority of stakeholders at the public hearing supported the Bill, in contrast, a number of submitters did not support the Bill. Opposition to the Bill and reservations about the Bill were in the following key areas:

- The need for public health emergency powers
- Impacts to existing rights in a democratic society
- The extent of public health emergency powers
- The delegation of public health emergency powers
- The bases on which decisions are made
- Stakeholder consultation
- Transparency of public policy decisions
- Communications and the publication of public health directions
- Hotel quarantine
- Wider impacts of the public health response.

3.2.1 The need for public health emergency powers

Some submitters argued that there is no requirement for the amendments in the Bill to extend a declared public health emergency, or extend the powers of emergency officers and the Chief Health Officer, as in their view the threat of the COVID-19 pandemic was over-stated or there was no longer an emergency.[73]

For example, Lyle Schuntner compared the COVID-19 emergency to previous emergency situations in Queensland.

> Queensland is nowhere near the flood threats of 2011 and 1974, some bushfire threats on several past occasions, the polio epidemic reality of around 1950, the enormous and increasing road tolls of the 1950's and 1960's or the threat of imminent invasion as in WW2. Emergency powers are relevant to issues where loss of life on a large scale occurs or is very likely to occur. The last Queensland covid death was on or about 18 April, 2020. It is ridiculous to suggest that large-scale loss of life in Queensland from covid 19 is likely to occur in 2021.[74]

Similarly, Hugh Dickson argued:

> We are not having an emergency in Queensland due to coronavirus if there has only been a total of 6 deaths and 1,177 cases in QLD since the start of last year, but Queensland Health are trying to justify

[72] Public hearing transcript, p 37.

[73] See submissions 38, 48, 58, 60, 61, 65, 117, 121.

[74] Submission 85, p 2.

> extending the declaration of a public health emergency based solely on the large worldwide case numbers and the possibility that we might experience a similar situation here.[75]

At the public hearing, most organisations supported the extension of powers; however, Queensland Council of Civil Liberties articulated the need to justify a further extension of the powers.[76]

> Our basic position is that we do not oppose the extension of the powers, although we would say that the government needs to tell us now or shortly what criteria will be used to determine whether or not they need be to be extended further, because at the current point in time we would see that there would need to be some significant change to justify a further extension of the powers.[77]

Some witnesses commented that there is a need for the government to adopt a set of criteria that should be met before the powers are extended beyond September 2021. QTIC outlined the need for a clear understanding of how future responses to public health issues will be determined.

> As a pay-off for the outstanding achievements from the health perspective, we must as soon as possible fully restore policy decision-making processes that take into account economic, social, health and environmental considerations. The community and industry, notably tourism, has been exceptionally compliant and cooperative during this process. For the future, this tested partnership must be the basis of trust to allow for a clear understanding of the decision-makers and stakeholders of how future responses to health issues will be determined.[78]

Dr Kate Galloway argued that the extension proposed under the Bill must be seen in the context of the already considerable duration of the emergency powers, beyond a state of emergency, into an ongoing normality, and therefore the Bill should provide for 'a sustainable means of governing public health, that accords with principles of good governance'.[79]

In response to concerns that there was no need to extend the emergency powers, the department stated:

> While the modelling of the potential spread of the virus, released by the Commonwealth Government, did not eventuate there is still a risk this modelling could accurately reflect the impacts on the health system if the Queensland Government's health response does not continue to successfully manage to flatten the curve of COVID-19 cases. It is important that the Queensland Government's health response does not end prematurely as there is still a risk of the virus spreading throughout Queensland, particularly as international arrivals return to Queensland from overseas where high numbers of cases continue to occur.[80]

In regard to concerns that there needs to be a justification and a clear understanding of how long future responses to health issues will be determined, Queensland Health stated:

> … it is difficult to determine with absolute certainty how long these emergency response measures will be required. An extension of the amendments to the Public Health Act and the Mental Health Act, until 30 September 2021, is considered to be the least restrictive and reasonable way to allow for the continuation of the Queensland Government's health response to respond to emerging threats of COVID-19 in Queensland.[81]

Queensland Health Director-General, Dr John Wakefield also confirmed the necessity to continue the public health response.

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75 Submission 99, p 1.

76 Public hearing transcript, pp 1, 2, 10, 13, 14, 20, 25, 29, 37, 48, 50, 54, 60.

77 Public hearing transcript, p 50.

78 Public hearing transcript, p 61.

79 Submission 47, p 4.

80 Queensland Health, correspondence, 18 December 2020, p 3.

81 Queensland Health, correspondence 21 January 2021, attachment, p 6.

> The amendments made by the bill are necessary to ensure that we do not end our response early and risk all of the potential success that we have achieved to date. These emergency powers have allowed us to act rapidly in response to the various emerging threats that we faced over the last year and that we may continue to face in the future.[82]

Committee comment

The committee does not support the view that the threat of the COVID-19 pandemic is over-stated or there is no longer a public health emergency. The committee notes during the first year of the global COVID-19 pandemic over two million people worldwide have lost their lives and that over 102 million positive cases have been recorded. COVID-19 is one of the most widespread pandemics in over a century.

The committee considers the very low numbers of COVID-19 cases in Queensland is as a direct result of the successful health response of the Queensland Government and the support of all Queenslanders.

3.2.2 Impacts to existing rights in a democratic society

A number of submitters were critical of the Bill arguing that it reduced democratic governance principles, eroded individual freedoms and natural rights in a civil society.[83] Dr Matthew Dean argued that the distinguishing feature of western democracies has been that the reach of admissible actions available to these governments has been limited by the 'natural rights' of each citizen, such as freedom of movement, freedom of speech, and the rights to buy use and sell property:

> These rights inherent in our human nature, are described by various names: some say Natural rights, some say God-given rights, and some say inalienable rights. In any case, the point is that they precede politics, and are beyond the scope of government interference. Free people set up governments for the sole purpose of protecting the Natural rights of each of the citizens.[84]

Gareth Bosley argued the Bill reduced the freedoms and responsibilities of individuals and the community, contrary to the Westminster conventions:

> Such powers are authoritarian and even totalitarian in their nature, application and outcome, stripping the community and individuals of their freedom and ability to make considered decisions, adversely impacting upon resilience and personal capacity/ autonomy and instead requiring that they abrogate personal responsibility for their safety and welfare to an unelected official.[85]

The Rev Alexander Borodin argued that the Bill contravened the Universal Charter of Human Rights, as well as multiple sections of the *Human Rights Act 2019* (HRA):

> The imposition of a health emergency that limits freedoms such as freedom of religion, freedom of travel, the right to participate in one's community's cultural life, to work, to peacefully take part in meetings, and even to express one's opinion - is objectively immoral and unethical. It contradicts multiple articles of the Universal Charter of Human Rights, as well as multiple sections of the Human Rights Act 2019 (Qld).[86]

Dr Kate Galloway commented that 'borders have been closed, people have faced criminal prosecution for leaving their homes without 'valid' reason, and businesses have been shut down—all by order of the CHO and without Parliamentary debate.'[87] She asserted:

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82 Public hearing transcript, pp 35-36.

83 See submissions 9, 22, 64, 83, 84, 95, 98, 106, 113.

84 Submission 97, p 1.

85 Submission 64, p 1.

86 Submission 105, p 4.

87 Submission 47, p 2.

> These measures constitute radical incursions into existing rights and assumptions about the way that Queenslanders live.[88]

In contrast, at the public hearing the Queensland Human Rights Commissioner explained that human rights limitations should be balanced:

> When you are looking at a limitation on a human right, you need to look at the purpose of the limitation and whether there are less restrictive options available to the decision-maker that would have less impact on those affected and those rights that are impacted. In this context, the right to life creates positive obligation on the government to protect lives. As I said, the Queensland government has taken that very seriously. In fact, they have gone, in my view, too far in saying that it automatically overrides all other rights. That is not the case. You still have to have an assessment of the impact on individual rights with each decision that is being made.[89]

He concluded:

> … looking at the risks of a pandemic to Queensland as a whole, I think the measures that have been taken to date insofar as the directions of the CHO go have been proportionate and reasonable.[90]

Further discussion on balancing any limitation to human rights and the Bill's compliance with the HRA are discussed in Chapter 5 of this report.

In response to concerns over the reduction to existing rights in a democratic society, the Bill limits the application of powers to only the period of the declared public health emergency and the Public Health Act requires the Minister to end the public health emergency when there is no longer a risk to human health. Dr Wakefield stated:

> All the measures that the bill will allow to continue depend on the minister's declaration of a public health emergency under the Public Health Act as that initial step. The act includes an important safeguard. It requires the minister to declare the public health emergency has ended if satisfied that there is no longer a risk to public health. If the minister declared the end of the public health emergency prior to 30 September 2021, the temporary emergency powers could no longer be exercised from the time of that minister's declaration.[91]

Committee comment

The committee notes concerns in relation to limitations on human rights and that human rights should be balanced. The Queensland Government's health response to COVID-19 has prioritised the lives of Queenslanders and therefore any impacts on existing rights is, in the committee's opinion, justified.

The committee notes that the impact on these existing rights is limited to a specific period.

3.2.3 The extent of public health emergency powers

Some submitters opposed the Bill as they felt there was an overreach of power in regard to the mechanisms used by the CHO to manage COVID-19 cases in Queensland.[92] In particular, submitters were extremely critical of the recent public health direction which resulted in a lockdown of Greater Brisbane in mid-January 2021.[93] Karen Dawson stated:

> To shutdown greater Brisbane over a single case was a stunning overreach of the Public Health Act, 2005. Measures must be commensurate with risk. Mandating face masks during a humid Brisbane Summer is

88 Submission 47, p 2.

89 Public hearing transcript, pp 6-7.

90 Public hearing transcript, p 7.

91 Public hearing transcript, p 35.

92 See submissions 18, 94.

93 See submissions 12, 18, 19, 22, 33, 34, 46, 50, 58, 59, 61, 62, 68, 69, 73, 74, 77, 79, 88, 94, 96, 97, 99, 100, 102, 112, 116, 117, 118.

> cruel. It was farcical to mandate them whilst driving your own car. The mental anguish resulting from waking up to the news of a snap lockdown is immeasurable.[94]

Similarly, Leonie Bosscher stated:

> I wish to submit my objection to the above extension of Bill.
>
> With only 6 deaths in Qld, I cannot see the need to extend emergency powers, with attendant lockdowns, destroying of the economy and taking away of people's freedoms to live their lives.[95]

Terry Roddick submitted that he believed that the impact of emergency powers to enforce area lockdowns was a disproportionate reaction to the health risks in the community.[96] A number of submitters argued that current evidence does not support the use of widespread, blanket lockdowns for the general population. Rather, such lockdowns are likely to result in more harm than good.[97]

A number of witnesses recommended that the public health emergency powers be used sparingly and in the least restrictive manner possible. The Queensland Mental Health Commissioner advised:

> These legislative changes have undoubtedly helped to keep Queenslanders safe and physically healthy. However, the restrictions imposed and the pandemic itself have had significant effects on the mental health and wellbeing of Queenslanders. It is important that we consider the implications of any possible unintended consequences and also consider potential mitigation strategies.[98]

The QHA also advocated the least restrictive use of these powers and expressed the view that 'the hotel and accommodation industry cannot afford to be restricted one day longer than is absolutely necessary and with confidence that these restrictions will be removed as quickly as they were imposed'.[99] Further commenting:

> Border restrictions unfairly impact tourism communities, and blanket restrictions do not take into account that Queensland has a population much more dispersed than any other state. QHA would seek to have the effect of these restrictions minimised. Restrictions must only be for the use of COVID as stipulated in the bill and not used to change other behaviours and thoroughly legal activities such as the consumption of alcohol, smoking or gambling.
>
> …
>
> The use of powers to restrict movement and operate businesses must be used sparingly. As vaccines become more available and the threat of outbreaks is hopefully reduced, we would expect a proportionate reduction of those restrictions.[100]

The CHO detailed her careful consideration when exercising her powers to limit the spread of COVID-19 in Queensland:

> I recognise that the powers of the Chief Health Officer which would be extended by the bill are extraordinary in nature and must be exercised judiciously. I would like to assure both the committee and the Queensland public that I do not exercise these powers lightly. I am deeply committed to ensuring that any public health directions made are appropriate and are the least restrictive way to achieve the purpose of limiting the spread of COVID-19 in Queensland. These measures might—possibly do—infringe

94 Submission 118, p 1.

95 Submission 33, p 1.

96 Submission 12, p 1.

97 See submissions 77, 88.

98 Public hearing transcript, p 3.

99 Public hearing transcript, p 10.

100 Public hearing transcript, p 9.

> people's liberties, but only to the extent necessary to ensure we do not let this virus spread into the community and place lives at risk.[101]

Committee comment

The committee acknowledges the impacts of public health directions on Queensland communities. However, given the potential catastrophic consequences of uncontrolled and widespread transmission of COVID-19, the extent of the public health emergency powers are necessary. The committee notes the assurance provided by Dr Young that these powers are exercised only after great consideration and in the least restrictive way.

3.2.4 The delegation of public health emergency powers

A number of submissions expressed opposition to the Bill, largely in relation to the delegation of public health emergency powers to the CHO.[102] Submissions were also critical of the current COVID-19 decision making process,[103] and that the Bill 'provides widespread and significant powers to an unelected official or bureaucrat whom is not ultimately unaccountable to the population of Queensland'.[104] For example, Brice Kaddatz stated:

> The implications of these decisions are far reaching and should not be left in the hands of any one individual.[105]

Emeritus Professor Robert Stable argued that:

> … unelected officials in a democratic system should not have unfettered powers. There are grave risks associated with this approach.[106]

The NPAQ stated:

> … there should be limits to delegation in order to balance other important competing interests, such as economic interests and the rights, liberties and privileges the community would enjoy in normal circumstances.[107]

A number of submitters argued that the powers given to the CHO should be given only to an elected Member of Parliament.[108] Brent Panting submitted:

> These type of powers should only be given to an elected Minister who then accountable to the Parliament and the people of Queensland especially when freedom of movement and other human rights are being restricted or taken away such as locking up people against their will in quarantine.[109]

Christine Rolfe argued the need for parliamentary oversight of decisions in a democracy.[110]

Some submitters proposed that the CHO act as an advisor and that ultimately decisions should be made only by elected Members of Parliament, as this would provide greater accountability to Queenslanders.[111]

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101 Public hearing transcript, p 37.

102 See submissions 7, 23, 31, 32, 33, 34, 39, 41, 42, 45, 108.

103 See submissions 10, 11, 24, 44, 57, 63, 67, 87, 89, 91, 102, 105, 107.

104 Cameron Mitchell, submission 28, p 1. Also see submissions 48, 51.

105 Submission 44, p 1.

106 Submission 37, p 1.

107 Submission 103, p 2.

108 See submissions 11, 16, 25, 64.

109 Submission 11, p 1.

110 Submission 111, p1.

111 See submissions 17, 87, 78.

In his submission, Brice Kaddatz suggested that:

> The CHO ought to be required to report to the states elected representative(s) with a recommendation(s), and a decision to made by those elected representative(s) This should preferably be a joint team of the Premier, Deputy Premier and the State Health Minister providing assurance that appropriate consideration is given to any decision.[112]

Adept Economics added to this argument, stating:

> I recognise that the Premier or the Health Minister cannot be expected to make every decision relevant to public health, so the relevant provision should be drafted in a way that allows the delegation of powers to officials to direct certain individuals (infected with COVID-19 or suspected of being infected) to get tested, isolate, or go into quarantine. But any decisions pertaining to whole populations in a geographical area should only be made by Ministers …[113]

It was suggested that the delegation of public health emergency powers does not allow for the usual parliamentary scrutiny. Senator Malcolm Roberts stated:

> … while these health directions are binding and enforceable, they are not subject to the normal procedural requirements of subordinate legislation, such as tabling and disallowance under ss 49 and 50 of the Statutory Instruments Act, viz. although they are still a type of 'statutory instrument' under s 7 of that Act, and they have the force of law, the concern is that they are exempt from the usual parliamentary scrutiny.[114]

Dr Galloway argued that any delegated legislation must be open to scrutiny by the parliament:

> The Bill should articulate a sustainable means of holding these law-making powers to account, recognising the desirability of checks and balances, and the paramountcy of Parliament beyond a short-term emergency.[115]

In terms of public health directions made by public officials, the CHO explained that the Queensland system was similar to other states and territories with New South Wales being the exception. Dr Young stated:

> With some exceptions, the chief health officers in other states and territories have similar powers to make directions. New South Wales requires their Minister for Health to make them. A few of the other states require their police commissioner or a senior police officer to make them. This allows for the chief health officers to discuss matters at AHPPC, the Australian Health Protection Principal Committee, and deliberate about the effectiveness of a public health measure and then to immediately implement them in their jurisdiction.[116]

In response to concerns regarding the delegation of power to the CHO, Queensland Health argued the critical importance of acting swiftly in response to any COVID-19 health risk, which would not be achievable under ordinary parliamentary procedures:

> The Chief Health Officer's emergency powers are considered appropriate and necessary to ensure a timely response to imminent and rapidly changing public health risks and to avoid any loss of opportunity to protect the public while Parliament acts. To achieve similar outcomes to the Queensland Government's response over the past 12 months, members of Parliament would have been urgently recalled to Parliament on multiple occasions without prior notice to consider the restrictions, in addition to the ordinary sitting weeks to consider other Bills and subordinate legislation. For example, if the emergency powers had not been available and it were necessary to follow ordinary Parliamentary procedures, the introduction of lockdown measures to contain the B117 strain would have required an urgent sitting of

[112] Submission 44, p 1.

[113] Submission 102, p 4.

[114] Submission 87, p 7.

[115] Submission 47, p 2.

[116] Public hearing transcript, p 37.

> Parliament to consider the implementation of the restrictions on Friday, 8 January, and then another sitting on the following Monday, 11 January, to consider their revocation or a further easing of restrictions.[117]

Dr Wakefield reiterated the need for a timely response to changing public health risks:

> We know because of our experience and the evidence that there is no safe level of this virus circulating in the community. It rapidly gets out of control, as we saw in Victoria, and if you have community cases today you may well have 10 times that many already, it is just that you do not know about them. 'Go hard, go early' is really the mantra, I think, and that is what has managed to keep Queenslanders safe.[118]

Dr Jeannette Young concurred stating:

> Delays in response to a potential outbreak can mean that it is too late. We must always act on the precautionary principle given the potential catastrophic consequences of uncontrolled and widespread transmission of COVID-19.[119]

Queensland Health also outlined the safeguards built into the legislation to ensure any delegated powers are used only while COVID-19 continues to be a public health risk. The department advised:

> Section 362E of the Public Health Act also requires the Chief Health Officer to revoke any public health directions as soon as reasonably practicable, if the Chief Health Officer, determines that they are no longer required to limit, or respond to, the spread of COVID-19 within the community. Throughout 2020, the Chief Health Officer has revoked several public health directions and notices as they have no longer been necessary to limit the spread of the virus.[120]

In addition, Dr Wakefield noted any delegated powers are dependent on the Minister's declaration of a public health emergency and that the Minister is required to declare that the public health emergency has ended if there is no longer a risk to public health.[121]

Committee comment

The committee notes that a number of submitters expressed concerns in relation to the delegation of powers to an unelected official and that decisions were not subject to normal parliamentary scrutiny. The committee supports the need to provide the CHO and emergency officers with increased powers given the need to respond rapidly to the various emerging COVID-19 threats.

The committee is satisfied that any delegated powers is established by Ministerial declaration. The mechanisms extended by this Bill will enable the continued swift and decisive response to protect the lives of Queenslanders.

3.2.5 The bases on which decisions are made

Given concerns in regard to the delegation of decision-making and public health emergency powers, some submitters argued that consideration should be given to establishing a wider base from which health advice could be formulated. Emeritus Professor Robert Stable proposed that to ensure that the Government receives unbiased, informed and comprehensive advice in any declared public health emergency, the CHO be required to formally establish, and chair, a Queensland Health Protection Committee with the following core membership:

- Director General of Health (as the Chief Executive (Accountable Officer) of Queensland Health with responsibility for the performance of Queensland health in responding to the health needs of Queenslanders including in this situation)

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117 Queensland Health, correspondence, 21 January 2021, attachment, p 5.

118 Public hearing transcript, p 43.

119 Public hearing transcript, p 37.

120 Queensland Health, correspondence, 21 January 2021, attachment, p 6.

121 Public hearing transcript, p 35.

- Specialist Public Health Physician x 1 (to ensure expert advice)
- Medical Specialist appropriate to situation x 1 (to ensure expert advice). For examples, an Infectious Diseases Physician for a pandemic, a Toxicologist for threat of mass poisoning.
- Community Psychiatrist x 1 (to ensure that the mental health of Queenslanders is taken into account when giving advice)
- Medically qualified Representative of Hospital and Health Service Chief Executives x 1 (to ensure strong and direct engagement with Hospital and Health Services for a coordinated and timely response)
- Health Economist x 1 (to ensure all actions are comprehensively scrutinised for their overall effectiveness and benefit to Queenslanders).[122]

Dr James McKeon, a Consultant Thoracic Physician, argued against the Chief Executive's decision to delegate their powers to the CHO, instead proposing:

> … that the Chief Executive consider a Committee which includes, but is not limited to, the following experts: a doctor with experience in the management of patients with acute viral respiratory illnesses; a doctor with experience in Public Health; an economist with expertise in Health Management; an epidemiologist with expertise in National Death Rates and causes of death; a social worker, preferably with expertise in Psychology; and a consultant to represent the interests of Private Enterprise (i.e. the business sector).[123]

A number of submitters argued that the COVID-19 pandemic was not only a crisis of health but also an economic and social crisis, and therefore needed a broader approach to decision-making based upon the advice from an independent multi-disciplinary committee.[124] Rupert and Sarah Haywood suggested:

> As the CHO decisions are focused on a very narrow area of concern but have far wider impact, the CHO should be required to consult with a wider expert group to check the broader impact of any decisions and this information should be provided to Government before any final decisions are taken.[125]

Elizabeth Worthington proposed that the CHO role should be as:

> … a member of a team of expert advisers to the Premier so that [the Premier] can make such rulings which take into account all aspects of the situation.[126]

Submitters argued that the CHO's expertise was in public health and that the CHO role should be restricted to giving public health advice to the Government and not in other sectors such as the economy.[127] It was also highlighted that 'the governance model supporting the exercise of these public powers should include a process to provide a capability of understanding regional, rural and remote perspectives'.[128]

Brent Panting proposed that given the impact of COVID-19, consideration should be given to appointing a special Minister of State to ensure the holistic management of the response:

> Appointing a special Minister of State for Queensland's COVID 19 and temporarily extending the size of the cabinet budget review committee to include the special Minister of State would be a much better arrangement. It would enable the Government to develop and be accountable for its COVID 19 response

[122] Submission 37, p 2.

[123] Submission 54, p 1.

[124] See submissions 8, 48, 70, 86, 89, 111, 115.

[125] Submission 56, p 1.

[126] Submission 10, p 1.

[127] See submissions 11, 25, 35, 43, 55, 67, 78.

[128] Submission 115, p 2.

> especially all on economic matters and any limitations it may decide to impose on limiting any individuals human rights. This would include any include any medical [advice] from the CHO. [129]

With respect to the health basis for decision-making, the CHO relied on advice from the Australian Health Protection Principal Committee (AHPPC), which is advised by experts in multiple fields.[130]

> The most important group is the AHPPC, the Australian Health Protection Principal Committee. As its core it has every chief health officer from every state, territory and the Commonwealth. Then there are a range of other people. In total there are about 60 people who sit on that committee. Most of the other people are there to give expert advice. At its core are the chief health officers, but then there are all these other people. We have multiple committees that sit under the AHPPC normally. They have a role, and it is an even more important role.[131]

Dr Young stated that she took advice from multiple sub-committees including:

- Communicable Diseases Network Australia
- Infection Control Expert Group
- National Emergency Medical Service
- Public Health Laboratory Network.[132]

In terms of the frequency of AHPPC meetings Dr Young explained:

> We have gone back now to only meeting two or three times a week, but all through December-January, until recently, we were meeting for two hours every day because we had the evolving situation that was happening in New South Wales and Victoria. We usually meet two to three times a week, and whenever there is a particular incident that is of concern we will meet every day, seven days a week.[133]

In addition, Dr Young stated:

> There is also a lot of information in the literature. We will regularly go through that and we will get briefings on that, plus we look at it ourselves. A number of committees have been stood up that are groups of the National Health and Medical Research Council. There have been various pieces of work done by them and there has been other commissioned work done by other groups. We get a lot of information from the Doherty centre in Melbourne. They have been doing all the modelling for us, and we get the information from them. Most weeks we will get an update on the modelling. There is a lot of that sort of information.
>
> Here in Queensland there are many groups that have been in place since the start of the pandemic back in January. Within Queensland Health there are all of the different senior executives from the hospital and health services and the department, plus there are a number of other groups that have been convened to look at different aspects of the response …[134]

Committee comment

The committee believes Queensland's successful health response to COVID-19 can be attributed to the advice of health professionals and experts based upon science.

The committee considers that given the extent of the impact of the COVID-19 pandemic, decisions to address the public health emergency must be based upon a wide range of expert knowledge. The committee notes that Queensland Health and the CHO do engage with national and international authorities to make informed decisions to ensure the safety of Queensland residents.

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129 Submission 11, p 1.

130 Public hearing transcript, p 38.

131 Public hearing transcript, p 38.

132 Public hearing transcript, p 38.

133 Public hearing transcript, p 38.

134 Public hearing transcript, p 38.

The committee has confidence in Dr Young and in the manner in which she has discharged her duties as the CHO in Queensland.

3.2.6 Stakeholder consultation

Some stakeholders called for improved consultation in relation to the development of public health directions.[135] The CCIQ argued for a requirement for the CHO to consult as early as practically possible.[136] However, it acknowledged the need for decisions to be made quickly and explained:

> We have examples over the past year where directions have been issued and then subsequently amendments have been made because the practical implications of those directions have caused issues for businesses at a ground level, at a business level.[137]

Adept Economics expressed a similar view:

> If you are imposing such a measure which is inconveniencing over two million people and potentially causing significant cost to businesses, it would be good to take the time and expand your consultative group to make sure that that decision is in the best interests of the community.[138]

Gold Coast Central Chamber of Commerce (GCCC) stated:

> SMEs, as a major stakeholder within our community, greatly contribute to our state's prosperity and need to be included in the government's decision-making processes. I am advocating for small businesses being embedded within this government's processes so we can ensure that small- and medium-size business can succeed and weather the economic storm.[139]

The QTIC offered the following analogy in relation to consultation prior to decisions being made:

> … I am not sure if it is about being consulted always before a decision is made, certainly not at the height of a crisis. If I indulge here for a moment: if my house is on fire, I do not want the chief fire officer to ring me to consult with me what should be done; I want him to go and do it. But if there is a fire risk that may affect repeatedly some houses in my neighbourhood, then I want to understand how the chief fire officer will structure a response. With that, I can then learn what can I do and how I can participate in this process. The rub is there, I think, not so much in even more meetings from our perspective. In our industry, we have had more meetings than I or any of us could cope with, and ministers, the CHO and other health officers have been involved constantly. However, it is the moving from an absolute crisis management that has to be done in some fairly categorical way to a more involved, inside-the-tent understanding of what is going to happen next. 'If this happens, then we will do this, and if that happens, we will do that'—that kind of understanding. That is where the rub is to rebuild certainty.[140]

GCCC also stated that the Minister for Employment and Small Business and Minister for Training and Skills Development, the Shadow Minister for Employment, Small Business and Training, Shadow Minister for Open Data and Dr Young had attended GCCC meetings:

> Every Friday morning without fail from the start of the pandemic we have met as a chamber movement to share problems, opportunities and solutions. We have welcomed the small business minister, the shadow small business minister and Dr Young via our weekly Zoom meetings. [141]

CCIQ acknowledged the strong level of consultation with agencies and Ministers throughout the COVID-19 pandemic to explain any health decisions made.[142] The QHA also acknowledged the

135 Public hearing transcript, pp 16, 54.

136 Public hearing transcript, p 57.

137 Public hearing transcript, p 54.

138 Public hearing transcript, p 64.

139 Public hearing transcript, pp 54-55.

140 Public hearing transcript, p 61.

141 Public hearing transcript, p 55.

142 Public hearing transcript, p 56.

extensive consultation between the QHA and the CHO's office and noted: 'Dr Young specifically and the health minister have been very good in working with us.'[143]

In addition, Queensland Health has established working groups to manage the response to COVID-19 in the community. Council of the Ageing Queensland (COTA Queensland) informed the committee:

> COTA is part of a committee that … an assistant director-general of Queensland Health—stood up about the time that the incident happened in north Rockhampton. … to give some advice around how that could be managed. Coming out of that and also other consultations, a working group was stood up. It now has about 30 members on it and it pretty much meets weekly. I think that has brought together unions, consumers, representatives of aged-care providers and people from the public health area. That has been a very valuable committee.[144]

Queensland Health has previously acknowledged that while government departments, business sectors and members of the public have been able to raise concerns relating to the public health directions, the decision to implement restrictions has been made with a view to the overriding need to manage the health risks of COVID-19 to Queenslanders.[145]

Committee comment

The committee notes the request from some stakeholders to be consulted on public health directions prior to their implementation or as early as practicable, given their significant impacts on the community. However, the request for greater consultation between Queensland Health and the stakeholder groups requires a balance between the need to consult widely and the requirement to act swiftly.

The committee acknowledges that Queensland Health officials, the CHO and the Minister for Employment and Small Business and Minister for Training and Skills Development are actively engaged in consultation and information sharing with the Queensland community.

3.2.7 Transparency of public policy decisions

A number of stakeholders commented on the availability of public evidence to support health directions and the public health response to COVID-19. QTIC commented:

> One of the greatest concerns for our industry is the climate of uncertainty that COVID-19 has created for consumers and businesses. The recovery will be severely hampered in these conditions. We appreciate that even health experts cannot predict how the spread of the virus will evolve, but we should raise the level of understanding of the factors that will prompt certain types of responses. … The state's collective response to the ongoing crisis and any future crisis will only be helped if we build up the community's and the industry's understanding and visibility of the decision-making process and the information supporting them.[146]

A number of submitters also argued that consistent with administrative law decision-making principles, there was a need for greater transparency[147] and the publication of evidence upon which the CHO develops health directions.[148] Emeritus Professor Robert Stable proposed that in relation to declared public health emergencies, all advice from the CHO to the Minister or Premier should be made public within four weeks of the advice being received by the Premier.[149]

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143 Public hearing transcript, p 11.

144 Public hearing transcript, p 30.

145 Correspondence to Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, Queensland Health, 17 June 2020, p 39.

146 Public hearing transcript, p 61.

147 See submissions 36, 105, 51.

148 See submissions 9, 13, 19, 39, 51, 56, 59, 62, 68, 73, 79, 82, 100, 104, 115.

149 Submission 37, p 2.

Submitters noted that decision-makers are human and therefore:

> It is legitimate to question what value judgments the CHO is making and whether she is being consistent in her decision making.[150]

Patricia Hatherly submitted:

> … the chief medical officer needs to provide the people with references to the research which underpins the advice she gives to government so that the citizens can be assured that that the public health directives are made on a sound scientific basis.[151]

Mike Neighbour proposed that publication of evidence would support greater community trust in high consequence decisions:

> Transparency of the evidence and reasons beyond 'based on health advice' and 'keeping Queenslanders safe' would assist with high consequence decisions (such as border control) particularly when the health advice of the Commonwealth Chief Health Officer, other State office holders, health specialist professionals and academics, or even the national body, the AHPPC, differ or hold a contrary view.[152]

The Queensland Human Rights Commissioner suggested:

> … a further safeguard to ameliorate the impact of CHO directions would be to publish a statement of the purpose, need, data and other factors that were considered in making each public health direction. Such clarity of purpose would assist in implementation and interpretation of the direction as well as improving the community's understanding and acceptance of the direction in the context of serious limitations on the rights of individuals.[153]

In response to these concerns the CHO indicated that the majority of public health directions, were a direct result of advice of the Australian Health Protection Principal Committee (AHPPC) and then subsequent decisions of National Cabinet.[154] Dr Young also advised that the statements published by the AHPPC were a readily available source of information:[155]

> A lot of information is made publicly available on the Commonwealth website, particularly in regard to AHPPC meetings and the subcommittees—a lot of that is already there in relation to statements that are made. The minutes are not—they will eventually be made public, I would expect—but the decisions and the statements are all there. Similarly, there is a lot of information on the Queensland Health website. There are a lot of Q&As which answer a lot of the questions and put forward a lot of the reasoning behind a lot of the decisions; that information is there as well.[156]

The GCCC suggested use of decision-making frameworks to enable the businesses to plan ahead. The GCCC told the committee that the last lockdown was difficult for some businesses:

> … genuine consultation processes requiring a standard operating procedure to be adopted outlining clearly what we can expect from a three-, five- or 10-day lockdown and the potential economic cost and economic losses. The last lockdown gave no capacity for businesses to plan day 4. For example, a local pie shop did not know how much stock to have delivered and a local bar did not know how many staff to roster. Whilst this may sound strange to some, these are genuine considerations that need to be taken into consideration as they have profound effects on that business's financial viability. [157]

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150 Submission 102, p 2.

151 Submission 81, p 1.

152 Submission 115, p 1.

153 Public hearing transcript, p 2.

154 Public hearing transcript, p 38.

155 Public hearing transcript, p 38.

156 Public hearing transcript, p 44.

157 Public hearing transcript, p 55.

In response to concerns, Queensland Health noted:

> … I have had quite a bit of engagement with all of the different groups who are very, very important in terms of how we rolled out a lot of the response, including the Hotels Association, retail, schools—all of those. I could go through them, but there have been many, many groups I have engaged with. They have been extremely helpful working through what is the best way to put restrictions on, to remove them, time frames and what sort of restrictions. There is a lot of that work that is done as well.[158]

The former Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee was advised that the Queensland Government has taken a whole of government approach to its response to COVID-19.[159]

Committee comment

The committee notes the advice from Dr Young that information is made publicly available on the Commonwealth and Queensland Health websites, including a significant Q&A section, which answer questions and provides the reasoning behind public health decisions.

The committee acknowledges that Queensland Health is working in partnership with other agencies to provide information for business and industry to meet the challenges of COVID-19.

3.2.8 Communications and the publication of public health directions

Some witnesses and submitters called for improved communications around public health directions. The QNMU acknowledged the benefits of greater public communication:

> Recognising that often decisions have to be made and implemented quickly is always an issue in these unusual times, but certainly as a general rule the more communication and explanation about particular changes that you can provide, the better … It is always a balancing act, I suspect. As a general rule I am a great believer that the more communication and explanation you can provide the better, but that is always balanced against a need to act.[160]

QHA stated:

> Access to that information may improve Queenslanders' general knowledge of what is required. The reason that would assist us immeasurably is that it takes the pressure off those hospitality workers who may not necessarily be as confident as somebody like me when being contested about a restriction.[161]

Health Consumers Queensland made the following comments about legislating with respect to communication processes:

> Legislation appears to be quite a heavy requirement around something like communication, which really should just be done well. In the main the daily stand-ups have been great for providing that background information where people know that they can listen in and hear up to date what is going on and the why. I did hear earlier suggestions and questions around having some written information to that background. That would be useful, particularly out to specific populations that may benefit in having it targeted for them, so anything really. We would always say the more information the better. Especially if people understand why decisions are being made, they will do the right thing.[162]

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158 Public hearing transcript, pp 38-39.

159 Correspondence to Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, Department of the Premier and Cabinet, 22 May 2020, p 1.

160 Public hearing transcript, p 16.

161 Public hearing transcript, p 12.

162 Public hearing transcript, p 27.

The CHO explained 'all of the consumer engagement groups have been very, very useful in terms of working out the best way to manage messaging and how to meet with different groups'.[163] Dr Young noted:

> I have made 173 directions and three notices to date. Of those, 19 are currently enforced. As soon as there is no longer a requirement, a direction is revoked. Some 164 have been revoked. In terms of what information is made available, ultimately that is a decision for government. I support however people would like that explanation made. As you said, after each direction I would do a press conference ready to answer any questions.[164]

Dr Kate Galloway highlighted concerns associated with the publication of health directions on the Queensland Health website.[165] Dr Galloway stated that the CHO's directions led to the absence of transparency in law-making due to issues around publication, version control and publicity. She explained:

> Generally, legislation, including subordinate legislation, is published on the official Queensland legislation website. Other notices and declarations are generally published in the Queensland Government Gazette. While neither of these sources may be appealing reading for the general public, they are authoritative sources of law that are properly promulgated.[166]

While she acknowledged that publishing directions on the Queensland Health website provides easy accessibility to the public, she argued:

> They are simply part of a website. The implication of this is that when the departmental website changes, unless steps are taken to preserve the information, they will be lost to the public. Because they do not appear in the Government Gazette, or on the Queensland legislation site, the directions break with the regular protocols concerning preservation of authoritative sources of law.[167]

Committee comment

The committee considers that effective communication of the public health directions will enhance community support for the public health response. The committee notes that Dr Young and Queensland Health have developed effective communication strategies and believes that these should be continually developed and improved.

3.2.9 Hotel quarantine

Some submitters raised concerns in relation to the enforcement and cost of hotel quarantine.[168] Kenneth Thorpe described his difficult and traumatic experience in hotel quarantine:

> I suffered greatly in quarantine. I was placed in a tiny room, no balcony and in the traumatised condition I was in, I really suffered. Police there were threatening because I kept complaining I needed out. Fresh air breaks were few.... And to be honest, police doctored the books on how many breaks people were getting and flat out lied about a few things. Clearly I wasn't coping but no one in quarantine addressed my condition. Friends were worried about my mental health, my G.P and more. But police and Health staff basically left me to rot. I was desperate I had to get out, I contemplated suicide and had to call an ambulance twice.[169]

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163 Public hearing transcript, p 38.

164 Public hearing transcript, p 44.

165 Submission 47.

166 Submission 47, p 2.

167 Submission 47, p 3.

168 See submissions 3, 49, 109, 92.

169 Submission 21, p 2.

Lisa Byrne supported the requirement for hotel quarantine in some instances, but highlighted the need to support basic human rights, such as access to fresh air.[170] Similarly, the QNMU argued that the standard of living and healthcare for individuals in hotel quarantine must be of an appropriately high standard to maintaining their dignity and human rights.[171] In particular the QNMU argued the importance of:

- Ensuring the training and qualification of healthcare staff enables a comparable standard of healthcare is afforded to those in hotel quarantine as would be available in the public health system.
- Access to fresh air, adequate and diverse nutrition, and reasonable access to goods and services outside of hotel quarantine.
- Proactively addressing the mental health and wellbeing of individuals in hotel quarantine by ensuring appropriately training of hotel staff, law enforcement officers, and healthcare staff, on identifying and responding to mental health concerns.
- Cultural safety training for healthcare workers, as distinct from current policies for cultural awareness training.[172]

The Queensland Human Rights Commissioner highlighted common themes in complaints in relation to hotel quarantine:

> Clearly access to fresh air emerged right from the beginning. We found some hotels that were being used—the voco hotel on the Gold Coast and another one close to the Brisbane Airport—where the rooms were very small. In fact, as I understand it, initially there were rooms being used that do not even have a window, let alone a window that opens ... It is very clear when you look at the treatment of prisoners. It has been a longstanding standard that prisoners have access to at least one hour every day of fresh air and exercise. There are good reasons for that. It makes sense for people who are stuck in hotel rooms, many of whom are travelling not because they want to. They might be at the start of a grieving process and their needs really are quite acute. The risk to them of being locked in a room without adequate fresh air and exercise is quite acute.[173]

He also commented on the number of complaints received by the Human Rights Commission:

> To date we have received around 54 complaints about hotel quarantine. While most complainants readily accept the need for quarantine, the lack of fresh air is having a negative impact, particularly on those with young children or those who are experiencing poor mental health. Eleven complaints about hotel quarantine have been resolved through conciliation so far, with several still in progress. This demonstrates the early success of Queensland's unique human rights complaint process, offering an avenue to individuals not available in other states while promoting transparency and increasing accountability.[174]

In terms of the number of people in hotel quarantine or have completed hotel quarantine, Deputy Commissioner Steve Gollschewski of the Queensland Police Service advised:

> We currently have 19 active quarantine hotels. As you probably are aware, Queensland Police leads hotel quarantine management. Even though it is part of our infection control regime that Health has responsibility for, our role is the security and operation of those hotels. We currently have 2,763 persons, as of this morning, in hotel quarantine in Queensland. Some 60,449 have completed quarantine in hotels, and we have also done 10,827 compliance visitations of people in home quarantine during that period.[175]

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170 Submission 43, p 1. Also see submissions 49, 53.

171 Submission 80, p 3.

172 Submission 80, p4.

173 Public hearing transcript, p 2.

174 Public hearing transcript, p 2.

175 Public hearing transcript, p 46.

The CHO highlighted the great success of Queensland's hotel quarantine system:

> I think there are lots of issues with hotel quarantine that we need to work through, but the most important one to remember is that we have now had 63,000 people through our quarantine process and we have really only had one breach that has led to community transmission. It has been managed very effectively to date, and that is due to enormous cross-government collaboration. The work we have done with police, Health and the hotel sector has been astounding. It has worked very, very effectively.[176]

A few submitters were critical that the Bill extended the authority for a person to be required to enter hotel quarantine at their own cost.[177] Mr Thorpe advised:

> I got a $2800 bill for the pleasure of that torture.
>
> …
>
> Finally the powers allow for a generalisation of the quarantine bill totals. Part of my bill was $900 for laundry I think? I only had my sheets and towels changed twice at my request. And I was the one who had to change the linen they just dump it at the door, that's disgusting charging pensioners like that who are already tormented. These powers are creating abuses. I am a clear case of that.[178]

Sarah Highley argued that the government must compensate people forced into hotel quarantine for their loss of income.[179]

While acknowledging that hotel quarantine is a crucial component of Queensland's strategy to combat the spread of COVID-19, the NPAQ raised concerns in relation to the cost of hotel quarantine. The NPAQ stated:

> … it is unfair to compel returned Queenslanders to pay for hotel quarantine given that quarantine and the restriction of liberty caused by quarantine is a decision of the State made in order to protect the community at large. Given the measures are designed to protect the community, and this decision was made by the State, the costs of that decision should be borne by the State, not by the affected individual.[180]

NPAQ recommended that sections 362 MC, 362MD, 362ME, and 362MF of the Bill be repealed and a new section 362MH inserted to mandate all costs associated with quarantine be paid for by the Queensland Government.[181]

In its response to concerns about hotel quarantine, Queensland Health explained that the 'requirement for mandatory quarantine for international arrivals and those returning from interstate COVID-19 hotspots has been highly successful in reducing the transmission of COVID-19 in Australia'.[182] In relation to hotel quarantine fees, it advised:

> Given the growing number of positive COVID-19 cases internationally, it is anticipated the requirements for international arrivals to enter hotel quarantine will need to remain in place for a further period. To ensure the ongoing sustainability of the hotel quarantine system, it is proposed to continue to charge a fee to persons required to enter hotel quarantine. This enables the State to recover costs incurred, such as, accommodation or food costs for the duration of the quarantine period.

176 Public hearing transcript, p 39.

177 Cassandra Browne, submission 110, p 1.

178 Submission 21, pp 2-3.

179 Submission 86, p 2.

180 Submission 103, p 3.

181 Submission 103, p 4.

182 Queensland Health, correspondence 21 January 2021, attachment, p 7.

> The hardship scheme will also continue to apply to allow people, particularly vulnerable cohorts, to seek a waiver from the requirement to pay a fee for hotel quarantine. It is also proposed to continue to offer payment plans or alternative measures to support people to pay the relevant fees over a period.[183]

Committee comment

The committee notes the concerns expressed by submitters in relation to hotel quarantine. However, the committee considers that if the hotel quarantine scheme were not in place, people returning from overseas with COVID-19 would have entered Queensland and unknowingly spread the virus to others. The experience of many other countries illustrates the ease with which COVID-19 can be spread and the significant strain on health systems.

Given that more than 60,000 individuals have completed hotel quarantine with minimal complaints and only one outbreak, the committee considers hotel quarantine in Queensland is highly successful. The committee commends all those associated with hotel quarantine in this State.

The committee notes that submitters raised concerns in relation to the requirement for people to pay their own costs associated with hotel quarantine. However, the committee is satisfied that the hardship scheme mitigates any potential financial disadvantage.

3.2.10 Wider impacts of the public health response

Some submitters opposed the Bill as they contended that the current emphasis on the management and elimination of COVID- 19 in Queensland has resulted in a wide range of harmful consequences.[184] Cara Templeman stated:

> Peoples freedoms are being eroded and their mental health compromised by the constant changing of rules and regulations. Businesses are being destroyed, people's relationships and health are at risk because of the snap judgements made by a person who wasn't even elected.[185]

Robert Henderson questioned whether the overall physical and mental health of Queenslanders was considered by the CHO and Queensland Health when making public health directions, such as the use of community lockdowns. He explained:

> … as a family we are dealing with the consequence of two 80+ year old parents who were active members of their community and are now drinking a very significant amount of alcohol and gained excessive weight; and at the other end of the spectrum, we have children aged 17-24 years who are restricted from meeting friends and are not experiencing new social interactions.[186]

Submissions also highlighted increases in homelessness, unemployment, suicides and mental health crises, reductions in access to healthcare, damage to business and economic loss. [187]

Claudette Freeman submitted that restrictions were destroying businesses and families:

> It has completely destroyed small businesses and my right to work has been destroyed. I have been stopped from going into work, stopped from going to see family members and stopped from even going to the shops to purchase basic food items!
>
> …

183 Queensland Health, correspondence 18 December 2020, p 5.

184 See submissions 21, 25, 34, 46, 50, 56, 60, 66, 93, 94, 105, 107, 112, 118.

185 Submission 49, p 1.

186 Submission 18, p 1.

187 See submissions 2, 12, 21, 29, 43, 72, 116. Also see public hearing transcript, pp 4-5.

> It is these extensions that are creating mental health in the people in itself because we are depressed that we have no freedom to do anything except for being controlled for a virus that has at least 99% chance of survival. My family and I cannot cope anymore.[188]

3.2.10.1 Inequity of impacts

Several submitters opposed the Bill on the grounds that the health responses to manage COVID-19 in the community had an inequitable impact on the Queensland population. For example, Jason Kowalonek stated:

> The lockdowns are a luxury of the rich, and of the public service. The man in the street does not get paid if he does not work …[189]

Shane Griffin outlined how the recent 3-day lockdown impacted him and noted that the same lockdown would not have any financial impacts upon those making these decisions:

> An example of this is the 3 day lock down this month that cost my small business over $30000 for no reason. Of course these decisions don't impact on public servants or politicians so they don't understand the hurt and damage her decisions cause. In fact they get extra days off work with full pay so they actually benefit from the lock downs.[190]

Additionally, some submitters highlighted an inconsistency in relation to the enforcement of health directions and a double standard for those employed in the entertainment industry or in sport versus private citizens.[191] Cameron Mitchell argued:

> … the CHO has been inconsistent with rules (favorable treatment for AFL players and movie stars because they bring money) whilst demonstrating a complete lack of compassion for those extremely low risk family members wanting to travel interstate to be with sick or dying family.[192]

COTA Queensland noted that there has been some frustration, particularly around visits to people in residential aged-care facilities:

> It was about making sure that people get that support and that connection to their family members when they are passing away in a residential aged-care facility. That has been the main area of concern and frustration. There is obviously frustration.[193]

Some submitters were critical of health directions which prevented the public worship of God.[194] The Rev Alexander Borodin also commented upon the seemingly different directions for religious gathering versus for attending a sporting event:

> One day, we are told that gathering in Churches in numbers above 50 is very dangerous, but soon after we are told that gathering for the State of Origin in numbers of 50,000 is completely fine.[195]

The Queensland Human Rights Commissioner raised concerns in relation to exemptions provided by the CHO:

> I think some of the decisions around whether or not exemptions should be granted—as I understand it, it has been reported that one per cent of applications for exemptions have been approved. That is a very low figure that would suggest that some of those decisions may not have been proportionate and may

188 Submission 101, p 1.

189 Submission 22, p 1.

190 Submission 35, p 1.

191 See submissions 51, 65, 69, 85, 111.

192 Submission 28, p 1,

193 Public hearing transcript, p 30.

194 Neil and Josephine van der Wel, submission 96, p 1.

195 Submission 105, p 2.

> have incompatibly impacted on human rights. So that would involve a case-by-case analysis. I am not privy to all of those decisions; I am just making that assumption.[196]

In response, Dr Young noted:

> It is a very low figure. In most situations exemptions have not been given. Or, if they have been given, they have been given to quarantine in a different venue, so not necessarily in a government hotel but somewhere else. That has steadily changed as we have gone through the pandemic. There were a lot more exemptions earlier on. As the risk increased, the exemptions tightened up.[197]

3.2.10.2 Impacts on businesses

Many stakeholders commented on the impacts of the health response to businesses.[198] QTIC stated:

> … it is hard to describe the business impact of COVID-19 without using words like 'catastrophic' and 'devastating' in our industry. Behind the eye-watering economic figures are tens of thousands of affected businesses, small and large—we have talked about small businesses, but small and large—and about 240,000 directly and indirectly employed people in our industry.[199]

GCCC told the committee about the impacts of the Greater Brisbane 3-day lockdown on the business community.

> We have heard from businesses that, although it was three days—which is short, sharp and required for the health response—it could take businesses up to six weeks to recover the lost trade in revenues, as well as the lost stock that they may have had because they either had to put in the bin or get rid of it. Whilst the lockdowns are immediate, short and sharp, the lagging impacts are starting to dig into businesses and their ability to be viable over the longer term.[200]

However, the Public Health Association of Australia provided an opposing view on the costs to the economy of lockdowns given that 'the work of economists indicates that countries with more stringent lockdowns have done better in their economies than those that did not implement policies of rapid containment.'[201]

The CHO stated:

> The measures contained in this bill have been proven to result in the position we are here in today. By extending these measures parliament can ensure we have the tools necessary to press on with our economic recovery, allow businesses to re-open and continue to operate safely, and ensure that our health system continues to provide patients with world-class treatment during these very challenging times.[202]

3.2.10.3 Impacts on mental health

At the public hearing the Queensland Mental Health Commissioner outlined the impacts of the pandemic on the mental health of Queenslanders. He stated that the demand for mental health services has increased significantly since March 2020.

> Medicare subsidised mental health service provision increased by 15 per cent. There was a 5.9 per cent increase in mental health risks in mental health related prescriptions dispensed under the Pharmaceutical Benefits Scheme compared to the corresponding period in 2019. Non-government services and call centres have experienced increased demand. The Queensland Ambulance Service and the Queensland Police Service have reported heightened levels of psychological distress in their callouts with more people

196 Public hearing transcript, p 7.

197 Public hearing transcript, p 43.

198 See submissions 2, 17, 19, 29, 34, 35, 47, 48, 59, 62, 68, 76, 87, 101, 104, 105, 112, 115, 119.

199 Public hearing transcript, p 60.

200 Public hearing transcript, pp 56-57.

201 Public hearing transcript, p 25.

202 Public hearing transcript, p 37.

> requiring mental health interventions. Between March and August, the Queensland Ambulance Service reported a 20 per cent increase in triple 0 mental health related incidents. There have been significant increases in demand for public mental health services as well. In the first six months of 2020, new referrals—so new people coming into the service—rose by about three per cent but provisional services overall increased by about seven per cent. Self-harm and suicidal ideation presentations to emergency departments increased by 11 per cent.[203]

The QNMU echoed concerns around mental health services:

> … community mental health has been a major issue during the pandemic and will likely remain so for a considerable time. Again, as we indicated in our submission, the QNMU suggests bolstering existing community mental health services as well as establishing specialised COVID-19 community mental health response teams for those who have tested positive or are in isolation as a hospital avoidance measure to reduce the risk of transmission in mental health wards and the wider community.[204]

The Queensland Mental Health Commissioner explained that young people had faced additional challenges throughout the period 'for example, home schooling, remote learning, social isolation, the loss of rites of passage such as birthday parties, schoolies and graduation ceremonies, and general uncertainty about their future'.[205] He stated:

> The pressures on this cohort have been reflected in significant increases in demand for services through organisations such as Kids Helpline and pressures on child and youth mental health services. Kids Helpline has reported a national increase of 24 per cent in demand for counselling services alone while public mental health services saw an almost 21 per cent increase in referrals of 12- to 18-year-olds in the July to September quarter.[206]

The Queensland Mental Health Commissioner also advised the other groups facing hardships as a result of the public health response to the pandemic.

> People with mental illness, including those in involuntary treatment, have faced service delivery disruptions such as moves to telehealth and restrictions to visitors and support services. These imposts can lead to increases in anxiety, depression and loneliness as well as possible noncompliance with agreed treatment. Other cohorts, including people living in residential aged care, prisons and detention centres, have faced similar challenges. The pandemic has also affected Queenslanders' use of alcohol and other drugs. There are indications of changing patterns of alcohol use and changes to the availability and use of some drugs as well as issues related to access to treatment and support services. For example, the Queensland Health funded alcohol and other drugs information service reported a 54 per cent increase in weekly calls during March to June last year.[207]

Commissioner Frkovic told the committee that the government had responded to the pandemic extremely well, and outlined the government's increased funding for mental health and homelessness.

> Queensland has been on the front foot, acknowledging the effects of the pandemic and responding to the mental health and wellbeing needs of our population. As early as April 2020, the Queensland government invested an initial $28 million of non-recurrent funding to support non-government service providers for people with mental illness and drug and alcohol problems. This was later increased to $30 million. In August 2020—and I think this is really important—as part of the economic recovery plan for Queensland, an additional $46.5 million over two years was announced to further support a range of mental health services across the state.

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203 Public hearing transcript, p 3.

204 Public hearing transcript, p 14.

205 Public hearing transcript, p 3.

206 Public hearing transcript, p 3.

207 Public hearing transcript, p 3.

> The government's response also included $24.7 million for accommodation, funding for homeless providers and an enhancement to the Home Assist Secure program.[208]

In response to the wider impacts of the public health response, the department highlighted that its primary goal was to protect Queenslanders and save lives; however, it was also cognisant that this has a social and economic cost for the wider community:

> … the response to COVID-19 has and continues to be challenging, and we have had to make many difficult decisions to ensure that we can protect Queenslanders and save lives. Protecting the health of Queenslanders has been the primary goal of the government's response to COVID-19 and is always the priority of Queensland Health. At the same time we have worked together with government, industry and the community to minimise the impacts to the economy and business and the social impacts that the response has had on Queenslanders. I can assure you that these are not matters that we take lightly.[209]

Committee comment

The committee acknowledges that many in the Queensland community are experiencing considerable hardships as a result of the necessary public health response to COVID-19.

In particular, the committee acknowledges the significant increase in the need for mental health services due to COVID-19. The committee notes in response to this increase demand for services the Queensland Government has provided $46.5 million in funding.

The committee supports the approach to minimising the negative impacts of the public health response by funding a wide range of targeted programs and services in the community.

[208] Public hearing transcript, p 3.

[209] Public hearing transcript, p 36.

4 Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

4.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

As set out in the explanatory notes:

Clause 10 amends section 323(3) and (4) of the Public Health Act and provides the power to extend a declared public health emergency by regulation for 90 days and expires at the end of the stated period unless the regulation is sooner repealed or when the declared public health emergency ends.

Clause 13 amends section 323 of the Public Health Act, with operation of these amendments commencing on 1 October 2021. Section 323(3) and (3A) provide that a regulation extending the period of a declared public health emergency expires 14 days after the public health emergency is declared unless it is sooner repealed or when the declared public health emergency ends.

Under subsection 3A, a regulation further extending the period of a declared public health emergency must state the period, of not more than 7 days, by which the declared public health emergency is further extended. Also, the regulation expires at the end of the stated period unless it is sooner repealed or when the declared public health emergency ends.

4.1.1.1 Issue of fundamental legislative principle

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals.

The concept of liberty requires that an activity (including a business activity) should be lawful unless there is a sufficient reason to declare it unlawful by an appropriate authority.

The Bill extends the period during which various emergency powers can be exercised by the Chief Health Officer and by emergency officers, including the power to issue directions. These powers are very broad ranging and their exercise can substantially interfere with (and has already substantially interfered with) the rights and liberties of individuals, including by imposing major restrictions on movements and on business activities, including the closure of business premises.

Powers of the Chief Health Officer include giving public health directions, which can include:

- a direction restricting the movement of persons
- a direction requiring persons to stay at or in a stated place
- a direction requiring persons not to enter or stay at or in a stated place
- a direction restricting contact between persons
- any other direction the Chief Health Officer considers necessary to protect public health.[210]

[210] Public Health Act, s 362B.

Powers of emergency officers include power to require persons:

- to not enter or to remain within a place, or to stay in a stated place
- to answer questions
- to stop using a place for a stated purpose.[211]

Failure to comply is an offence with a maximum penalty of 100 penalty units.[212]

Emergency officers (medical) have the power to order detention of a person if that person has or may have a serious disease or illness.[213] A person must be given the opportunity to voluntarily comply with a detention order before it is enforced against them.[214] Failure to then comply carries a maximum penalty of 200 penalty units.[215]

The explanatory notes, somewhat curiously given the impacts on rights and liberties, do not address these issues in the context of rights and liberties generally. Instead, they frame the issue of fundamental legislative principle only as involving a consideration of whether the provisions are consistent with section 4(3)(a) of the LSA, which is concerned with whether rights, obligations and liberties of individuals are made to be dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.[216] This issue of fundamental legislative principle is mentioned further below.

Nonetheless, the justification offered in the explanatory notes in that context is relevant:

> It is considered that any potential impact that these emergency powers have upon the rights and liberties of individuals is justified, given the need to protect the health of the public by managing the outbreak of COVID-19, and in particular to ensure the latest health and medical advice about isolation and quarantine of suspected or confirmed cases of COVID-19 can be achieved.
>
> While they are broad, the emergency powers are clearly defined and subject to limits, including that the person giving the direction or order must reasonably believe that it is necessary to assist in containing or responding to the spread of COVID-19. Similarly, directions issued by both the Chief Health Officer and emergency officers must be revoked if the Chief Health Officer or emergency officer is satisfied the direction is no longer necessary.[217]

Committee comment

The committee is satisfied the restrictions on rights and liberties of individuals which result from the continuation of the various powers vested in the Chief Health Officer and other officers are justified by the need to respond to the ongoing public health emergency.

4.1.2 Rights and liberties of individuals – administrative power

As outlined above, Clauses 10 and 13 of the Bill extend the period during which various emergency powers can be exercised by the Chief Health Officer and emergency officers.

4.1.2.1 Issue of fundamental legislative principle

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

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211 As to powers of emergency officers, see generally the Public Health Act, s 349.

212 Public Health Act, s 362J.

213 Public Health Act, s 349.

214 Public Health Act, s 353.

215 Public Health Act, s 351(4).

216 Explanatory notes, p 3.

217 Explanatory notes, p 3.

Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.[218]

Committees carefully scrutinise provisions that do not sufficiently express the matters to which a decision-maker must have regard in exercising a statutory administrative power.[219]

Extending the expiry of the amendments to the Public Health Act may potentially breach this principle as the provisions authorise the Chief Health Officer and emergency officers to issue directions that may restrict the ability of persons to leave their homes or other premises, to enter particular facilities, or to freely move about and engage in activities.

Again, the justification offered in the explanatory notes in that context is relevant:

> It is considered that any potential impact that these emergency powers have upon the rights and liberties of individuals is justified, given the need to protect the health of the public by managing the outbreak of COVID-19, and in particular to ensure the latest health and medical advice about isolation and quarantine of suspected or confirmed cases of COVID-19 can be achieved.
>
> While they are broad, the emergency powers are clearly defined and subject to limits, including that the person giving the direction or order must reasonably believe that it is necessary to assist in containing or responding to the spread of COVID-19. Similarly, directions issued by both the Chief Health Officer and emergency officers must be revoked if the Chief Health Officer or emergency officer is satisfied the direction is no longer necessary.[220]

Committee comment

The committee considers that the vesting of these broad and extensive powers in the Chief Health Officer and other officers is justified given the need to protect the health of the public and respond to the threat of COVID-19.

4.1.3 Rights and liberties of individuals - power to enter premises

Clause 10 of the Bill provides the power to extend a public health emergency which in turn enlivens section 343 of the Public Health Act. This provision allows an emergency officer to enter a place in certain circumstances, if the officer believes it is urgent to save human life, prevent or minimise serious adverse effects on human health or do anything else to relieve suffering or distress. The emergency officer must make a reasonable attempt to seek an occupiers consent to the entry, according to section 344 of the Public Health Act.

4.1.3.1 Issue of fundamental legislative principle

The Bill breaches this fundamental legislative principle, by providing an emergency officer with the power of entry.

Power to enter premises should generally be permitted only with the occupier's consent or under a warrant issued by a judge or magistrate.[221]

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218 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 18.

219 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 15; citing Scrutiny Committee Annual Report 1998-1999, para 3.10.

220 Explanatory notes, p 3.

221 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 45.

Legislation should confer power to enter premises with the occupier's consent or under a warrant issued by a judge or other judicial officer. This principle supports a long established rule of common law that protects the property of citizens.[222]

> FLPs are particularly important when powers of inspectors and similar officials are prescribed in legislation because these powers are very likely to interfere directly with the rights and liberties of individuals.[223]

Further, a person should have free enjoyment of their property without the expectation that an emergency officer may enter their property, without consent.

The explanatory notes do not address this issue of fundamental legislative principle. It can be noted the explanatory notes for the Public Health (Declared Public Health Emergencies) Amendment Bill 2020 acknowledged the breach of fundamental legislative principle involved and provided the following justification for these powers of emergency officers:

> The exercise of these emergency powers is likely to impact upon the rights and liberties of individuals. However, it is considered that any potential impact that the Bill has upon the rights and liberties of individuals in this context is justified, given the need to protect the health of the public by managing the potential spread of 2019-nCoV.[224]

The current explanatory notes also note the safeguard of including a sunset clause with the expiry date being 12 months after the commencement of the *Public Health (Declared Public Health Emergencies) Amendment Act 2020*. It can be seen that with the further extension proposed by the current Bill, that the justification that a sunset clause as a safeguard, may not be as relevant.

Committee comment

The committee considers the breach of fundamental legislative principle and the restrictions on rights and liberties of individuals which result from the power to enter the premises of a person in certain circumstances are justified by the need to respond to the ongoing public health emergency.

4.1.4 Institution of Parliament

Section 4(2)(b) of the LSA requires legislation to have sufficient regard to the institution of Parliament.

Clause 10 amends sections 323(3) and 323(4) of the Public Health Act to provide the Governor-in-Council with the power to make a regulation to extend, or further extend, the period of a declared public health emergency for a period of up to 90 days, unless it expires at the end of the stated period, or is sooner repealed, or it expires under section 324(3) of the Act.

Section 324(3) of the Public Health Act states that a regulation extending, or further extending, a declared public health emergency expires when the declared public health emergency ends under section 324.

Clause 13 is a sunset clause for the amendments made to sections 323(3) and 323(4), providing that the amendments made by clause 10 expire on 1 October 2021.

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222 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 44.

223 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 45.

224 Public Health (Declared Public Health Emergencies) Amendment Bill 2020, explanatory notes, p 3. (At that time COVID-19 was known as 2019-nCoV.)

4.1.4.1 Issue of fundamental legislative principle

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example (as noted earlier), section 4(4)(a) of the LSA provides that a Bill should allow the delegation of legislative power only in appropriate cases and to appropriate persons.

The greater the level of potential interference with individual rights and liberties, or the institution of Parliament, the greater will be the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.[225]

Senator Malcolm Roberts raises this issue in his submission:

> The use of delegated legislation in Queensland during the COVID-19 outbreak raises concerns about the way it undermines accepted legislative process. Our primary concern is that there is an absence of regular parliamentary procedures to provide oversight and validation for the outcomes of these new laws. And further this type of legislation suspends the normal process of parliamentary oversight and accountability by delegating power to change the operation of the primary legislation and it can divert contentious policy choices away from the public eye where it should be.[226]

The explanatory notes do not address this issue of fundamental legislative principle. Nor was the issue addressed in the explanatory notes for the Public Health (Declared Public Health Emergencies) Amendment Bill 2020, which introduced the original amendments to section 323 of the Public Health Act.

The explanatory notes do not address the issue of whether the power to further extend a public health emergency should be contained in regulation, rather than in principal legislation, given the extensive powers enlivened when a public health emergency is declared or extended.

The explanatory notes for the COVID-19 Emergency Response Bill 2020 did note this issue (in the related context of the 'modification' provisions in that Bill):

> The modification framework established by the Bill enables various Acts to be amended by subordinate legislation (such as a regulation or notice), should be required. The use of secondary instruments to implement the modification framework ('Henry VIII clauses') represents a potential departure from the fundamental legislative principles requiring that legislation has sufficient regard to the institution of Parliament (section 4(2)(b) Legislative Standards Act).[227]

Those explanatory notes then set out these safeguards, including that the provisions are time limited:

> While the modification framework is broad, the Bill applies general safeguards in relation to each of the modification framework provisions. In particular, the Bill makes clear that any extraordinary regulations or statutory instruments may only be made if the Minister or responsible entity is satisfied that the regulation or instrument is necessary for a purpose of the Bill. The modification framework is also strictly time limited providing that upon commencement, the Act and all instruments and regulations made under the Act expire on 31 December 2020.[228]

The explanatory notes for the current Bill note the amendments are similarly limited in time:

> On [1 October 2021] the *Public Health Act 2005* will revert to the previous section 323(3) and 323(4), which provides for Governor-in-Council to:
>
> - make a regulation to extend a declared public health emergency for an initial period of 14 days from the date the emergency is declared; or

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225 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 145.

226 Submission 87, p 3.

227 COVID-19 Emergency Response Bill 2020, explanatory notes, p 11.

228 COVID-19 Emergency Response Bill 2020, explanatory notes, p 12.

- make a regulation to further extend a declared public health emergency for a period of no more than 7 days.[229]

Committee comment

The committee considers that given the significant powers conferred by the Bill, greater clarity in relation to fundamental legislative principle breaches should be provided in the explanatory notes. The committee is of the view that breaches of fundamental legislative principle are justified by the need to swiftly respond to the ongoing public health emergency.

4.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. As discussed, the treatment in the explanatory notes of issues of fundamental legislative principle is inadequate. There is little material addressing rights and liberties of individuals, regarding a Bill containing provisions which clearly quite significantly restricts those rights, especially regarding the right to liberty and freedom of movement.

By way of contrast a more detailed consideration of human rights issues was undertaken in the statement of compatibility, (particularly noting there is some overlap of human rights issues dealt with in the statement of compatibility with some of the issues of fundamental principle).

There is also no consideration of the issue of whether the Bill has sufficient regard for the institution of Parliament.

The notes otherwise contain the information required by Part 4.

[229] Explanatory notes, p 7.

5 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.[230]

A Bill is compatible with human rights if the Bill:

(a) does not limit a human right, or
(b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.[231]

The HRA protects fundamental human rights drawn from international human rights law.[232] Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly.

5.1 Human rights compatibility

5.1.1 Right to freedom of movement

5.1.1.1 *Nature of the human right*

The right to freedom of movement protects a person's right to move freely in Queensland. The right has been described by the United Nations Human Rights Committee (CCPR) as 'an indispensable condition for the free development of a person'.[233]

As the statement of compatibility correctly identifies:

> Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. … The continuation of the amendments to the Public Health Act will limit the right to freedom of movement by continuing to authorise the Chief Health Officer and emergency officers to restrict the movement of any person or group of persons to limit, or respond, to the spread of COVID-19 in Queensland; require persons to isolate or quarantine themselves for periods of up to 14 days; require persons to stay at or in, or not to stay at or in, a stated place; restrict contact between groups of persons; and provide other directions that are necessary to protect public health.[234]

5.1.1.2 Nature of the purpose of the limitation

The purpose of the limitation, as identified in the statement of compatibility, is to protect public health. This is a very important purpose in so far as managing COVID-19 in Queensland, which is a highly contagious and deadly virus. As the statement of compatibility properly identifies, the measures give effect to the right to life protected in section 16 of the HRA.[235]

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230 HRA, s 39.

231 HRA, s 8.

232 The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

233 CCPR General Comment No 27: Article 12 at [11].

234 Statement of compatibility, p 4.

235 Statement of compatibility, p 3.

5.1.1.3 *The relationship between the limitation and its purpose*

There is a rational connection between the public health purpose and the limitation. Restricting people's movement is a key defence against controlling the spread of the highly contagious and deadly virus.

5.1.1.4 *Whether there are less restrictive and reasonably available ways to achieve the purpose*

There are no less restrictive and reasonably available ways to achieve the purpose. Restricting movement of persons, including isolation where required, is a necessary defence to the spread of COVID-19 in the community.

Further, a number of important safeguards exist in the measures which limit the interference with human rights. These are identified in the statement of compatibility:

> The Bill also continues a number of safeguards to ensure that any potential interference with human rights is minimal and no greater than necessary to respond to the COVID-19 pandemic. These include:
>
> - The emergency powers provided to the Chief Health Officer and emergency officers appointed under the Public Health Act are conferred for the COVID-19 public health emergency declared by the Minister on 29 January 2020 and may only be used to assist in containing or responding to the spread of COVID-19 within the community;
> - The emergency powers may only be exercised by, as applicable, the Chief Health Officer and emergency officers appointed under the Public Health Act;
> - Before issuing a direction, the Chief Health Officer or emergency officer must have a reasonable belief that the direction is necessary to assist in limiting, or responding to, the spread of COVID-19 within the community;
> - If at any time the Chief Health Officer or an emergency officer is satisfied that a direction is no longer necessary to contain the spread of COVID-19 within the community, the direction must be revoked;
> - Directions to self-isolate or quarantine must be time-limited and may not apply for more than 14 days unless a further lawful direction is made;
> - Directions must state the period during which they apply and that non-compliance with the direction is an offence;
> - A person who fails to comply with a direction does not commit an offence if they have a reasonable excuse for not complying;
> - Directions may include conditions to minimise adverse impacts on human rights and other interests. For example, a person who is required to self-isolate may be permitted to obtain medical supplies or to engage in activities that do not involve close contact with other persons.[236]

5.1.1.5 *The importance of the purpose of the limitation*

The public health purpose is a very important purpose in so far as managing a highly contagious and deadly virus. The statement of compatibility provides information on the widespread incidence of COVID-19 globally and in Australia as at 9 November 2020. More recent information is publicly available on the incidence of COVID-19 both globally and in Australia. The pandemic is still current with outbreaks of the virus subsisting in Australia and across the world.

5.1.1.6 *The importance of preserving the human right*

The right to freedom of movement is not destroyed by the Bill; but temporarily limited for a public health purpose.

[236] Statement of compatibility, p 12.

5.1.1.7 *The balance between the importance of the purpose of the limitation and the importance of preserving the human right*

There is an overall proportionality between the measure and the limitation for the reasons given above.

5.1.2 Equality before the law and access to health services

5.1.2.1 *Nature of the human rights*

Section 15(2) and (3) protect equality rights. Section 15(2) protects a person's right to enjoy their human rights without discrimination. Section 15(3) provides that 'Every person is equal before the law and is entitled to the equal protection of the law without discrimination.' The principle of equality before the law is a fundamental principle of modern democratic government based on the rule of law. Directions restricting movement and contact with others imposed by sections 362B, 362G and 362H may disproportionately affect persons with a disability as opposed to persons without one, such as by temporarily restricting their access to services required during a period of isolation. Disability is a prohibited ground of discrimination, both under Queensland domestic law and international human rights law.

The HRA also protects a right to access health services without discrimination in section 37(1). The statement of compatibility notes:

> While undertaking mandatory quarantine, a person will be provided with the health services they require.[237]

However, the statement does not adequately consider whether a person may be precluded from accessing regular health services during other restrictions on their movement, such as a stay at home direction. The clauses may limit the rights in sections 15(2), 15(3) and 37(1).

5.1.2.2 Nature of the purpose of the limitation

The purpose of the limitation, as identified in the statement of compatibility, is to protect public health. This is a very important purpose in so far as managing COVID-19 in Queensland, which is a highly contagious and deadly virus.

5.1.2.3 *The relationship between the limitation and its purpose*

As explained above, there is a rational connection between the public health purpose and the limitation on the human right to freedom of movement. Restricting people's movement is a key defence against controlling the spread of the highly contagious and deadly virus. A consequence of restricting movement may be a restriction on a person's ability to access health and medical services temporarily while in isolation. Whilst some health and medical services may be able to continue to be provided, for example, Telehealth services, services that require in-person access may be temporarily precluded.

5.1.2.4 *Whether there are less restrictive and reasonably available ways to achieve the purpose*

There are no less restrictive and reasonably available ways to achieve the purpose. Restricting movement of persons, including isolation where required, is a necessary defence to the spread of COVID-19 in the community.

5.1.2.5 *The importance of the purpose of the limitation*

As stated above, the public health purpose is a very important purpose in so far as managing a highly contagious and deadly virus. The Statement of compatibility provides information on the widespread incidence of COVID-19 globally and in Australia as at 9 November 2020. More recent information is publicly available on the incidence of COVID-19 both globally and in Australia. The pandemic is still current with outbreaks of the virus subsisting in Australia and across the world.

[237] Statement of compatibility, p 8.

5.1.2.6 *The importance of preserving the human right*

The rights protected in sections 15(2), 15(3) and 37 are not destroyed by the Bill; but temporarily limited for a public health purpose.

5.1.2.7 *The balance between the importance of the purpose of the limitation and the importance of preserving the human right*

There is an overall proportionality between the measure and the limitation for the reasons set out above.

5.1.3 Protection of families and children and right not to have family unlawfully or arbitrarily interfered with

5.1.3.1 *Nature of the human right*

Section 26(1) protects a family as 'the fundamental group unit of society … entitled to be protected by society and the State'. Section 26(2) protects the right of every child 'without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child.' Section 25 protects a person's right not to have his or her family 'unlawfully or arbitrarily interfered with'. These rights, together, recognise the centrality of the family unit in society and the need for special protection of children.

Directions restricting movement and contact with others imposed by sections 362B, 362G and 362H may result in the temporary loss of contact between family members for a number of reasons: directly, via a direction made restricting the contact between persons, or as a result of a direction requiring persons to stay at a particular place, or in isolation for 14 days without family members present.

Further, as the statement of compatibility properly identifies, the measures will impact on children:

> The exercise of emergency powers has the potential to impact children through, for example, temporarily restricting their movement, restricting the movement of family or other contacts, or restricting their access to certain facilities or events. Also, directions may not consider the child's views or give their views due weight, which does not respect their capacity to influence the determination of their best interests. However, there are other aspects of the child's best interests which weigh in favour of the amendments, such as their right to life and their health and wellbeing.[238]

5.1.3.2 *The balance between the importance of the purpose of the limitation and the importance of preserving the human right*

There is an overall proportionality between the limitation on the family and children's rights imposed by the legislative provisions and the purpose for which they are imposed. In particular, section 362E is notable in this regard. In addition, the Chief Health Officer is a public entity under the HRA, and when giving a particular direction under section 362B will be required to act compatibly with human rights.

5.1.4 Cultural rights, Aboriginal cultural rights, right to peaceful assembly, freedom of thought, conscience, religion and belief, right to education

5.1.4.1 *Nature of the human right*

The HRA protects a person's right to practise their religion and enjoy their culture 'in community with other persons of that background' in section 27. Further, section 20(1) protects a person's right to 'demonstrate' religion or belief 'in worship, observance, practice and teaching, either individually or as part of a community, in public or in private'. Aboriginal persons also have a particular cultural rights protected in sections 28(1) and 28(2).

The HRA also protects a person's right to peaceful assembly and establishes, in section 36, a child's right to access primary and secondary education appropriate to their needs.

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[238] Statement of compatibility, p 6.

Directions restricting movement and contact with others imposed by sections 362B, 362G and 362H may result in the temporary loss of ability to engage in particular activities, such as gathering with others to practise religion and engage in cultural practises, or assemble for a peaceful purpose. While the Bill does not preclude peaceful assembly directly, such activity may be indirectly precluded by a direction to stay at home. Further, education may be temporarily interrupted if a child is subject to an isolation order for 14 days, and education facilities are not able to be provided to the child remotely for that period of time.

5.1.4.2 *The balance between the importance of the purpose of the limitation and the importance of preserving the human right*

There is an overall proportionality between any temporary restriction on these rights and the purpose for which the rights are being limited. In particular, section 362E is notable in this regard. In addition, the Chief Health Officer is a public entity under the HRA, and when giving a particular direction under section 362B will be required to act compatibly with human rights.

5.1.4.3 Chief Health Officer's power to give any direction the Chief Health Officer considers necessary to protect public health

Section 362B(2)(e) of the Public Health Act empowers the Chief Health Officer to give 'any direction the Chief Health Officer considers necessary to protect public health'. The statement of compatibility does not give consideration to whether this broad power is compatible with rights protected by the HRA. As the Chief Health Officer is a public entity under the HRA, provided the power is exercised compatibly with the obligations imposed on public entities under the HRA, the statutory power will not be incompatible with human rights.

5.1.4.4 Directions to open, close and limit access to businesses

Sections 362F and 362I of the Public Health Act empower the Chief Health Officer and emergency officers to give notices, or make directions, respectively, to a particular business owner or operator, to open or close or limit access to any facility used in conducting the business.

These provisions engage, but do not limit a person's property right protected in section 24. The engagement of the right is brought about by a potential loss of value of the property owner, and/or access to property, by for example a mandatory closing of the business. However, any such impact on the property of a business will not constitute an 'arbitrary' deprivation of property because the limitations are justified by the public health purpose. There is no definition of 'arbitrary' in the HRA. Applying a human rights meaning to the term means that it will be construed to mean an unreasonable, unjust or disproportionate interference.[239]

5.1.4.5 Detention orders for up to 14 days

The Bill will extend the amendment of section 350 of the Public Health Act to empower an emergency officer (medical), being a doctor appointed under section 335, to order a person's detention for up to 14 days. Prior to the amendment, detention could be authorised for only 96 hours.

An emergency officer (medical) must 'reasonably suspect' the person 'has or may have' a serious disease, the 'person's likely behaviour constitutes an immediate risk to public health' and 'it is necessary to detain the person to effectively respond to the declared public health emergency'.[240] The detention must end if the officer (and any doctor chosen by the person) is satisfied that there is no longer an immediate risk to public health; a magistrate orders the end of the detention or after 14 days (unless extended by a magistrate). The officer must facilitate the detainee's communication with

[239] There is no case law yet from Queensland on the meaning of 'arbitrary' in the HRA. There have been conflicting views as to the meaning of 'arbitrary' in the Victorian Charter of Human Rights and Responsibilities. See Pound and Evans, *Annotated Charter of Rights* (LawBook Co, 2019), pp 14-115.

[240] Public Health Act, s 349.

others, including a lawyer, and tell the detainee that he or she can apply to a magistrate to end the detention.[241]

Enforcement of a detention order may occur by the use of reasonable force.[242] This amendment limits a person's right to liberty and engages the right to humane treatment when deprived of liberty.

The conditions of detention is not a matter that is subject to the legislative provisions in this Bill and is accordingly outside of the scope of consideration. However, section 30 of the HRA applies.

The statement of compatibility incorrectly notes that (emphasis added):

> … there remains no provision for persons subject to a direction or a *detention order* to appeal the direction or order.[243]

However, a person subject to a detention order may apply to a magistrate to order the detention be ended.[244]

In this regard, the statement of compatibility does not address the right set out in section 29(7) of the HRA:

> A person deprived of liberty by arrest or detention is entitled to apply to a court for a declaration or order regarding the lawfulness of the person's detention, and the court must –
>
> a. make a decision without delay; and
>
> b. order the release of the person if it finds the detention is unlawful.[245]

5.1.5 Right to liberty and security

5.1.5.1 Nature of the human right

The right to liberty has been described as the most elementary and important of all common law rights. The right protects a person's personal liberty from being interfered with by unlawful or arbitrary deprivations of liberty. The right is a very important right in a modern democratic society.

5.1.5.2 Nature of the purpose of the limitation

The purpose of detention is to contain an immediate risk to public health, as set out in section 349(1) of the Public Health Act.

5.1.5.3 The relationship between the limitation and its purpose

The statement of compatibility does not explain why the 14 day period is necessary but states that:

> The ability to detain a person is also a proportionate response to the risk of COVID-19 spreading unknowingly through the community.[246]

Publicly available information from Australian Health Protection Principal Committee states:

> The median incubation period for COVID-19 is 4.9-7 days, with a range of 1-14 days. Most people who are infected will develop symptoms within 14 days of infection.[247]

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241 Public Health Act, ss 349-350, 355, 360-361.

242 Public Health Act, s 351(5).

243 Statement of compatibility, p 7.

244 Public Health Act, s 361.

245 HRA, s 29(7).

246 Statement of compatibility, p 7.

247 Australian Health Protection Principal Committee, 'Statement on the utility of testing for COVID-19 to reduce the requirement for 14 days of quarantine', https://www.health.gov.au/news/australian-health-protection-principal-committee-ahppc-coronavirus-covid-19-statements-on-14-may-2020.

This information provides a rational basis for the detention period being up to 14 days.

5.1.5.4 *Whether there are less restrictive and reasonably available ways to achieve the purpose*

Under section 349 of the Public Health Act, detention may only be ordered where various conditions are satisfied. These include that there is an 'immediate risk to public health' and it is 'necessary' to detain the person. While there may be less restrictive means available to achieve the public health purposes that the Bill aims to achieve, they are not reasonable alternatives in the circumstances where detention is required.

5.1.5.5 *The importance of the purpose of the limitation*

The public health purpose is a very important purpose in so far as managing a highly contagious and deadly virus. The statement of compatibility provides information on the widespread incidence of COVID-19 globally and in Australia. The death rates from COVID-19 both globally and in Australia are widely available statistics.

5.1.5.6 *The importance of preserving the human right*

While there is no doubt about the importance of the right to liberty, the measures are limited in duration to up to 14 days.

5.1.5.7 *The balance between the importance of the purpose of the limitation and the importance of preserving the human right*

There is an overall proportionality between the measure and the limitation for the reasons set out above.

Clauses 3-5

Section 354 of the Public Health Act requires an emergency officer (medical) to request a person detained to be subject to a medical examination. The emergency officer (medical) must —

(a) give an explanation to the person about the examination to be undertaken in a way likely to be readily understood by the person; and

(b) tell the person that the person may refuse the examination.[248]

However, the medical examination requirement does not apply if there is no way of deciding within a specified period that the person has been exposed to the illness or disease. Section 60 of the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* amended section 354 of the Public Health Act by changing the specified period from 96 hours to 14 days. The current Public Health Act provision (specifying a period of 14 days) will apply until the commencement of Division 3 of Part 16 of the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020*, at which time the specified period will revert to 96 hours. The Bill extends the time for the commencement of Division 3 of Part 16 to 1 October 2021.

The amendment engages the right in section 17(c) of the HRA, however there is no limitation on this right because, the legislative provision establishes the necessary requirements to require a person to give his or her full, free and informed consent to the medical examination.

Clauses 6-8

The Mental Health Act was amended to insert new section 800I which confers a power on the Chief Psychiatrist to approve a patient's leave of absence from an authorised mental health service if leave is required to enable compliance with a detention order or direction by the Chief Health Officer given under section 362B of the Public Health Act. Modifications were also made to section 783 and Schedule 1, section 5 of the Mental Health Act which permit the disclosure of information relating to a particular patients.

[248] Public Health Act, s 354(2).

The statement of compatibility fails to identify which right or rights protected by the HRA are limited by these provisions. Rather, it offers the following information:

> *Amendment to the Mental Health Act 2016 to allow the Chief Psychiatrist to grant leave from an Authorised Mental Health Service during the COVID-19 emergency*
>
> Containing the spread of COVID-19 within the community may be achieved through detention orders and public health directions. This is because COVID-19 is a communicable disease that may be easily transmitted between people. Quarantine and self-isolation are proven ways to slow the transmission of COVID-19, particularly to vulnerable persons who may develop complications or otherwise require emergency or life-sustaining treatment. The continuation of the amendments achieve the purpose by facilitating a requirement of a detention order or public health direction under the Public Health Act.[249]

Patients in an authorised mental health service have a right to equality under the law, and right to access health services. The potential impact on a patient's mental health care treatment should the patient be moved from an authorised mental health service to another place for the purpose of complying with a detention order or direction given under section 362B is not adequately addressed in the statement of compatibility.

Further, clause 8 of the Bill extends the expiry of Chapter 18B of the Mental Health Act until 30 September 2021. Chapter 18B includes not only section 800I but also section 800N which modifies section 783(1) of that Act. The statement of compatibility does not consider the limitation on a patient's right to privacy protected in section 25 of the HRA through a release of personal information about a patient to the persons listed in section 783(1) of the Mental Health Act. These clauses limit a patient's right to privacy and the statement should have examined whether the limitation was demonstrably justified.

Clause 11

Section 362MD of Part 7AA, Chapter 8 of the Public Health Act requires a person who is required to quarantine to pay quarantine fees, to be prescribed by regulations. Clause 11 extends the expiry of Part 7AA from 18 March 2021 to 30 September 2021. The result is that persons who are required to quarantine because of the COVID-19 pandemic, will be required to pay quarantine fees until 30 September 2021.

This provision engages but does not limit section 24(2) of the HRA. There is no limitation because the right in section 24(2) protects against an 'arbitrary' deprivation of property. Not all interferences with property will be arbitrary. There is no definition of 'arbitrary' in the HRA. Applying a human rights meaning to the term means that it will be construed to mean an unreasonable, unjust or disproportionate interference.[250]

The provisions in Part 7AA do not impose an unreasonable, unjust or disproportionate interference for the following reasons:

- the fees payable are prescribed by regulations and may be set by reference to the costs associated with the quarantine and whether shared accommodation is available; and
- Part 7AA contains a waiver provision on the basis of vulnerability and financial hardship.

Clause 12

Clause 12 of the Bill extends the expiry date of Part 7B, Chapter 8 of the Public Health Act to 30 September 2021. Part 7B makes two modifications to sections 81 and 109 of the Public Health Act relating to disclosure of confidential information. The amendments permit the chief executive officer to delegate his or her powers under sections 81 and 109 to other persons. As the statement of compatibility notes, the amendment 'facilitates the disclosure of the information [concerning

[249] Statement of compatibility, p 10.

[250] See above footnote 13.

notifiable conditions] in the public interest where the chief executive or Chief Health Officer need to focus on leading the State's response to the COVID-19 emergency.'[251]

The information that may be disclosed under sections 81 and 109 must not identify 'directly or indirectly, the person to whom the confidential information relates'.[252] Accordingly, there is no limitation on a person's right to privacy protected in section 25 of the HRA.

Committee comment

The committee finds the Bill is compatible with human rights. The limit on the human rights in the Bill regarding the rights to:

- freedom of movement
- equality before the law and access to health services
- protection of families and children and right not to have family unlawfully or arbitrarily interfered with
- cultural rights, Aboriginal cultural rights, right to peaceful assembly, freedom of thought, conscience, religion and belief, right to education
- Right to liberty and security

are reasonable and justifiable.

5.2 Statement of compatibility

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

The statement of compatibility was tabled with the introduction of the Bill and although it provided a sufficient level of information to facilitate understanding of most aspects of the Bill in relation to its compatibility with human rights, it does not sufficiently address the following issues:

Amendments to the Public Health Act

- The compatibility of section 362B(2)(e) which permits the Chief Health Officer to give 'any direction the Chief Health Officer considers necessary to protect public health' with rights protected in the HRA. The statement of compatibility does not give consideration as to whether this broad power is compatible with rights protected by the HRA. As the Chief Health Officer is a public entity under the HRA, provided the power is exercised compatibly with the obligations imposed on public entities under the HRA, the statutory power will not be incompatible with human rights.
- The compatibility of sections 362F and 362I which empower the Chief Health Officer and emergency officers to publish a notice or direction to business owners and operators to open, close and limit access to the facility, with their right to property under section 24 of the HRA.
- Whether the right in section 29(7) of the HRA is limited by the detention powers in Chapter 8, Part 7, Division 1.
- Whether directions restricting movement and contact with others imposed by sections 362B, 362G and 362H ma disproportionately affect persons with a disability thereby limiting the equality rights in sections 15(2) and 15(3) of the HRA.

[251] Statement of compatibility, p 9.

[252] Public Health Act, ss 81(3), 109(3).

Amendment to the Mental Health Act (Clauses 7 and 8)

- The potential impact on a patient's mental health care treatment should the patient be moved from an authorised mental health service to another place for the purpose of complying with a detention order or direction given under section 362B.
- The limitation on a patient's right to privacy through a release of personal information about a patient to the persons listed in section 783(1) of the Mental Health Act.

Appendix A – Submitters

Sub #	Submitter
001	George Dickson
002	AJ Dalton
003	Catherine Parker
004	The Royal Australian and New Zealand College of Psychiatrists
005	Australian Medical Association Queensland
006	Queensland Mental Health Commission
007	Beth and Bruce Head
008	Tony Nielsen
009	Sue Potts
010	Elizabeth Worthington
011	Brent Panting
012	Terry Roddick
013	William David Featon
014	Liz Lawrie
015	Michael Kiss
016	Mick Logan
017	Carol Solomon
018	Robert Henderson
019	Sarah Dew
020	Carole Baxter
021	Kenneth Thorpe
022	Jason Kowalonek
023	Chris Henseleit
024	David Howard
025	Name Withheld
026	Name Withheld
027	Donna Allen
028	Cameron Mitchell
029	Kylie Russell
030	Katrina Rivers
031	Andrew Coates
032	Lisa Charles
033	Leonie Bosscher

034	Wayne Balmanno
035	Shane Griffin
036	John Bussell
037	Robert Stable
038	Michael Dalton
039	Greg Lane
040	Dr Marj Henderson
041	Jasmine Harrison
042	Jernin Yates-Round
043	Lisa Byrne
044	Brice Kaddatz
045	Shane Hoffman
046	Louise Bentley
047	Dr Kate Galloway, Associate Professor of Law
048	Gillian Lyons
049	Cara Templeman
050	Miranda Tester and Ashley Tester
051	Mal Watt
052	Rudolph Kurpershoek
053	David Jensen
054	Dr James Mckeon
055	Gemma Yates-Round
056	Rupert and Sarah Haywood
057	Mark Yates-Round
058	James Dawson
059	Reeda Close
060	Stevie Pringle
061	Brianna Ryan
062	Bernadette Longden
063	Richard FaureField
064	Gareth Bosley
065	Aprille Walker
066	David Wright
067	Christian Yates-Round
068	Gaby Thompson

069 Name Withheld
070 Paul Slater
071 Lung Foundation Australia
072 Peter Rowan
073 Helena Bond
074 Linda Vij
075 Lauren Brown
076 Simone Sleep
077 Name Withheld
078 Sandra Lippiatt
079 Dace Ose-Abey
080 Queensland Nurses and Midwivies Union
081 Patricia Hatherly
082 Dr Belinda Goodwin
083 Professor Dr James Smith
084 Ernst Talke
085 Lyle Schuntner
086 Sarah Highley
087 Senator Malcolm Roberts
088 Michelle Heltay
089 Ira Winston
090 Environmental Health Australia (Queensland) Incorporated
091 David Crichton
092 Saxon Brown
093 Christine Houghton
094 Robert Kruk
095 Sandra Joiner
096 Neil and Josephine van der Wel
097 Dr Matthew Dean
098 Allan Milton Cox
099 Hugh Dickinson
100 Yasmin Cacciotti
101 Claudette Casey Freeman
102 Adept Economics
103 Nurses Professional Association of Queensland

104	Donna Thompson
105	Fr Alexander Borodin, Rector, Blessed Virgin of Vladimir Russian Orthodox Church Abroad
106	Renee Kent
107	Aneeta Hafemeister
108	Alan William Ballard
109	Anna St Claire
110	Cassandra Browne
111	Christine A Rolfe
112	Jane McNaughton
113	Angelo Castiglione
114	Irene Henley
115	Michael Neighbour
116	Chris McDermott
117	Andrew and Cara Marshall
118	Karen Dawson
119	Adriana Thompson
120	Confidential
121	Aaron Stirling
122	Julie Copley
123	Queensland Council for Civil Liberties
124	Chamber of Commerce & Industry Queensland

Appendix B – Witnesses at public hearing

Queensland Human Rights Commission

- Scott McDougall, Commissioner
- Sean Costello, Principal Lawyer

Queensland Mental Health Commission

- Ivan Frkovic, Commissioner

Queensland Hotels Association

- Bernie Hogan, Chief Executive

Shop Distributive and Allied Employees Association – Queensland branch

- Stephanie Purton, Industrial Officer

Queensland Nurses and Midwives' Union

- Daniel (Dan) Prentice, Professional Research Officer
- Julie Lee, Research and Policy Officer

Australian Medical Association Queensland

- Dr Brett Dale, Chief Executive Officer

Public Health Association of Australia

- Letitia Del Fabbro, Queensland Branch President

Health Consumers Queensland

- Melissa Fox, Chief Executive Officer

Council of the Ageing Queensland

- Mark Tucker-Evans, Chief Executive

Queensland Health

- Dr John Wakefield, Director–General
- Dr Jeannette Young, Chief Health Officer and Deputy Director General Prevention Division
- Tricia Matthias, Director, Legislative Policy Unit, Office of the Director-General and System Strategy Division

Queensland Police Service

- Deputy Commissioner Stephan Gollschewski, Overall Commander, COVID-19 Response

Queensland Council of Civil Liberties

- Michael Cope, President

Chamber of Commerce & Industry Queensland

- Amanda Rohan, Policy and Advocacy General Manager
- Augustine (Gus) Mandigora, Senior Policy Advisor

Gold Coast Central Chamber of Commerce

- Martin Hall, President

Queensland Tourism Industry Council

- Daniel Gschwind, Chief Executive

Adept Economics

- Gene Tunny, Director

Dissenting Report

Mr Stephen Andrew, MP

Member for Mirani

DISSENTING REPORT

PUBLIC HEALTH AND OTHER LEGISLATION (EXTENSION OF EXPIRING PROVISIONS) AMENDMENT BILL 2020

OPENING STATEMENT

Domestic and international jurisprudence contain principles for law making during a public health emergency.

These are that emergency laws should be limited, time-bounded and proportionate to the nature of the emergency.

This makes emergency laws separate and distinct from ordinary laws, and reduces the chances of them being used for periods and purposes beyond their initial remit.

Specific structural techniques to do this are: to use sunset clauses, to use a single legislative vehicle for emergency laws, to use non-textual amendments, to expressly state their temporary nature, to specifically limit their use to the emergency and to give them a title which indicates their emergency nature.

I am concerned at the lack of Transparency we are getting from the Government, that no cost/benefit or risk assessment was carried out at the outset of the crisis as is regarded as 'best practice' for crisis management, and even today, over a year later, we are given no roadmap for removing these powers.

In fact, Dr Young leaves the question of an 'exit date' as very much up in the air. On page 14 of the Report, Dr Young States:

> "***in response to the question of how long the extraordinary powers would be needed, Qld Health states "it is difficult to determine with absolute certainty how long these emergency response measures will be required***.

Like a lot of other submitters to this Inquiry, I am starting to have real concerns regarding not only the impact of emergency provisions on our democratic freedoms and civil liberties, but also the potential of emergency powers to become normalised and eventually permanent.

QUEENSLAND EMERGENCY LEGISLATION

Under Queensland's Covid-19 Emergency legislation, public health emergency powers have vested enormous legislative and executive decision-making authority in the hands of a select few.

Specifically, unelected public health officials are given extraordinary power and they have used this power to place severe restrictions on Queenslanders' freedom of movement, association and livelihoods.

The original Act granted the Government enormous powers to control and restrict the movement, speech, assembly and association of the people.

It can also close businesses, churches, theatres and restaurants, all for the purpose of controlling the transmission of Covid-19.

These are significant laws. They override all other laws and confer extraordinary powers on the CHO.

Fundamental legal principles inherited from our common-law tradition, including due process, the presumption of innocence and habeas corpus have been substantially undermined.

The new policy is also a radical departure from a long tradition dating back centuries where infectious diseases were controlled by the confinement and isolation of infected people, not the confinement of the healthy.

In the process all the usual democratic processes, checks and balances, and time-limited law are being ignored.

GOVERNMENT SECRECY – LACK OF TRANSPARENCY

Many written submissions as well as a number of witnesses at the Public Hearing, including the Human Rights Commissioner and the Mental Health Commissioner, expressed concern over the secrecy and lack of transparency there was around data and medical advice on which CHO and Queensland Health were basing some of their policies on.

Trying to get information from the Queensland government on anything to do with the virus or detailed information regarding cases has been impossible.

At a time when the government should be providing as much information as possible to the public, it has closed down the shutters and told the public simply to "trust the Government".

We are told that decisions are made on the basis of health advice but we are not allowed to see that health advice. Why not?

The people need information so that they can better understand why these decisions are being made and on what basis.

Hiding the scientific basis for pandemic policies makes it harder for the public to evaluate what's being done.

When health authorities present one rule after another without clear, science-based substantiation, their advice ends up seeming arbitrary and inconsistent.

That erodes public trust and makes it harder to implement rules that do make sense.

Overall I would say there's a crisis in transparency in our Covid rules and restrictions, and it needs to be addressed.

SUPPORT FOR THE BILL OVERSTATED IN COMMITTEE REPORT

The Report states on page 13 "the committee notes the strong support for the Bill and that key stakeholders and members of the Queensland community support the Queensland Government's health response to Covid-19" and further on, "the vast majority of stakeholders at the public hearing supported the Bill".

Both of these statements, I feel, are misleading.

Written Submissions

In the case of submissions made in writing, the Committee received 124 submissions.

Of those 124, I counted only 17 that were in favour of the Bill. That equates to 87% of submissions opposing the Bill and just 13% in favour.

Of the dissenting 107 submissions, there were no more than two or three where the response was mixed.

Most of the 107 opposed, did so with conviction, and at times, some considerable emotion.

Amongst the submitters were many credible and intelligent submissions, that advanced extremely insightful viewpoints.

One in particular I found especially powerful, was from the Reverend Alexander Borodin, Rector of the largest Russian Orthodox Church in Brisbane, in the working-class suburb of Rocklea.

Reverend Alexander speaks movingly the parish's founders, as well as many members still alive, who fled communist rule as refugees: first from Russia to China in the twenties, and later from China to Australia in the early 1950s after Mao.

The Reverend describes how many of his older congregation members have commented on the similarities they are seeing going on today with their own, or their parents experiences under communism. He described them as being deeply traumatised by these past experiences under a system that exercised total control over their lives and encouraged them to view their fellow citizens with distrust and even to 'dob in' their neighbours for wrongdoing.

He writes powerfully on some of the adverse impact of the Public Heald restrictions have had on his congregation:

> *"I have never before seen such levels of anxiety, depression, confusion and anger in the community as I have in the past year. Nor have I witnessed so many good and capable people lose their will to work and to be productive, contributing members of society. The loss of income, the loss of employment that many in the community have faced, and are facing, businesses going broke …"*

The Reverend is the first and only Church leader to date to have made a submission to Parliament on behalf of his parish and I believe his is a voice the Committee should have been allowed to hear.

People like Reverend Borodin are one of those who have, what the Mental Health Commissioner described as, real "lived experience" of how ordinary people are dealing with current state of affairs in Queensland.

There were many other submissions received from people of all ages and walks of life that I believe it would have benefited the committee greatly to hear from.

There were submissions from at least six doctors, one a former Director-General of Queensland Health, one from the Menzies School of Health Research and another a former Consultant Thoracic Physician in Queensland from 1988 to 2018 with considerable experience in treating people with acute respiratory viral infections.

There were also submissions from Federal Senator, Malcolm Roberts, the Nurses Professional Association of Queensland (NPAQ) (a non-partisan association that represents around 6,500 nurses, midwives and affiliates) a biomedical scientists, several qualified naturopaths, a former high level Federal Treasury Economist/Analyst who now runs the popular Queensland Economy Watch News Blog, as well as two law professors from Queensland Universities.

Witnesses at the Public Hearing

Even amongst the witnesses, who were mainly government, or government connected, organisations and lobby groups, it would be hard to say support for the Bill was overwhelming.

Certainly, of the ostensibly 'non-government' witnesses, the Human Rights Commissioner and the Mental Health Commissioner expressed a number of deep reservations, as did all the industry organisations, the ACCC and Gene Tunny in the afternoon session. Even the two Union reps admitted greater transparency and better access to the data was needed.

The three organisations who were the most enthusiastically supportive and complimentary about the Bill, were three organisations that I have since learned more about and which I have considerable concerns with as far as the value of their submissions goes.

The HCQ, PHAA and COTA Queensland are all firstly deeply connected with each other – COTA Qld and HCQ apparently share the same office and postal address for some unknown reason.

Both are 98% funded by Government – HCQ by the State Government and COTA by the Federal Government. In the case of HCQ, they were in fact a Government group who 'broke away' from the Queensland Government in 2013 to become an NGO, although continuing to be funded by Government.

PHAA, who I had never heard of and who I specifically asked to provide me with relevant information to do with her organisation and funding neglected to say PHAA is one of 130 global member organisations of the WHO's World Federation of Public Health Associations (WFPHA) with a head of office at the Institute of Global Health in Geneva and sponsored by Pfizer.

I have considerable concerns with so-called "community organisations" like these three, who are all government funded organisations, whose entire work consists of contracts with Government to "deliver government programs" and "advance reforms in the aged care sector".

All three are ubiquitous in making submissions on every major piece of legislation and appearing at Committee hearings. They are represented as Non-Government Organisations but I have a real issue with exactly how 'independent' or 'non-government' an organisation can be that receives the majority of its revenue from Government.

As a Parliamentarian I am required to declare any "conflicts of interest" and I believe the same onus should be on witnesses to make clear the same.

Normally, when parliamentary committees conduct inquiries they will select individuals and representatives of organisations from amongst those who have submitted written submissions to the Committee are invited to appear before the committee and answer questions the committee may have.

According to the Australian Parliamentary website, "these hearings enable witnesses to clarify and expand on their written submissions and allow the committee to seek additional information".

Of the sixteen witnesses who appeared before the Committee at the Public Hearing on 22 January 2021, only four had actually lodged a written submission. Only around six of those witnesses could be described as independent of Government.

Failure to properly consider the "Application of fundamental legislative Principles"

The Report states the "committee's task to be considering "the application of fundamental principle legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals and to the institution of Parliament".

I do not feel that this was achieved. The Report's response to the many constitutional and civil liberty issues raised in the submissions, by simply repeating the Chief Health Officer's statement that "it was necessary to preserve safety". I don't believe that constitutes a proper consideration of the 'legislative' or democratic principles at stake here.

Why was there no Legal or Constitutional Experts at the Public Hearing to provide the Committee members with clear legal answers to some of these questions?

There were submissions from two legal experts and I note both were opposed to the extension of emergency powers.

Dr Julie Copley, is a Law Lecturer the University of Southern Queensland's School of Law and Justice, while Professor Kate Galloway is a an Associate Professor of Law at Griffith University.

Why were they not invited to appear at the Hearing? Or the Queensland Law Society, or the Qld Bar Association or Professor James Allen of the University of Qld?

CONSTITUTIONAL AND CIVIL LIBERTY ISSUES

Under the 'rule of law' model Australia was built on, any exercise of the Executive's regulation-making powers needs to be proportionate.

The government, CHO and the Committee's report has included on every point of issue or question, a formulaic statement that it is. But unless you believe that absolutely anything is justifiable in the interest of eliminating the transmission of this disease, that is clearly far too simplistic – as the Human Rights Commissioner pointed out in his evidence at the Hearing.

Powers as wide and intrusive as those which this government has purported to exercise should not be available to any government on the mere say-so of the executive.

CONCLUSION

All over the media and official outlets, we are hearing about how efficient the new way of governing is, at both the National and State level.

There is a common delusion that authoritarian government is efficient. It does not waste time in argument or debate or parliamentary scrutiny.

This concentration of power in a small number of hands and the absence of wider deliberation and scrutiny enables governments to make major decisions on an ad hoc basis, without proper forethought, transparency, scrutiny or accountability.

The use of political power as an instrument of mass coercion is corrosive. It divides and it embitters.

The unequal impact of the government's measures is also eroding any sense of community or national solidarity.

Stephen Andrew MP

State Member for Mirani

Member QLD Parliamentary Health & Environment Committee (HEC)

11 February 2021