



COVID-19 Emergency Response and Other Legislation Amendment Bill 2021

**Report No. 6, 57th Parliament
Economics and Governance Committee
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Economics and Governance Committee

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

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Abbreviations

ACSL	Australian College of Strata Lawyers
Amendment Act	<i>Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020</i>
Attorney-General	Hon Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women, and Minister for the Prevention of Domestic and Family Violence
Bill	COVID-19 Emergency Response and Other Legislation Amendment Bill 2021
CBR	City of Brisbane Regulation 2012
CC Act	<i>Crime and Corruption Act 2001</i>
CCIQ	Chamber of Commerce & Industry Queensland
COBA	<i>City of Brisbane Act 2010</i>
Commissioner	Commissioner of Liquor and Gaming
committee	Economics and Governance Committee
DJAG	Department of Justice and Attorney-General
DSDILGP	Department of State Development, Infrastructure, Local Government and Planning
ECQ	Electoral Commission of Queensland
ER Act	<i>COVID-19 Emergency Response Act 2020</i>
Extension Act	<i>COVID-19 Emergency Response and Other Legislation Amendment Act 2020</i>
FLP Notebook	Office of the Queensland Parliamentary Counsel, <i>Fundamental Legislative Principles: The OQPC Notebook</i> , January 2008.
FLPs	fundamental legislative principles
Gaming Machine Act	<i>Gaming Machine Act 1991</i>
HRA	<i>Human Rights Act 2019</i>
HTV card	how-to-vote card
LGA	<i>Local Government Act 2009</i>
LGAQ	Local Government Association of Queensland
LGEA	<i>Local Government Electoral Act 2011</i>

LGMA Queensland	Local Government Managers Australia, Queensland
LGR	Local Government Regulation 2012
Liquor Act	<i>Liquor Act 1992</i>
LSA	<i>Legislative Standards Act 1992</i>
NRA	National Retail Association
OQPC	Office of the Queensland Parliamentary Counsel
PIN	penalty infringement notice
Public Health Emergency Act	<i>Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020</i>
QFF	Queensland Farmers' Federation
QHA	Queensland Hotels Association
QLS	Queensland Law Society
QRC	Queensland Resources Council
Regulation	Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020 (Regulation)
Small Business Commissioner	Queensland Small Business Commissioner
TLA	Takeaway Liquor Authority

Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the COVID-19 Emergency Response and Other Legislation Amendment Bill 2021.

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 and provided evidence at the committee's public hearing. I also thank our Parliamentary Service staff, the Department of Justice and Attorney-General, and the Department of State Development, Infrastructure, Local Government and Planning for their assistance.

I commend this report to the House.



Linus Power MP

Chair

Recommendations

Recommendation 1

3

The committee recommends the COVID-19 Emergency Response and Other Legislation Amendment Bill 2021 be passed.

1 Introduction

1.1 Role of the committee

The Economics and Governance 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 are:

- Premier and Cabinet, and Trade
- Treasury and Investment
- Tourism Industry Development, Innovation and Sport.

The committee is responsible for examining each bill in its portfolio areas to consider the policy to be given effect by the legislation, the application of fundamental legislative principles (FLPs), and the compatibility of the legislation with the *Human Rights Act 2019* (HRA).²

1.2 Inquiry process

The COVID-19 Emergency Response and Other Legislation Amendment Bill 2021 (Bill) was introduced into the Legislative Assembly on 11 March 2021 by the Hon Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women, and Minister for the Prevention of Domestic and Family Violence (Attorney-General). On the introduction of the Bill, the Assembly agreed to a motion that the Bill be declared an urgent Bill³ and referred to the committee for expedited consideration and report to the Assembly by 14 April 2021.⁴

During its examination of the Bill, the committee:

- invited written submissions on the Bill from the public, identified stakeholders and email subscribers, and received 10 submissions⁵ (a list of submitters is provided at Appendix A)
- received a written briefing on the Bill from the Department of Justice and Attorney-General (DJAG) and Department of State Development, Infrastructure, Local Government and Planning (DSDILGP), prior to a public briefing from departmental officials on 22 March 2021 (a list of the officials who appeared at the briefing is provided at Appendix B)
- requested and received written advice from the departments on issues raised in submissions
- held a public hearing with stakeholders via videoconference and teleconference on 29 March 2021 (a list of the witnesses who participated in the hearing is provided at Appendix C).

The submissions, written advice from the departments, and transcripts of the briefing and hearing are available on the committee's inquiry webpage.⁶

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), s 39.

³ The Bill was declared urgent under Standing Order 137, which provides for bills to be declared urgent and be subject to expedited passage through the various stages of parliamentary consideration. This includes providing, under SO 137(1), for the House 'to refer an urgent Bill to a portfolio committee to report to the House for a period of less than 6 weeks'.

⁴ Queensland Parliament, Record of Proceedings, 11 March 2021, p 530.

⁵ The committee issued its call for submissions on 12 March 2021 and required submissions to be provided by 12pm midday, 19 March 2021. To publicise the inquiry and call for submissions, the committee contacted over 1,100 email subscribers and 700 identified stakeholder organisations and individuals, as well as publishing inquiry information on its website and issuing a media release and social media posts.

⁶ <https://www.parliament.qld.gov.au/work-of-committees/committees/EGC>

1.3 Policy objectives of the Bill

The stated objectives of the Bill are to:

- extend the operation of various legislative measures implemented to respond to the impacts of the COVID-19 public health emergency, to apply up to 30 September 2021 or an earlier date as prescribed, as required to support the ongoing response to the pandemic and its effects
- allow local governments to decide, by resolution at a meeting other than a budget meeting, what rates and charges are to be levied for the 2021-22 financial year (including providing for decisions to be revisited later during the year)
- provide for various measures to facilitate the holding of local government by-elections and fresh elections in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency, including providing for a penalty infringement notice to be issued for certain electoral offences
- extend the operation of temporary local government and committee meeting provisions which allow for such meetings to be held via audio/audio visual link, or to be closed to the public for health and safety reasons associated with COVID-19, and require real-time public viewing or listening to meetings where audio visual links are used.⁷

1.4 Government consultation on the Bill

The explanatory notes advise that the government undertook targeted consultation with key stakeholders on the policy proposal to further extend the application of the temporary legislative measures implemented in response to the pandemic and its effects. This included engaging with:

... heads of court jurisdiction and the Queensland Civil and Administrative Tribunal, Queensland Law Society, Bar Association of Queensland, Real Estate Institute of Queensland, Women's Legal Service, Aboriginal and Torres Strait Islander Women's Legal Service, Unit Owners Association of Queensland, Owners Corporation Network, Australian College of Strata Lawyers, Strata Community Australia (Qld), Australian Resident Accommodation Managers Association, Clubs Queensland, Queensland Hotels Association, RSL & Services Clubs Association Queensland Inc, Foundation for Alcohol Research and Education, Restaurant and Catering Australia, Tabcorp Holdings Limited, The Star Entertainment Group, The Ville Resort – Casino, The Reef Hotel Casino, Director of Public Prosecutions, Queensland Human Rights Commission, Legal Aid Queensland, Crime and Corruption Commission, Public Trustee, Public Guardian, Public Advocate, Electoral Commission Queensland, Queensland Family and Child Commission, Queensland College of Teachers, Family Responsibilities Commission, Office of the Independent Assessor and Small Business Commissioner.⁸

In relation to the local government provisions (regarding rating adjustments, local government elections and local government meetings), the explanatory notes state that the Local Government Association of Queensland (LGAQ) and Local Government Managers Australia, Queensland (LGMA Queensland) were provided with an overview of the proposed local government amendments.⁹

Additionally, the Electoral Commission of Queensland (ECQ) was consulted 'during the preparation of the proposed amendments for local government by-elections and fresh elections'.¹⁰

⁷ Explanatory notes, p 4.

⁸ Explanatory notes, p 16. See also Mr David McKarzel, Executive Director, Office of Regulatory Policy, Liquor, Gaming and Fair Trading, Department of Justice and Attorney-General (DJAG), public briefing transcript, Brisbane, 22 March 2021, p 6.

⁹ Explanatory notes, p 16.

¹⁰ Explanatory notes, p 16. See also: Mr Jordon Watts, Acting Director, Legislation Governance and Capability, Local Government Division, Department of State Development, Infrastructure, Local Government and Planning (DSDILGP), public briefing transcript, Brisbane, 22 March 2021, p 3.

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 COVID-19 Emergency Response and Other Legislation Amendment Bill 2021 be passed.

2 Background

Queensland's response to the COVID-19 pandemic has been supported by the implementation of a suite of legislative measures designed to 'protect the health, safety and welfare of Queenslanders, mitigate the spread of COVID-19 in the community, and facilitate the continued functioning of Queensland's institutions and economy to the extent possible'.¹¹

As a first response, the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* (Public Health Emergency Act) was urgently passed by the Parliament on 18 March 2020. This legislation gave effect to a series of measures including:

- strengthening the powers of the Chief Health Officer and emergency officers to implement social distancing measures (including regulating movements and gatherings and establishing isolation and quarantine arrangements and associated enforcement provisions)
- providing for changes to the planning framework to allow businesses to operate outside of normal hours or approved activities and conditions, to ensure important services could continue to be provided to the community (eg including allowing supermarkets to restock shelves around the clock without breaching conditions)
- implementing a series of amendments to facilitate the holding of the 2020 quadrennial local government elections and state by-elections in a way that minimised serious risks to the health and safety of persons caused by the COVID-19 emergency (including by increasing the flexibility of postal voting processes, providing for expanded electronic voting and other alternative arrangements, and providing for the suspension or termination of the poll if required).¹²

In addition to these key changes in respect of the public health framework, the Parliament thereafter enacted 3 pieces of legislation to support a further array of temporary, and in some cases extraordinary, legislative measures to allow for flexible and rapid responses to disruptions to a broad range of activities and resulting impacts and issues arising from the COVID-19 emergency and associated restrictions.¹³

The first of these three COVID laws was the *COVID-19 Emergency Response Act 2020* (ER Act), which was enacted in April 2020, and included provisions:

- establishing regulation-making powers to deal with the effects of the COVID-19 public health emergency on residential tenancies and rooming accommodation, and to facilitate the implementation of the 2020 National Cabinet decision in relation to good faith leasing principles for relevant non-residential leases
- establishing a temporary Queensland Small Business Commissioner (Small Business Commissioner) to deliver expanded advocacy functions for Queensland small businesses and administer mediation services in relation to small business tenancy disputes
- establishing a legislative modification framework of general application across the statute book, which provided for legislative requirements to be modified by secondary instruments where those requirements relate to:
 - reducing physical contact between persons
 - statutory timeframes
 - proceedings of courts and tribunals.¹⁴

¹¹ Explanatory notes, p 1.

¹² Public Health and Other Legislation (Public Health Emergency) Amendment Bill 2020, explanatory notes, pp 1-2.

¹³ Explanatory notes, p 1.

¹⁴ COVID-19 Emergency Response Bill 2020, explanatory notes, p 2.

The *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* (Amendment Act), enacted the following month in May 2020, contained further provisions to address issues unable to be addressed under the ER Act's legislative modification framework, or otherwise 'unsuitable to be made by way of a secondary instrument' such as a regulation.¹⁵ Amending over 20 different Acts across the statute book, the Amendment Act's provisions included:

- various amendments intended to assist Queensland's health and disability sectors and adult corrective services and youth detention sectors to operate safely and effectively during the pandemic (through amendments to the *Corrective Services Act 2006*, *Disability Services Act 2006*, *Forensic Disability Act 2011*, *Mental Health Act 2016*, *Private Health Facilities Act 1999*, *Public Health Act 2005* and *Youth Justice Act 1992*)
- amendments to the *Police Powers and Responsibilities Act 2000* to provide for court-ordered COVID-19 testing, and for the provision of the results to specified persons
- provision for certain affected registered workers to apply for payment of all or part of their long service leave (through amendments to the *Building and Construction Industry (Portable Long Service Leave) Act 1991* and *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*)¹⁶
- amendments to local government legislation¹⁷ to provide a temporary regulation-making power to enable Queensland local governments to decide, by resolution at a meeting other than a budget meeting, what rates and charges are to be levied for part of the 2020-21 financial year (to help 'safeguard revenue streams' for local governments)¹⁸
- a series of particular measures to assist Queensland businesses and individuals suffering financial and operational stress caused by the public health emergency (through amendments to the *Body Corporate and Community Management Act 1997*, *Building Units and Group Titles Act 1980*, *Gaming Machine Act 1991* (Gaming Machine Act), *Keno Act 1996*, *Lotteries Act 1997*, *Casino Control Act 1982*, *Environmental Protection Act 1994*, *Liquor Act 1992* (Liquor Act), and *Manufactured Homes (Residential Parks) Act 2003*)¹⁹
- amending the ER Act to clarify the operation of the legislative modification framework in relation to statutory time limits.²⁰

The majority of the measures in the ER Act and Amendment Act were initially due to expire on 31 December 2020. However, '[i]n recognition of the continued uncertainty surrounding the effects of and response to the COVID-19 public health emergency', the *COVID-19 Emergency Response and Other Legislation Amendment Act 2020* (Extension Act) was enacted,²¹ extending the operation of the measures in the ER Act and Amendment Act, together with secondary instruments made under or in relation to those measures, that were considered still to be required.²² The Extension Act achieved this by establishing a newly termed 'COVID-19 legislation expiry day' applicable to these Acts and related

¹⁵ Justice and Other Legislation (COVID-19 Emergency Response) Amendment Bill 2021, explanatory notes, p 1.

¹⁶ Justice and Other Legislation (COVID-19 Emergency Response) Amendment Bill 2021, explanatory notes, p 4.

¹⁷ *The City of Brisbane Act 2010* and *Local Government Act 2009*.

¹⁸ Justice and Other Legislation (COVID-19 Emergency Response) Amendment Bill 2021, explanatory notes, p 2.

¹⁹ Justice and Other Legislation (COVID-19 Emergency Response) Amendment Bill 2021, explanatory notes, p 2.

²⁰ The amendments were identified as necessary to clarify that the power provided to modify statutory time limits on a ground relating to COVID-19 does not unintentionally override a general or overarching condition or restriction on the exercise of an existing power – eg that a statutory period be extended by agreement or consent. See Justice and Other Legislation (COVID-19 Emergency Response) Amendment Bill 2021, explanatory notes, p 4.

²¹ Explanatory notes, p 1.

²² Explanatory notes, p 1. See also: Ms Kristina Deveson, Acting Senior Director, Courts Innovation Program, Magistrates Court Service, DJAG, public briefing transcript, Brisbane, 22 March 2021, p 2.

secondary instruments, which it set at 30 April 2021, or an earlier day prescribed by regulation.²³ In addition, the Extension Act inserted a limited number of new measures also subject to expiry by the COVID-19 legislation expiry day, including establishing a power to make transitional regulations to facilitate the return from modified to ordinary arrangements,²⁴ and amendments to provide for state government by-elections to be conducted in a COVID-safe manner.²⁵

Following the passage of the Extension Act, significant restrictions were imposed on the Greater Brisbane region in January 2021, in response to the identification of a highly contagious variant of COVID-19 in an individual who had been in the community. These restrictions included a rapidly imposed, strict, 3-day lockdown, and subsequent period of targeted social distancing and masking requirements.²⁶ Similar emergency measures, including short periods of lockdown, were also imposed in Western Australia and Victoria in January and February 2021.²⁷

While the staged rollout of the COVID-19 vaccines has now commenced in Queensland (on 22 February 2021), given the recent developments and ongoing risks posed by COVID-19, the government has identified that there is a continued need for a temporary legislative framework to facilitate the state's successful functioning 'while uncertainty surrounding potential outbreaks of COVID-19 and the rapid, unpredictable imposition of restrictions remains'.²⁸

On 8 March 2021, the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* received assent, extending the operation of temporary legislative provisions to support the public health response to COVID-19 (including those in the Public Health Emergency Act), through to 30 September 2021.²⁹ This includes the extension of emergency powers for the Chief Health Officer to make public health directions to limit or respond to the spread of COVID-19 in Queensland.³⁰

Consistent with this extended application of the public health legislative framework for responding to COVID-19, the Bill proposes to also extend the operation of provisions introduced in the ER Act, Amendment Act, Extension Act, and related secondary instruments (the 'COVID-19 legislation') to 30 September 2021, as well as supporting further COVID-19 related temporary measures relating to local government administration and elections through additional amendments.³¹

DJAG and DSDILGP advised that other Australian jurisdictions have also adopted various comparable legislation, which is set to expire either on specified dates, or on the cessation of their declared public health emergencies.³²

The provisions for the extension of the COVID-19 legislation, and the additional local government related provisions, are respectively examined in sections 3.1 and 3.2 of this report.

²³ Extension Act, ss 4, 7, 37-39.

²⁴ See Extension Act, s 15, which provides for the making of a transitional regulation where 'it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of an affected law, as modified by a COVID-19 law, to the operation of the affected law after the expiry of the COVID-19 law', and 'this Act or the affected law does not make provision or sufficient provision'.

²⁵ DJAG and DSDILGP, correspondence, 17 March 2021, p 2.

²⁶ Explanatory notes, p 2.

²⁷ Explanatory notes, p 2.

²⁸ Explanatory notes, p 2.

²⁹ DJAG and DSDILGP, correspondence, 17 March 2021, p 2.

³⁰ DJAG and DSDILGP, correspondence, 17 March 2021, p 2. DJAG noted: 'As at 15 March 2021, there were 19 public health directions in force in Queensland'.

³¹ DJAG and DSDILGP, correspondence, 17 March 2021, p 5. DJAG stated that the Bill will align the expiry of the COVID-19 legislation with that of the public health emergency powers.

³² DJAG and DSDILGP, correspondence, 17 March 2021, p 10.

3 Examination of the Bill

3.1 Extension of COVID-19 legislation

The Bill proposes to extend the operation of COVID-19 legislation identified as still required to respond to COVID-19,³³ by amending the definition of ‘COVID-19 legislation expiry day’ as applicable to a broad range of temporary measures contained within these Acts and instruments, from 30 April 2021 to 30 September 2021, or an earlier date as prescribed by regulation.³⁴ To support this change, the Bill also amends references to dates in several affected Acts and regulations, as well as making some other consequential or minor, technical amendments.³⁵ Further, the Bill amends the transitional regulation making power in the ER Act (which allows a regulation to be made to facilitate the efficient and effective return to normal operations once a COVID-law is no longer needed), to allow the power to be exercised by the minister who is responsible for administering the substantive law affected by the COVID-19 legislation (as opposed to only the Premier, as minister responsible for the ER Act).³⁶

On introducing the Bill, the Attorney-General stated that while the Bill’s extension of the COVID-19 legislative framework recognises that we may ‘continue to feel the immediate effects of this global pandemic for many months to come’, its time limited nature is an ‘important safeguard’ which ensures that ‘if the need for these measures dissipates before 30 September 2021 they can be extinguished as quickly and flexibly as possible’.³⁷

In this report’s consideration of these extended provisions, the committee has focussed primarily on those measures discussed by stakeholders during the committee’s consultation on the Bill. However, a full summary of the measures to be extended by the Bill, which was provided to the committee as an addendum to written advice received from DJAG and DSDILGP, is available at Appendix D.

At an overall level, those stakeholders who addressed the proposed extension and associated amendments were generally supportive of the Bill’s intent, recognising the importance of supporting affected businesses, organisations and individuals with a responsive legislative framework.

The National Retail Association (NRA), for example, submitted to the committee that the retail sector had endured a tumultuous period over the course of the pandemic, with a significant ‘nosedive’ in retail sales in early 2020 that resulted in large losses for its Queensland members.³⁸ While the sector since experienced ‘unusually high levels of retail sales’ in the latter part of 2020, the NRA advised that this was influenced by a number of factors, including pent up demand following lockdowns, strong discretionary spending power due to Queenslanders being unable to travel overseas, and government assistance measures (eg JobKeeper etc), which have supported consumer spending.³⁹ The NRA submitted that as ‘all those contributing factors are only temporary’, and with JobKeeper due to expire at the end of March 2021, governments need to continue to work with businesses ‘to ensure...we avoid

³³ Note – not all provisions of the COVID-19 legislation are to be extended. The Bill amends provisions of the Amendment Act to remove modifications to the *Coroners Act 2003* that extended the period for providing the annual report of the Domestic and Family Violence Death Review and Advisory Board. DJAG advised that these ‘were intended as a temporary one-off extension for the 2019-20 annual report’. See DJAG and DSDILGP, correspondence, 17 March 2021, p 5. See also explanatory notes, p 6.

³⁴ Bill, cl 12 (ER Act, proposed amended s 4A).

³⁵ Bill, cls 2-5, 15, 16-18, 19-20.

³⁶ Explanatory notes, p 11; DJAG and DSDILGP, correspondence, 17 March 2021, p 3.

³⁷ Queensland Parliament, Record of Proceedings, 11 March 2021, p 528.

³⁸ Submission 7, p 2.

³⁹ Submission 7, p 2.

the economic carnage of a second recession in quick succession'.⁴⁰ The NRA submitted that the Bill's support for the ongoing operation of certain key measures would assist in supporting retail trade.⁴¹

The Queensland Law Society (QLS) also expressed general support for the Bill and its retention of 'the necessary legislative head of power',⁴² which it described as 'providing the flexibility needed to respond to the ongoing developments of the COVID-19 pandemic'.⁴³ Citing the impending 3-day lockdown announced by the Premier on the day of the committee's public hearing on the Bill (to commence at 5pm that evening), the QLS' Mr Matt Dunn stated that the power had been:

... very much facilitative to allow changes to be made to our legislative framework to ease people's transition into doing various types of legal business and certain types of proceedings and otherwise to be done during the pandemic when there is a disruption like the one we are experiencing today.⁴⁴

QLS President, Ms Elizabeth Shearer, also stated that while 'there will always be an argument around the margins of some measures ... we think that on the whole the correct legislative balance has been struck'.⁴⁵ Further, the QLS submitted that many of the benefits of the amendments 'are not limited to issues solely arising from the pandemic' and should be considered for implementation in legislation on a more permanent basis.⁴⁶

The Chamber of Commerce & Industry Queensland (CCIQ) also saw scope for the more permanent implementation of some of the temporary legislative measures as part of a broader move towards a more 'business-friendly government', expressing support for the Bill, 'but as part of a larger piece of work'.⁴⁷

Further, the LGAQ expressed support for the extension of the COVID-19 related legislation, advising that 'Queensland councils acknowledge COVID is far from over', and that the extension of the provisions is 'necessary to ensure government is able to appropriately respond to emerging COVID situations'.⁴⁸

Specific measures, stakeholder views on those measures, and departmental responses to stakeholder comments are set out below.

3.1.1 The legislation modification framework

As previously noted, the ER Act established a legislative modification framework to support responses to COVID-19 and associated health risks and restrictions, through powers to make regulations relating to:

- reducing physical contact between persons
- statutory timeframes
- proceedings of courts and tribunals.⁴⁹

⁴⁰ Submission 7, p 2.

⁴¹ Submission 7, p 3.

⁴² Ms Elizabeth Shearer, President, QLS, public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 1.

⁴³ Submission 9, p 2.

⁴⁴ Mr Matt Dunn, General Manager, Advocacy, Guidance and Governance, QLS, public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 2.

⁴⁵ Ms Elizabeth Shearer, President, QLS, public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 1.

⁴⁶ QLS, submission 9, p 2.

⁴⁷ Mr Gus Mandigora, Senior Policy Advisor, CCIQ, public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 7.

⁴⁸ Submission 10, p 1.

⁴⁹ DJAG and DSDILGP, correspondence, 17 March 2021, p 1.

In her explanatory speech, the Attorney-General stated of the provisions:

In practice, this legislative framework has given Queensland the flexibility for: additional attendance requirements at corrective service facilities; body corporate meetings to be attended remotely with electronic voting; P&C meetings to be held electronically; and administrative costs to be reduced for impacted industries such as the tourism industry. These are just a few examples...⁵⁰

3.1.1.1 Stakeholder views and the department's response

The QLS generally expressed support for the modification framework and its continued operation, citing its facilitation of a range of important legislative measures to support the continued operation of institutions, organisations and businesses.⁵¹ QLS President, Ms Elizabeth Shearer, referenced 'a number of changes to proceedings' that have been beneficial in allowing emergency matters to be brought before the courts:

... especially where participants to applications and interlocutory matters can participate potentially using technology more than the sort of more traditional face-to-face approach for those kinds of more procedural matters in the courts. It also allows and facilitates the appearance by technology of people in certain matters, like domestic violence applications. I know that has been particularly welcomed by a number of parties in that particular space because it is a helpful and useful thing to have the parties at distant locations and not both physically attending court at the same time.⁵²

In addition, Mr Matt Dunn, General Manager, Advocacy, Guidance and Governance, QLS, advised the committee that some of the measures also offered 'a significant access to justice benefit', including where they have supported the electronic signing and witnessing of certain documents:

Those things have meant that legal documents can be signed and executed in a way that allows people, especially those who are in isolation as people are at the moment or in regional and remote areas, to do legal business in a way that is still secure but is much cheaper and in a much more accessible way...

... We have also seen the production of evidence in terms of materials like affidavits being able to be produced in that way and that seems to have been a positive from our members' perspective in terms of the ability to be able to reduce costs in litigation and also to make litigation more accessible, even when people are disrupted or locked down, as we may find ourselves.⁵³

Mr Dunn suggested there would be merit in the government consulting further with stakeholders on the possible retention of these 'constructive' measures beyond the COVID-19 legislation expiry day, to support the Queensland community's continued access to associated justice and cost benefits.⁵⁴

The Crime and Corruption Commission (CCC) submitted that it 'welcomes' the Bill's proposed amendments to support the continued utilisation of relevant regulatory measures implemented under the Amendment Act, 'which in part permits the CCC to conduct hearings remotely using audio visual links during a COVID-19 emergency'.⁵⁵ The CCC expressed its support for the extension of the provisions 'applicable to the CCC's operations' until 30 September 2021.⁵⁶

In its departmental response to submissions, DJAG noted the comments of the QLS and the CCC in support of the Bill.⁵⁷

⁵⁰ Queensland Parliament, Record of Proceedings, 11 March 2021, p 528.

⁵¹ Submission 9, p 1.

⁵² Public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 2.

⁵³ Public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 2.

⁵⁴ Public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 2.

⁵⁵ Submission 4, p 1.

⁵⁶ Submission 4, p 1.

⁵⁷ DJAG and DSDILGP, correspondence, 25 March 2021, attachment, pp 5, 6.

DJAG also acknowledged the QLS's call for the government to engage in discussions about the possible retention of some COVID-19 legislative measures, advising in response:

As the Attorney-General noted on introducing the Bill, work is continuing to identify measures that should be retained permanently and where temporary measures are proposed to be made permanent, this will occur through ordinary legislative process.

DJAG will ensure that the QLS is consulted in this process.⁵⁸

3.1.2 Bodies corporate and related amendments

Among the amendments affected by the extension of the COVID-19 legislation expiry day are a series of provisions inserted in the *Body Corporate and Community Management Act 1997* and *Building Units and Group Titles Act 1980* by the Amendment Act, to 'provide measures to alleviate the financial burden caused by the COVID-19 emergency on bodies corporate' and owners/proprietors of lots.⁵⁹ The measures, which were initially extended by the Extension Act and would now continue through to the new 30 September 2021 COVID-19 legislation expiry day (unless otherwise prescribed), serve to:

- allow bodies corporate to adopt sinking fund budgets that do not meet the requirement to reserve an appropriate proportional share of amounts to meet anticipated major expenditure over at least the next 9 years after the body corporate's current financial year, thereby allowing bodies corporate to reduce contributions payable by owners
- permit body corporate committees to postpone the due date for contributions, to provide lot owners suffering financial hardship as a result of COVID-19 with additional time to pay their contributions
- prevent bodies corporate from charging penalty interest on outstanding lot owner contributions
- relax requirements for bodies corporate to initiate proceedings to recover lot owner contributions that have been outstanding for 2 years, thereby enabling bodies corporate to defer commencing debt recovery action against lot owners experiencing financial distress due to COVID-19
- increase (double) the maximum amounts that bodies corporate can borrow when authorised by ordinary resolution.⁶⁰

The Bill also makes minor amendments to these provisions to update references to regulations and extend the late payment deadline used in an example, from 1 June 2021 to 30 November 2021.⁶¹

3.1.2.1 Stakeholder views and the department's response

The Australian College of Strata Lawyers (ACSL) advised in reference to the amendments that it had made submissions about the government's policy response to issues arising from the COVID-19 pandemic. The ACSL submitted:

As this Bill is consistent with the Government's policy response, ACSL has no objection to the Bill.⁶²

DJAG noted that the ACSL had not expressed any concerns regarding the amendments.⁶³

⁵⁸ DJAG and DSDILGP, correspondence, 25 March 2021, attachment, p 6.

⁵⁹ *Body Corporate and Community Management Act 1997*, s 323A (Purpose of part), inserted by Amendment Act, s 4; *Building Units and Group Titles Act 1980*, s 134A (Purpose of part, inserted by Amendment Act, s 7.

⁶⁰ *Body Corporate and Community Management Act 1997*, chapter 7, part 3; *Building Units and Group Titles Act 1980*, part 6A (provisions inserted by the Amendment Act, ss 3-8. See also DJAG and DSDILGP, correspondence, 17 March 2021, addendum, p 11.

⁶¹ Bill, cls 3-5 (*Body Corporate and Community Management Act 1997*, proposed amended ss 323D(4), 323F(1)(b) and 323H(4)(a)).

⁶² Submission 1, p 1.

⁶³ DJAG and DSDILGP, correspondence, 25 March 2021, attachment, p 2.

3.1.3 Lease arrangements and the Small Business Commissioner

The Bill would extend the operation of the Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020 (Regulation), made under the regulation making powers set out in the ER Act 2020. The Regulation served to implement a National Cabinet agreement on establishing a mandatory code of conduct for the purpose of imposing good faith leasing principles for application to commercial leases, in response to the financial hardship being experienced by some tenants due to business disruptions, closures, restrictions on movement and social distancing arising during the COVID-19 emergency.⁶⁴ The Regulation also included a prohibition on a lessor increasing rent or taking a recovery action or otherwise terminating possession or charging interest on unpaid rent for an affected lease for a specific 'response period' (29 March to 30 September 2020), which was subsequently extended across an 'extension period' (1 October 2020 to 31 December 2020) by the Extension Act.⁶⁵

The Bill proposes to extend the operation of the Regulation through to the new 30 September 2021 expiry date. Whilst not further extending the protections applicable to the response or extension periods, the Bill would preserve the rights of a lessee under an affected lease to continue to seek rent relief in respect of these past periods, or:

- to seek to mediate a dispute through the Small Business Commissioner, whose facilitative role in the mediation process is recognised in the Regulation
- if mediation is unsuccessful, to apply to the Queensland Civil and Administrative Tribunal or a court to resolve the dispute.⁶⁶

The extension of the Regulation also supports the continued operation of the Small Business Commissioner, established as a temporary appointment under the ER Act with functions and powers including:

- providing information and advisory services to the public about matters relevant to small businesses, particularly in relation to the COVID-19 response measures
- assisting small businesses in reaching an informal resolution for disputes relating to small business leases
- administer a mediation process prescribed by regulation for responding to the COVID-19 emergency in relation to small business tenancy disputes.⁶⁷

While the appointment of the Small Business Commissioner was initially scheduled to expire on 31 December 2021, the Extension Act removed the reference to this expiry date.⁶⁸

DJAG confirmed that while the Bill extends the operation of these ER Act and Extension Act provisions, the earlier removal of the expiry day means that the Bill's amendments would not have any direct impact on the Small Business Commissioner's continuing operations, beyond supporting the ongoing recognition of the Small Business Commissioner's role (including as stipulated in the Regulation).⁶⁹ The department confirmed that the Small Business Commissioner has been 'critical' in 'avoiding lengthy

⁶⁴ Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020, explanatory notes, pp 1-2.

⁶⁵ Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020, ss 12-13 (as made and subsequently amendment by the Extension Act).

⁶⁶ DJAG and DSDILGP, correspondence, 17 March 2021, addendum, p 20.

⁶⁷ ER Act, s 20.

⁶⁸ Extension Act, s 12.

⁶⁹ Ms Kristina Deveson, Acting Senior Director, Courts Innovation Program, Magistrates Court Service, DJAG, public briefing transcript, Brisbane, 22 March 2021, p 5.

and costly commercial leasing disputes during the COVID-19 pandemic with early information, advice and mediation services’:

The function assisted Queensland businesses to successfully manage the impact of COVID-19 and resolve leasing issues in an effective and timely way, in many cases through informal mechanisms. The Small Business Commissioner is continuing to receive demand for its dispute resolution services. Its ongoing operation will enable leasing dispute matters received already to be finalised by the Small Business Commissioner, avoiding the need for them to transfer to any other resolution mechanisms.⁷⁰

DJAG also advised the committee that the government intends to introduce a permanent Small Business Commissioner, which would ‘bring Queensland into line with other mainland states that already have a small business commissioner—to provide support services and advocacy for small business’.⁷¹

3.1.3.1 Stakeholder views and the department’s response

The NRA in its submission acknowledged the importance of the continuation of the ‘approach seen over the last 12 months that enables greater flexibility in negotiations between tenants and landlords’.⁷² The NRA submitted that leasing arrangements have been ‘one of the biggest hurdles for retail throughout the pandemic’, with thousands of commercial tenants having to still make rental payments while their on-premises operations have been ‘severely limited by lockdowns...’.⁷³ The NRA stated:

Queensland and Australia are still a long way from home with regards to avoiding severe economic fallout from the pandemic. Extending this measure would help immensely when it comes to keeping as many Queensland retail outlets as open as possible.⁷⁴

The NRA also took the opportunity to commend the establishment and operations of the Small Business Commissioner, stating that it supports the move to make the role a permanent one, and that ‘we look forward to working with the Commissioner into the future’.⁷⁵

DJAG noted the NRA’s support for the retention of measures promoting greater flexibility in negotiations between landlords and tenants, and for the ongoing operations of the Small Business Commissioner.⁷⁶ DJAG stated:

The extension of the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020* will: continue to preserve rights and obligations accrued prior to 31 December 2020; allow for the continuation of matters on foot; and allow the Small Business Commissioner to continue to mediate small business tenancy disputes.⁷⁷

3.1.4 Takeaway liquor authorities

The Bill extends the operation of provisions inserted by the Amendment Act and extended once by the Extension Act, which provide a temporary power for the Commissioner for Liquor and Gaming (Commissioner) to issue a Takeaway Liquor Authority (TLA) to allow a licensee or permittee to sell takeaway liquor as specified in the TLA, regardless of the limitations of their current licence or permit.⁷⁸

⁷⁰ Ms Kristina Deveson, Acting Senior Director, Courts Innovation Program, Magistrates Court Service, DJAG, public briefing transcript, Brisbane, 22 March 2021, pp 5-6.

⁷¹ Ms Kristina Deveson, Acting Senior Director, Courts Innovation Program, Magistrates Court Service, DJAG, public briefing transcript, Brisbane, 22 March 2021, p 6.

⁷² Submission 7, p 3.

⁷³ Submission 7, p 3.

⁷⁴ Submission 7, p 3.

⁷⁵ Submission 7, p 3.

⁷⁶ DJAG and DSDILGP, correspondence, 25 March 2021, attachment, pp 5-6.

⁷⁷ DJAG and DSDILGP, correspondence, 25 March 2021, attachment, pp 5-6.

⁷⁸ DJAG and DSDILGP, correspondence, 17 March 2021, addendum, p 13.

The provisions, which would continue to operate through to the new COVID-19 legislation expiry day, are intended to support the ongoing viability of licensed restaurants, cafes and bars that have been disrupted by the COVID-19 emergency, and reduce the risk of harm relating to the COVID-19 emergency to persons residing in restricted areas.⁷⁹ Consistent with this purpose, eligibility for a TLA is specifically linked to a licensed premise's experience of COVID-related disruptions, with a TLA only able to be issued to businesses for which:

- (a) the sale of liquor for consumption on the premises is authorised by a licence; but
- (b) the operation of a business in the premises, in the way the business was ordinarily operated in the premises immediately before the COVID-19 emergency, would contravene a public health direction.⁸⁰

3.1.4.1 Stakeholder views and the department's response

The CCIQ expressed support for the provisions enabling pubs, clubs, restaurants and other licensed venues to sell takeaway liquor, commending the government's rapid action in this respect to support business-friendly conditions during the pandemic.⁸¹ While not commenting on the specifics of the TLAs that have been issued, CCIQ Senior Policy Advisor, Mr Gus Mandigora, advised the committee that at a broad level:

I think our position remains that, where it is necessary to allow businesses to operate flexibly in order to survive through a situation like lockdown and COVID-19 restrictions, it is important to let that happen.⁸²

The Queensland Hotels Association (QHA), while also supportive of the extension of the power to enable changes to operating conditions, particularly in the context of the 3-day lockdown imposed during the course of the committee's inquiry,⁸³ expressed concerns about the manner in which the powers have been engaged, arguing they have not been implemented in an appropriately balanced fashion, and may serve to disadvantage hotels and bottle shops.⁸⁴

The QHA noted that it supported the provisions during the COVID lockdown and specifically in lockdown periods, recognising that the affected venues were denied the on-premises opportunity for sales of alcohol at that time, and that under licence conditions the patrons of restaurants can ordinarily, at the end of their meal, take away an open bottle of wine and one unopened bottle of wine (albeit wine specifically in this respect, and no other alcohol types).⁸⁵ However, the QHA contended that lockdown periods aside, the disruption to on-premises trading for cafes and restaurants decreased when venues were able to resume substantial on-premises trading from Stage 3,⁸⁶ such that there may no longer have been sufficient justification for continuing the temporary exemptions for these venues to sell takeaway alcohol:

... from 3 July 2020, cafes, restaurants and bars were essentially back to full on-premise trading. Capacity restrictions were imposed on hotels as 1 patron per 4sqm whilst "smaller hospitality venues" were

⁷⁹ *Liquor Act 1992*, s 235A.

⁸⁰ *Liquor Act 1992*, s 235C(2). This includes licensed premises in a restricted area or premises that the Commissioner is satisfied are a source of supply for residents of a restricted area (see *Liquor Act 1992*, s 235C(3)).

⁸¹ Mr Gus Mandigora, Senior Policy Advisor, CCIQ, public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 7.

⁸² Public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 8.

⁸³ Mr Bernie Hogan, Chief Executive Officer, Queensland Hotels Association (QHA), public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 4.

⁸⁴ Submission 3, p 1-2.

⁸⁵ Mr Bernie Hogan, Chief Executive Officer, QHA, public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 4.

⁸⁶ 'Stage 3' was the last of the 3 stages in the state government's 'roadmap' for the easing of COVID-19 restrictions. Stage 3 commenced at 12pm on 3 July 2020 (with some further relaxation of restrictions from 10 July 2020).

allowed 1 patron per 2 sqm. In virtually all restaurants and cafes, this meant business as usual returned since July.⁸⁷

The QHA suggested there needed to be more detailed criteria or a threshold test connected to the engagement of the TLA provisions, which are triggered by the Chief Health Officer issuing a directive, and not by a measure of the extent to which those directives affect the business:

For example, they talk about business viability. How is that defined and by whom? How is it measured? All the different parts of a directive, whether it is capacity, whether it is the need to wear masks, whether it is that there is a requirement for someone to be socially distant, should have no effect on whether a cafe or restaurant should be able to sell takeaway liquor.

We would look at the situation particularly of capacity. One person per two square metres has been in the restrictions for cafes since July. Many would be at full capacity at one per every two square metres, but not a hotel. We are curtailing the ability of a hotel, against another product licence type, that is essentially running at full capacity at the present time.⁸⁸

The QHA further submitted that allowing one small business type (cafes, restaurants and bars) to continue to sell takeaway liquor in contravention of their liquor licence entitlements is detrimental to hotels and clubs and does 'not create jobs',⁸⁹ stating:

- hotels and clubs that invested in the appropriate liquor type and required facilities underpinning the entitlement to sell takeaway alcohol are now facing competition from establishments operating outside of their usual licence conditions, with a resulting transfer of trade away from these businesses, hindering the recovery and growth particularly of small hotels and clubs⁹⁰
- hotels face a higher capital investment associated with establishing and maintaining their businesses, including: higher annual liquor licence fees;⁹¹ the requirement to have at least 2 of a commercial kitchen, functions facilities and/or accommodation; and higher licence compliance costs (including a requirement to have a Licensed Approved Manager available at all times – an individual who must pass probity to renew their licence and must maintain a *Responsible Management of Licensed Venues* training course certificate which must be renewed every 3 years)⁹²
- while a thriving hotel bottle shop business might require additional staff for handling customer stock control as it is a dedicated part of the hotel business, alcohol sales requirements for restaurants and cafes are typically met by existing wait staff without the need for a dedicated retail salesperson, such that there is no additional employment benefit for the economy.⁹³

The QHA argued that the disadvantage for hotel businesses is particularly acute in regional areas, and that the amendments may be inconsistent with the government's policy on tackling alcohol fuelled violence:

If you look at a small country town that does not have a huge tourism business, it does not suddenly swell in numbers because of Easter— there is one hotel, a restaurant, a cafe and a golf club. You have not grown the pie here, all you have done is slice it ever thinner. In fact, the hotel is disadvantaged because suddenly there are three other outlets in town. That has always been the issue when we were talking about tackling

⁸⁷ Submission 3, p 2.

⁸⁸ Mr Bernie Hogan, Chief Executive Officer, QHA, public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 4.

⁸⁹ Submission 3, p 4.

⁹⁰ Submission 3, p 2.

⁹¹ Submission 3, p 4. The QHA noted, for example, that while hotels were included in the removal of licensing fees for 2020-21, under the extended provisions they will be required to pay \$4,344 per bottle shop in 2021-22, whilst cafes and restaurants operating under TLAs will pay no extra fees for their sale of takeaway liquor.

⁹² Submission 3, pp 2-3.

⁹³ Submission 3, p 4.

alcohol fuelled violence laws. We wanted to curtail access. We cannot have it both ways. Now we are going to be opening up more and expecting that those businesses will survive where they have no more customers. From an economic point of view, and I know health is paramount, we cannot see that as a long-term future for regional Queensland.⁹⁴

The QHA suggested any TLAs issued under the provisions should only apply for a defined period concluding no later than the 30 September 2021 expiry day for the enabling powers (or earlier, depending on the status of the public health emergency),⁹⁵ as well as submitting that further support for the hotels and clubs sector may be warranted, for a more equitable approach to assistance across the different businesses operating in the hospitality sector.⁹⁶

DJAG, in response, acknowledged the QHA's comments about the differing effects of public health directives and associated restrictions on business viability, and a failure of TLAs to account for these effects, but stated:

Before government made the decision to further extend the provisions, there was reasonably significant consultation done with the various stakeholders. In November 2020 and February 2021, consultation occurred with the QHA ... ; Clubs Queensland; RSL & Services Clubs Association; the Restaurant and Catering Industry Association of Australia; and the Foundation for Alcohol Research and Education, FARE. There was general support for the continuation of the provisions.⁹⁷

DJAG advised that while the QHA expressed similar concerns during the consultation period, suggesting that many restaurants, cafes and bars continued to benefit from TLAs despite being all but back to 'business as usual':

The R&CA, the Restaurant and Catering Industry Association, stated that the takeaway liquor requirements remain necessary for the viability of restaurants and cafes while the COVID-19 restrictions continue to apply ... In the case of restaurants and cafes, at the time of the last notice that was issued—which I think was at the end of December—they were still subject to the social distancing density requirements

Having spoken both to the Small Business Commissioner and to the R&CA, it was clear that at that point restaurants and cafes were not able to ramp up back to where they were prior to the COVID emergency. If the bill's provisions actually refer to whether or not a public health direction in relation to the emergency is in place and whether that affects the ability of that business to trade in the way that it traded beforehand, the commissioner made a decision to issue a temporary takeaway liquor authority based on considering that evidence. The QHA has said that there is a risk from their perspective that there might be some what they call cannibalisation of the market. There has not been any data that we are aware of at this stage, but we have invited them to provide us with data.

...

Anecdotally—there is no data here—it is likely that a number of restaurants and cafes are sourcing their takeaway alcohol from their local bottle shops anyway. It is not necessarily a direct increase or proliferation. It is the restaurant going to Dan Murphy's, as it were, and stocking up. It depends. It is different from region to region.⁹⁸

DJAG further emphasised:

When people could dine in a restaurant—there are a number of people who can now go into a restaurant but not the full complement—it was always possible for them, after they had had their meal, to take away

⁹⁴ Mr Bernie Hogan, Chief Executive Officer, QHA, public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 4.

⁹⁵ Submission 3, p 1.

⁹⁶ Submission 3, p 4.

⁹⁷ Mr David McKarzel, Executive Director, Office of Regulatory Policy, Liquor, Gaming and Fair Trading, DJAG, public briefing transcript, Brisbane, 22 March 2021, p 6.

⁹⁸ Mr David McKarzel, Executive Director, Office of Regulatory Policy, Liquor, Gaming and Fair Trading, DJAG, public briefing transcript, Brisbane, 22 March 2021, pp 6-7.

an open bottle and a closed bottle as takeaway. Restaurants already had that capacity. What this provision did was to say, 'Okay, if people are unable to sit down because of COVID restrictions'—or a number of people still are not able to get into the relevant restaurant—if they buy takeaway food, they can buy up to 2.25 litres of takeaway alcohol but only with the takeaway meal.' It is not like a bottle shop where you can go in and buy alcohol.⁹⁹

Additionally, DJAG stated that it is 'important to note' that the Bill only extends the power for the Commissioner to issue a TLA, and that 'it is not automatic that the commissioner would extend the current TLA in force again beyond 30 April',¹⁰⁰ but that the provisions would provide the Commissioner with the flexibility to respond to evolving health and business conditions:

As an example, when we had the Brisbane lockdown at the end of January we had to issue a TLA ... for hotels because hotels could not have individuals inside the hotel drinking. Hotels can normally do takeaway, but if they are not offering on premises the Liquor Act stops them from doing takeaway as well. It would have been unlawful for hotels during the lockdown to supply takeaway when the bar was not open. The commissioner took into account that the CHO lockdown direction had affected those businesses, and the hotel received a temporary liquor authority to continue to trade takeaway both at the hotel and in a bottle shop so that the Liquor Act did not stop them from keeping afloat for those four days.¹⁰¹

DJAG also stated that the provisions are considered to be consistent with the government's policy on tackling alcohol fuelled violence, as in order to issue a TLA, the Commissioner must be satisfied that the granting of the authority is consistent with the purpose of the Liquor Act stated in s 3(a):

Section 3(a) provides that it is a main purpose of the Liquor Act to regulate the liquor industry and areas in the vicinity of licensed premises in a way compatible with minimising harm, and the potential for harm, from alcohol abuse and misuse and associated violence; minimising adverse impacts on the health or safety of members of the public; and minimising adverse effects on the amenity of the community.¹⁰²

Additionally:

The takeaway liquor authority issued to licensed restaurants and cafes also ensures the takeaway liquor can only be sold with takeaway food. The service of liquor with food is known to minimise alcohol-related harm.¹⁰³

3.1.5 Gaming tax relief

Under the Amendment Act, a new part was inserted in the Gaming Machine Act which established time limited provisions allowing for the Minister to issue a notice waiving or deferring the payment of gaming taxes¹⁰⁴ payable for a relevant month between March 2020 and December 2020. This power of deferral or waiver is able to be engaged only if the Minister is satisfied the deferral or waiver of the taxes 'is necessary to alleviate the financial burden caused by the COVID-19 emergency on gaming operators' (and subject to the approval of the Treasurer).¹⁰⁵

DJAG advised the committee that to date, the government:

... has only deferred the taxes that were incurred in March 2020. Obviously in the few months after that there were no taxes to collect because gaming was shut down. The amount all up was \$46 million, and

⁹⁹ Mr David McKarzel, Executive Director, Office of Regulatory Policy, Liquor, Gaming and Fair Trading, DJAG, public briefing transcript, Brisbane, 22 March 2021, p 6.

¹⁰⁰ DJAG and DSDILGP, correspondence, 25 March 2021, attachment, p 3.

¹⁰¹ Mr David McKarzel, Executive Director, Office of Regulatory Policy, Liquor, Gaming and Fair Trading, DJAG, public briefing transcript, Brisbane, 22 March 2021, pp 7-8.

¹⁰² DJAG and DSDILGP, correspondence, 25 March 2021, attachment, p 4.

¹⁰³ DJAG and DSDILGP, correspondence, 25 March 2021, attachment, p 5.

¹⁰⁴ A 'gaming tax' includes a gaming machine tax or health services levy (for funding health services), both levied as a percentage of a gaming machine licensee's monthly metered win), as well as a casino tax (under the *Casino Control Act 1982*, s 51), a keno tax (under the *Keno Act 1996*, s 109), or a lottery tax (under the *Lotteries Act 1997*, s 94). See *Gaming Machine Act 1991*, s 367A.

¹⁰⁵ *Gaming Machine Act 1991*, s 367C(2).

that amount has been subject to repayment arrangements that should kick in under the Gaming Tax Notice by the middle of this year, by June.¹⁰⁶

The Gaming Machine Act currently stipulates that a gaming tax notice must require a gaming tax for which payment is deferred 'to be paid by a day not later than 30 June 2021'.¹⁰⁷ The Bill proposes to extend this timeframe for the final payment of deferred gaming taxes, from 30 June 2021 to 30 September 2021,¹⁰⁸ consistent with the COVID-19 legislation expiry day.

There would be no extension to the range of relevant months for which taxes can be deferred or waived – that is, only 'an amount paid between March and December of 2020 ... could be deferred or waived'.¹⁰⁹ However, as the deferral and waiver provisions include scope for the government to issue a refund of a gaming tax that has already been paid, as a type of retrospective deferral or waiver,¹¹⁰ DJAG explained that the Bill's amendment would allow the government to 'say, pick August and refund it', via the issuing of a new gaming notice.¹¹¹ DJAG further explained:

... if there was a complete Melbourne style three-month shutdown again and government took the view that there needed to be some assistance, these provisions, having been extended through to September, could be used ... [T]his is worst case scenario. We are being really cautious and putting things in just in case, because around the world we have seen that things can happen quite quickly. In terms of the actual Gaming Tax Notice at the moment, it will not change even with the change in the bill. All the bill does is allow the power to do something in the future to continue. The current Gaming Tax Notice provides that they will pay the money back by the middle of the year.¹¹²

DJAG advised that the engagement of the provisions to date has not impacted the funding of the Gambling Community Benefit Fund,¹¹³ which redistributes gaming tax revenue through the allocation of grants to not-for-profit community groups, to enhance their capacity to provide services, leisure activities and opportunities for Queensland communities.¹¹⁴

3.1.5.1 Stakeholder views and the department's response

The QHA advised that it supports the Bill's extended provision for the deferral or waiver of gaming taxes, noting the Minister's engagement of deferral powers in respect of March 2020, but submitted that the provisions should be engaged to waive the applicable taxes completely.¹¹⁵

Mr Bernie Hogan, QHA Chief Executive Officer, advised the committee:

I think for us those taxes were to be collected in March 2020 and we had asked that they be waived, I suppose, in some small compensation for the fact that the industry was shut for 3½ months in its entirety, and it still has not recovered. In the next few weeks we will have that same experience as we had in

¹⁰⁶ Mr David McKarzel, Executive Director, Office of Regulatory Policy, Liquor, Gaming and Fair Trading, DJAG, public briefing transcript, Brisbane, 22 March 2021, p 8.

¹⁰⁷ *Gaming Machine Act 1991*, s 367C(4).

¹⁰⁸ Bill, cl 20 (*Gaming Machine Act 1991*, proposed amended s 367C(4)).

¹⁰⁹ Mr David McKarzel, Executive Director, Office of Regulatory Policy, Liquor, Gaming and Fair Trading, DJAG, public briefing transcript, Brisbane, 22 March 2021, p 8.

¹¹⁰ *Gaming Machine Act, 1991*, s 367C(3).

¹¹¹ Mr David McKarzel, Executive Director, Office of Regulatory Policy, Liquor, Gaming and Fair Trading, DJAG, public briefing transcript, Brisbane, 22 March 2021, p 8.

¹¹² Mr David McKarzel, Executive Director, Office of Regulatory Policy, Liquor, Gaming and Fair Trading, DJAG, public briefing transcript, Brisbane, 22 March 2021, p 8.

¹¹³ Mr David McKarzel, Executive Director, Office of Regulatory Policy, Liquor, Gaming and Fair Trading, DJAG, public briefing transcript, Brisbane, 22 March 2021, p 8.

¹¹⁴ Queensland Government, Business Queensland, *Gambling Community Benefit Fund*, webpage, last updated 1 August 2019, <https://www.business.qld.gov.au/industries/hospitality-tourism-sport/liquor-gaming/gaming/community-benefit-fund>

¹¹⁵ Submission 3, p 4.

January where all confidence was taken out of the market. There were very widespread numbers of cancellations, and not just in those areas that are locked down. Queensland gets affected right across the state from these lockdowns in a major population centre such as Greater Brisbane, but the Gold Coast and Sunshine Coast will feel that as well. We had asked and we have been in discussions with the Queensland government that those gaming taxes be waived to enable businesses to continue on instead of having a debt hanging over them where they have little chance of repayment every time we have cancellations or closing down of business operations.¹¹⁶

As previously noted, DJAG confirmed that the provisions would ensure the Minister has the capacity to further intervene to defer or waive payment of previous gaming taxes (including by way of a refund of paid amounts) to assist the sector if deemed appropriate.¹¹⁷

3.2 Temporary local government administrative and electoral provisions

The Bill proposes to establish new provisions and amend existing provisions to provide for extended temporary measures in relation to local government activities and elections, to:

- enable local governments to make ‘extraordinary decisions’ adjusting the rates and charges to be levied by the local government for the 2021-22 financial year
- provide the flexibility, if required, to facilitate the holding of fresh local government elections and by-elections in a COVID-safe way, in line with similar provisions for the quadrennial local government elections held in March 2020 and subsequent state elections in October 2020
- enable local governments to conduct meetings in a COVID-safe way.¹¹⁸

3.2.1 Ability to make ‘extraordinary decisions’ for the 2021-22 financial year

In response to the COVID-19 public health emergency, the Amendment Act and the Local Government Legislation Amendment Regulation (No. 1) 2020 inserted new provisions into the *City of Brisbane Act 2010* (COBA), *Local Government Act 2009* (LGA), *City of Brisbane Regulation 2012* (CBR) and *Local Government Regulation 2012* (LGR) to enable local governments to make an ‘extraordinary decision’ to adjust the rates and charges to be levied for the 2020-21 financial year, to help safeguard local government revenue streams.¹¹⁹ These measures were adopted only in relation to the 2020-21 financial year, and expire on 30 June 2021.¹²⁰

The Bill proposes to amend the COBA and the LGA to insert new provisions to provide the necessary authority for local governments to also make an extraordinary decision – that is, a decision by resolution, outside of the annual budget meeting – regarding what rates and charges are to be levied for the 2021-22 financial year.¹²¹

A local government may elect to increase or decrease rates.¹²² Further, if an extraordinary decision is made, the local government must amend the annual budget at the same meeting to take account of the extraordinary decision, and must adopt the amended annual budget.¹²³

The proposed new sections would expire on 30 June 2022.¹²⁴

¹¹⁶ Public hearing transcript, Brisbane (via videoconference), 29 March 2021, pp 4-5.

¹¹⁷ DJAG, public briefing transcript, Brisbane, 22 March 2021, p 8.

¹¹⁸ Explanatory notes, pp 6-7.

¹¹⁹ Amendment Act, explanatory notes, pp 36-37.

¹²⁰ Explanatory notes, p 2.

¹²¹ Explanatory notes, p 3.

¹²² DJAG and DSDILGP, correspondence, 17 March 2021, addendum, p 4.

¹²³ Bill, cls 7 (COBA, proposed s 96B) and 24 (LGA, proposed s 94B); DJAG and DSDILGP, correspondence, 17 March 2021, addendum, p 4.

¹²⁴ DJAG and DSDILGP, correspondence, 17 March 2021, p 6.

Ms Bronwyn Blagoev, Executive Director, Strategy and Service Delivery, Local Government Division, DSDILGP, advised the committee that while no councils had engaged the use of the provisions in 2020-21, the department had consulted with the LGAQ, LGMA and Local Government Finance Professionals Network regarding the need for the provisions, and:

The overwhelming response we got from stakeholders was, 'It wasn't used last time because of the extent of support that councils did get,' also in Queensland because of the relatively short nature of the lockdown.¹²⁵

Ms Blagoev further explained:

What councils are concerned about is if we get to July or August, post budget, and there is something that no-one really foresees—for example, we are back in a very deep lockdown. It might be unlikely, but I guess the point of this legislation is to provide for what we think is unlikely.

If we have another significant lockdown, I think you will see one of two things: some councils could say, 'We've had to shut down a lot of our revenue streams so we've shut the gyms, we've shut the pools and we've put staff off, so we've lost revenue streams so we need to increase rates to improve our revenue stream,' or they may actually say, 'We've had such a big lockdown that this is actually impacting on our ratepayers' ability to pay rates so we're going to reduce our rates to help out our ratepayers.' Somewhere like Cairns has obviously been heavily impacted. What if there was another lockdown and the extent of the impact on a place like Cairns is felt even more? Rates could go up; rates could go down. That is really up to each individual council to work out ... I think it is unlikely, but we are trying to provide that flexibility.¹²⁶

The provisions are considered further in section 4.1.2.1 of this report regarding the application of FLPs and in section 5.1.1 in respect of human rights considerations.

3.2.1.1 Stakeholder views and the department's response

In reference to the provisions for councils to adjust rates and charges for the 2021-22 financial year by extraordinary decisions, the joint submission of Queensland Resources Council (QRC), Queensland Famers' Federation (QFF) and Agforce Queensland acknowledged the need for the government to mitigate the economic effects of the COVID-19 pandemic, and to help safeguard revenue streams for local government.¹²⁷ However, these stakeholders expressed concerns that extending this authority 'serves to exacerbate the already unpredictable and non-transparent nature of the local government rating system',¹²⁸ potentially at 'the expense of the viability of the resources and agricultural sector'.¹²⁹ Ms Lauren Hewitt, Policy Specialist, AgForce Queensland, particularly warned of the disproportionate effects of councils engaging in targeted sectoral increases, suggesting 'our institution is used to balance local governments' annual budgets'.¹³⁰ Ms Hewitt, together with Ms Katie-Anne Mulder, Policy Director, Resources, QRC, called for increases in rates to be predictable, transparent and justifiable, to support a more stable operating environment for their organisations' members.¹³¹

¹²⁵ Public briefing transcript, Brisbane, 22 March 2021, p 4.

¹²⁶ Public briefing transcript, Brisbane, 22 March 2021, p 4.

¹²⁷ Submission 6, p 2.

¹²⁸ Submission 6, p 2. See also Ms Katie-Anne Mulder, Policy Director, Resources, QRC, public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 14.

¹²⁹ Submission 6, p 2.

¹³⁰ Public hearing transcript (via videoconference), Brisbane, 29 March 2021, p 15.

¹³¹ Ms Lauren Hewitt, Policy Specialist, AgForce Queensland, public hearing transcript, Brisbane (via videoconference), 29 March 2021, pp 15-16; Ms Katie-Anne Mulder, Policy Director, Resources, Queensland Resources Council (QRC), public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 14.

Citing significant increases in certain charges levied by some councils during 2020-21, the QRC, QFF and AgForce Queensland submitted:

The impacts of COVID-19 will likely be felt beyond the term of this Bill. Instead of a series of short-term temporary legislative amendments, Government should consider reforming the local government rating system so that it supports regional development, provides transparency of budgets and ensures the long-term sustainability of local governments.¹³²

Mr Gus Mandigora, Senior Policy Adviser, CCIQ, expressed similar concerns about potential adverse economic impacts should councils elect to impose rates increases:

Let us not allow councils to raise costs for business because they cannot afford it at this particular time. If these powers are going to be used to reduce, for example, fees and to streamline decision-making, we completely support that, but anything around raising fees for businesses at this vulnerable time we are concerned about and would like to register that concern.¹³³

The QRC, QFF and AgForce Queensland suggested that one way in which to minimise any adverse impacts and more generally improve rating transparency would be to mandate the Queensland Government's *Guideline on equity and fairness in rating for Queensland local governments*, which sets out principles to assist local governments to implement fair and equitable rating systems.¹³⁴ These stakeholders submitted:

At a minimum, mandating the guideline would provide greater predictability in the rates determination process for our members and increase the transparency of local government budgets. The Guideline was introduced to provide a consistent approach to transparency between councils but it has not been effective in this regard ...

Our organisations understand the complexities associated with reforming the local government rating system. Nonetheless a good governance framework for determining local government rates is imperative to the industries we represent and the financial sustainability of local government which delivers services essential for their local communities. In looking beyond the extension of extraordinary decision powers, there is an opportunity for Government to consider how to best improve the transparency and sustainability of the local government rating system.¹³⁵

The SEQ Community Alliance also sought greater transparency in relation to the Bill's proposed provisions to extend local governments' power to make extraordinary decisions in relation to rates and budgets. The organisation's submission suggested that 'it would be appropriate if the Government were to report to Parliament about any instances where local councils have used these emergency provisions, perhaps in an end of financial year report to Parliament'.¹³⁶

The LGAQ, in contrast, provided broad support for the extension of the amendments to the LGA and COBA, submitting that with Jobkeeper and other economic support packages ending soon, 'maintaining budget flexibility will be important for the coming 2021-22 financial year'.¹³⁷ Mr Mike Lollback, Manager, Member & Advisory Services, LGAQ, considered that given some of the extraordinary costs met by councils due to COVID-19 lockdowns there will be a need for the extension to the provisions:

I do believe that councils will view some changes to the budgetary parameters particularly in terms of rateability. The one thing we have not yet really got our head around, with the completion of JobKeeper

¹³² Submission 6, 2.

¹³³ Public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 7.

¹³⁴ Submission 6, p 3; citing Department of Infrastructure, Local Government and Planning, *Guideline on equity and fairness for Queensland local government*, June 2017, available at: https://www.dlgrma.qld.gov.au/__data/assets/pdf_file/0028/45469/equitable-rating-guidelines-for-local-governments.pdf.

¹³⁵ Submission 6, p 3.

¹³⁶ Submission 8, p 1.

¹³⁷ Submission 10, p 1.

et cetera only in the past few days, is exactly what imposes councils have felt in terms of budgetary arrears with rate payments.¹³⁸

Ms Shayne Sutton, Manager, Intergovernmental Relations and Special Projects, LGAQ, further emphasised to the committee that the proposed extension would not automatically mean that all councils would be increasing rates. Ms Sutton stated:

The budget provisions also apply to fees and charges and can also mean that it allows us the flexibility to implement greater concessions as well if we feel that is what the communities need and will help them assist with local economic stimulus.¹³⁹

These stakeholders' various comments were acknowledged by DSDILGP.¹⁴⁰ In response to the concerns expressed by the QRC, QFF and AgForce Queensland, the department reaffirmed that no local governments had used the extraordinary decision provisions for the 2021-financial year,¹⁴¹ such that any increases effected by councils had been implemented through the conventional rate-setting process. DSDILGP also emphasised that the 'policy intention' of the provisions is that any change be specifically related to COVID-19 and its effects,¹⁴² noting the extension of the provisions has been largely informed by:

... feedback from the local government sector is that it is preferable for this authority to be extended to the 2021-22 financial year due to the uncertain nature of the impact of the COVID-19 pandemic.¹⁴³

The department also sought to provide some reassurance to stakeholders regarding the engagement of the extraordinary decision provisions, noting that 'there are safeguards in the legislation that allow the state to step in with respect to council decisions', though 'they are used sparingly'.¹⁴⁴ DSDILGP advised that s 121 of the LGA empowers the Minister to revoke a decision of a local government 'where it is in the public interest to do so or where that decision breaches the statutory local government principles'.¹⁴⁵

In respect of the SEQ Community Alliance suggestion regarding council reporting on the use of the extended extraordinary decision making provisions, DSDILGP noted that the legislation requires a local government to make a resolution to revisit its rates and charges, amend its budget to take account of the extraordinary decision and adopt the amended budget, and that any such resolutions would be required to be published in council minutes.¹⁴⁶

The department also noted the suggestion of QRC, QFF and Agforce Queensland that the government take the opportunity to improve the transparency and fairness of the local government rating system, but advised that the statutory rating framework for local governments is an issue beyond the scope of the Bill.¹⁴⁷

¹³⁸ Public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 11.

¹³⁹ Public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 12.

¹⁴⁰ DJAG and DSDILGP, correspondence, 25 March 2021, attachment, pp 10-11.

¹⁴¹ Ms Bronwyn Blagoev, Executive Director, Strategy and Service Delivery, Local Government Division, DSDILGP, public briefing transcript, Brisbane, 22 March 2021, p 4; DJAG and DSDILGP, correspondence, 25 March 2021, attachment, p 10.

¹⁴² Ms Bronwyn Blagoev, Executive Director, Strategy and Service Delivery, Local Government Division, DSDILGP, public briefing transcript, Brisbane, 22 March 2021, p 4.

¹⁴³ DJAG and DSDILGP, correspondence, 25 March 2021, attachment, p 10. See also: Ms Bronwyn Blagoev, Executive Director, Strategy and Service Delivery, Local Government Division, DSDILGP, public briefing transcript, Brisbane, 22 March 2021, p 4.

¹⁴⁴ Ms Bronwyn Blagoev, Executive Director, Strategy and Service Delivery, Local Government Division, DSDILGP, public briefing transcript, Brisbane, 22 March 2021, p 4.

¹⁴⁵ DJAG and DSDILGP, correspondence, 25 March 2021, attachment, p 10.

¹⁴⁶ DJAG and DSDILGP, correspondence, 25 March 2021, attachment, p 11.

¹⁴⁷ DJAG and DSDILGP, correspondence, 25 March 2021, attachment, p 10.

3.2.2 Provisions for COVID-safe local government by-elections and fresh elections

The Public Health Emergency Act inserted new provisions into the COBA, the LGA and the *Local Government Electoral Act 2011* (LGEA) to provide flexibility, if required, for the election date for the 2020 quadrennial local government election and statutory processes for the conduct of the election, to help minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency.¹⁴⁸ Additionally, the Local Government Electoral (2020 Quadrennial Election) Regulation 2020 provided for matters to allow or facilitate the holding of the quadrennial election, including allowing for ECQ directions to candidates and scrutineers to regulate numbers and movement at polling venues.¹⁴⁹

DSDILGP advised that these provisions were all specific to the quadrennial elections and that currently, there are no legislative measures in place which provide for the conduct of COVID-safe local government by-elections or fresh elections.¹⁵⁰ The Bill therefore proposes to amend the COBA, LGA and LGEA to insert new provisions to provide ‘flexibility, if required, to facilitate the holding of local government by-elections or fresh elections’ in a way that minimises serious risks to the health and safety of persons caused by the COVID-19 public health emergency.¹⁵¹

The explanatory notes emphasise that the amendments:

- are temporary in nature, expiring on the COVID-19 expiry day of 30 September 2021¹⁵²
- align, where appropriate, with recent amendments to the *Electoral Act 1992* for state by-elections in response to the COVID-19 public health emergency.¹⁵³

Transitional provisions included in the Bill also support the continued application of the provisions, after they expire, to elections initiated before or after commencement if ‘immediately before the expiry ... anything required to be done under the LGEA in relation to the election has not been done’.¹⁵⁴

To support the implementation and enforcement of the provisions, the Bill also proposes to amend schedule 1 of the State Penalties Enforcement Regulation 2014 to prescribe proposed offences for contravening certain directions given by the ECQ, a returning officer, a presiding officer for a polling booth or a member of the ECQ’s staff carrying out a re-count of ballot papers, as offences for which penalty infringement notice offences may be issued.¹⁵⁵ The offences, which have applicable infringement notice fines of either 10 penalty units (\$1,334.50¹⁵⁶) or 20 penalty units (\$2,669),¹⁵⁷ are discussed further in section 4.1.1 of this report, which considers the proportionality of penalties imposed by the Bill.

3.2.2.1 *Stakeholder views and the department’s response*

The ECQ submitted that the Bill’s insertion of new temporary provisions governing local government elections and by-elections was ‘prudent’, noting the threat of COVID-19 could still impact the delivery of by-elections, and by extension, the continuity of public administration during an emergency.¹⁵⁸ The

¹⁴⁸ Explanatory notes, p 3.

¹⁴⁹ Explanatory notes, p 3.

¹⁵⁰ DJAG and DSDILGP, correspondence, 17 March 2021, p 4.

¹⁵¹ DJAG and DSDILGP, correspondence, 17 March 2021, pp 6-7. See Bill, cls 8 (COBA, proposed part 5B), 25 (LGA, proposed part 5B), and 27-28 (LGEA, amending s 18 and proposed part 9B).

¹⁵² Explanatory notes, p 22. See also Bill, cl 28 (LGEA, proposed section 200N).

¹⁵³ Explanatory notes, p 3.

¹⁵⁴ Explanatory notes, p 7.

¹⁵⁵ Bill, cl 33 (State Penalties Enforcement Regulation 2014, proposed amended schedule 1).

¹⁵⁶ The prescribed value of a penalty unit, as set out in s 3 of the Penalties and Sentences Regulation (for s 5A(1) of the *Penalties and Sentences Act 1992*) is \$133.45.

¹⁵⁷ DJAG and DSDILGP, correspondence, 17 March 2021, addendum, p 7.

¹⁵⁸ Submission 2, p 2.

ECQ noted that amendments would provide ‘similar regulatory flexibility for the conduct of local government by-elections’ as the ‘substantively similar’ provisions implemented for the state general election, which the ECQ described as providing an ‘effective framework’ for that election.¹⁵⁹

The ECQ also noted that the:

... provisions contained in the Bill would only be operationalised based on health advice and where it is considered necessary to protect the health and safety of electoral participants and facilitate voter participation in a by-election.¹⁶⁰

The SEQ Community Alliance described the provisions relating to local government elections as ‘uncontroversial’, but raised concerns about reports that during the 2020 local government elections, ECQ staff provided incorrect advice about voting methods to voters.¹⁶¹ The SEQ Community Alliance suggested that ‘any regulations for holding COVID-19 safe local government elections include clear guidance to the ECQ that it should properly explain to voters how they can vote’.¹⁶²

The LGAQ reported that, during consultation with the department, it had sought greater clarity regarding:

- when a poll can be adjourned
- the consultation and decision-making processes relating to handing out how-to-vote cards (HTV cards)
- the ECQ’s ability to give direction to scrutineers and candidates.¹⁶³

The LGAQ stated: ‘While the LGAQ absolutely respects the need to ensure community safety at all times, it is also important to safeguard the most important aspects of democratic process’.¹⁶⁴

In response, DSGILGP advised that it had noted the ECQ’s comments, and that ‘the ECQ has not raised any issues of concern in relation to the Bill’.¹⁶⁵

The department also acknowledged the concerns expressed by the SEQ Community Alliance, but stated that the matter in question concerns the operations of the ECQ, and is ‘beyond the scope of the Bill’.¹⁶⁶

3.2.3 Extension of COVID-related local government meeting provisions

The Bill proposes amendments to the CBR and LGR to extend the operation of existing temporary local government and committee meeting provisions enabling the chairperson of a local government or committee meeting to restrict access to a meeting if they are satisfied it is in the public interest to do so in order to minimise serious risks to the health and safety of persons caused by COVID-19.¹⁶⁷

The provisions, which are contained in Chapter 8, part 2A of the CBR and chapter 8, part 2, division 4 of the LGR, allow meetings to be held by audio or audio visual link, provide for the participation of persons in meetings by audio or audio visual link and for meetings to be closed to the public for health and safety reasons associated with COVID-19, and require real-time public viewing or listening for

¹⁵⁹ Submission 2, p 2.

¹⁶⁰ Submission 2, p 2.

¹⁶¹ Submission 8, p 2. See also: Mr Chris Walker, President, SEQ Community Alliance, public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 17.

¹⁶² Submission 8, p 2.

¹⁶³ Submission 10, p 1. See also Ms Shayne Sutton, Manager, Intergovernmental Relations and Special Projects, LGAQ, public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 13.

¹⁶⁴ Submission 10, pp 1-2.

¹⁶⁵ DJAG and DSDILGP, correspondence, 25 March 2021, attachment, p 7.

¹⁶⁶ DJAG and DSDILGP, correspondence, 25 March 2021, attachment, p 8.

¹⁶⁷ Bill, cls 10 (CBR, proposed amended s 255G) and 31 (LGR, proposed amended s 277F). See also explanatory notes, p 15.

meetings for which an audio or audio visual link is used. The Bill extends the operation of these provisions beyond their current expiry day of 30 June 2021 to provide instead for their expiry on the Bill's new COVID-19 legislation expiry day of 30 September 2021 (or an earlier day as prescribed).¹⁶⁸

The explanatory notes advise that:

- the extension of the proposed amendments ensures the provisions may still be engaged to help minimise disruptions to council business associated with the ongoing COVID-19 public health emergency¹⁶⁹
- the provisions remain temporary in nature, and are consistent with the Queensland and Commonwealth Governments' measures to promote social distancing and discourage gatherings of people to help contain COVID-19.¹⁷⁰

In respect of the provision for meetings to be closed to the public all together, DSDILGP also clarified that:

This is because not all local councils have the capacity to live-stream their meetings and the intent was for temporary COVID-safe meetings provisions to equally apply to all 77 of Queensland's local councils, regardless of their size during the COVID public health emergency.¹⁷¹

Ms Bronwyn Blagoev, DSDILGP, further stated:

I think most councils are embracing the policy where they want the community to have some transparency around that. It is just that the degree of transparency, as you said, depends on people's IT and also what each council has the resources to do.¹⁷²

In terms of how many councils are yet to return to public meetings, or provide their meetings in real-time delivery, Ms Blagoev acknowledged that 'there is no formal monitoring' and, 'it does very much vary across councils at the moment'.¹⁷³

3.2.3.1 Stakeholder views and the department's response

The LGAQ advised that it was supportive of the extension of the provisions to support COVID-safe local government meetings,¹⁷⁴ while the SEQ Community Alliance submitted that it accepted the need for social distancing measures to be engaged consistently with the public health measures generally applied by the government.¹⁷⁵ The SEQ Community Alliance observed, however, that as restrictions have relaxed, Queenslanders have seen that people can 'sit in a cinema, restaurant and sporting stadium but are precluded from attending the meetings of some councils', and submitted that to ensure appropriate use of the provisions:

We suggest that the wording of regulations be amended to ensure that meetings are closed to the public only to the extent that this is consistent with prevailing public health directions.¹⁷⁶

¹⁶⁸ Mr Jordon Watts, Acting Director, Legislation Governance and Capability, Local Government Divisions, DSDILGP, public briefing transcript, Brisbane, 22 March 2021, p 3. See also explanatory notes, p 4; DJAG and DSDILGP, correspondence, 17 March 2021, p 9.

¹⁶⁹ Explanatory notes, pp 3-4.

¹⁷⁰ Explanatory notes, p 15.

¹⁷¹ DJAG and DSDILGP, correspondence, 25 March 2021, attachment, pp 8-9.

¹⁷² Public briefing transcript, Brisbane, 22 March 2021, p 5.

¹⁷³ Public briefing transcript, Brisbane, 22 March 2021, p 5.

¹⁷⁴ Submission 10, p 1.

¹⁷⁵ Submission 8, p 2.

¹⁷⁶ Submission 8, p 2.

At the public hearing on 29 March 2021, SEQ Community Alliance President, Mr Chris Walker, stated that such amendments could include clarifying the provisions to ensure that where councils are closing meetings to the public, they are seeking to facilitate the live streaming of meetings as far as possible:

We think that the regulations could be worded a little more prescriptively to make it clear whether or not a council should live stream, and we would like to see some greater obligation on councils to use better efforts to encourage and continue public participation.¹⁷⁷

Mr Walker noted that at recent meetings of the Redland City Council, a person from the clergy was regularly recorded as attending.¹⁷⁸ Mr Walker commented that:

... if it is possible to get somebody who is not a councillor to come along to a meeting and talk to the council about religious matters, then why is it not possible for a member of the community to come and talk about flooding on their property, or the Weinam Creek priority development area, or council spending decisions which seem to be lacking transparency, for example? There is an example already of a person who is not a councillor coming into the room or even talking via video link, and yet those facilities are not being extended to the rest of the community.¹⁷⁹

Redlands2030 also expressed concern that despite the provisions for the use of audio visual link being contingent on the proceedings being live streamed to the public, some councils may be failing to comply with this requirement. In particular, the Redlands2030 submission noted that since the current regulations have come into force, 'all Redland City Council meetings have been closed to the community, but Redland City Council has not implemented live streaming of meetings', contrary to requirements, with video recordings typically only becoming available '24-48 hours after each meeting'.¹⁸⁰ Redlands2030 suggested:

... that the current COVID-19 inspired regulations be re-worded to ensure that if a large and well-resourced local council decides to close its meetings to the community then it is compelled to deliver live streaming of its meetings via its website.¹⁸¹

Mr Steve MacDonald, President of Redlands2030, attested:

I think it is a fundamental tenet of democracy that there be greater accountability and, in these times, whilst unique and certainly serious with the challenge of COVID, it is not a reason to actually do away with the fundamentals of democracy.¹⁸²

In response to the concerns raised by the SEQ Community Alliance and Redlands2030, DSDILGP emphasised that the temporary provisions may be engaged only if the chairperson of the council or local government committee is satisfied it is not practicable for members of the public to attend the meeting because of health and safety concerns associated with the COVID-19 public health emergency.¹⁸³

Mr Jordon Watts, Acting Director, Legislation Governance and Capability, Local Government Division, DSDILGP, also offered the following assurance in relation to maintaining transparency in the conduct of local government meetings:

It is important to note that the other regular requirements in the regulation for meetings still apply as well; that is, the requirement to take minutes and make the minutes available for inspection by the public.

¹⁷⁷ Public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 17.

¹⁷⁸ Mr Walker provided the committee with a record of attendance, including details of the presence of clergy, at recent Redland City Council meetings. See: Mr Chris Walker, President, SEQ Community Alliance, public hearing document, 29 March 2021.

¹⁷⁹ Public hearing transcript, Brisbane (via videoconference), 29 March 2021, p 18.

¹⁸⁰ Submission 5, p 1.

¹⁸¹ Submission 5, p 2.

¹⁸² Public hearing transcript, Brisbane (via videoconference), 29 March 2021, pp 17-18.

¹⁸³ DJAG and DSDILGP, correspondence, 25 March 2021, attachment, pp 8-9.

There is certainly still a level of transparency there; it just might be the immediacy of the actual meeting itself not being able for the public to attend.¹⁸⁴

Additionally, DSDILGP advised:

DSDILGP understands that many local governments are attempting to livestream these meetings - either virtually or in a separate room which members of the public can attend.¹⁸⁵

Committee comment

The committee notes the advice of the department that there are additional layers of regulation that ensure a level of transparency is maintained where local government meetings are closed under the temporary meeting provisions, including through requirements for meeting agendas to be published prior to meetings, and for the meeting minutes to be promptly made available for public inspection following a meeting.¹⁸⁶

The committee expects, as would Queenslanders, that the temporary provisions be engaged in a manner that is in keeping with:

- the purposes of COBA and LGA, which include providing for a system of local government that is accountable¹⁸⁷
- the established local government principles on which these Acts are founded, which call for 'transparent and effective processes, and decision-making in the public interest' and 'good governance of, and by, local government', including by making decisions in open council meetings, developing open and transparent processes and procedures, and 'keeping clear, concise and accessible records of decisions'.¹⁸⁸

The committee encourages the Attorney-General to make clear during her second reading speech that it is expected that councils' engagement of the extended temporary meeting provisions be in accordance with these established aims and principles, and supported by the prompt compliance with requirements to make meeting audio or audio visual recordings and minutes publicly accessible.

¹⁸⁴ Public briefing transcript, Brisbane, 22 March 2021, p 5.

¹⁸⁵ DJAG and DSDILGP, correspondence, 25 March 2021, attachment, p 9.

¹⁸⁶ For example see DJAG and DSDILGP, correspondence, 25 March 2021, attachment, p 9.

¹⁸⁷ See COBA, s3(1)(b); LGA, s 3(b).

¹⁸⁸ Department of Local Government, Racing and Multicultural Affairs, *Code of Conduct for Councillors in Queensland*, Queensland Government, August 2020, p 5.

4 Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

The *Legislative Standards Act 1992* (LSA) states that FLPs are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’.¹⁸⁹ The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.¹⁹⁰

The committee has examined the application of the FLPs to the Bill. The committee notes that FLP issues related to the ER Act, Amendment Act and Extension Act have been considered by the Legislative Assembly during the debate on those Bills. Further, a range of secondary instruments to be extended by this Bill have been scrutinised and reported on by various portfolio committees. The committee has accordingly focussed primarily on the specific measures contained in the Bill.

The committee considers that the Bill raises potential issues of FLP with respect to both the rights and liberties of individuals and the institution of Parliament. The committee’s consideration of these issues is outlined below.

4.1.1 Rights and liberties of individuals – proportionality and relevance of penalties

4.1.1.1 *Penalties*

As outlined in section 3.2.2 of this report, the Bill proposes to insert a number of new offences in the LGEA.

The Bill would impose a maximum penalty of 10 penalty units (\$1,334.50) for a contravention, without reasonable excuse, of an ECQ direction:

- regarding how, where or when HTV cards may be distributed or displayed at a polling booth
- prohibiting the distribution or display of HTV cards or other election material at a polling booth
- prohibiting a person from canvassing for votes in or near polling booths, or
- permitting the display of political statements inside a polling booth or within 6 metres of the entrance to a building that is, or is part of, a polling booth.¹⁹¹

A maximum penalty of 20 penalty units (\$2,669) would apply to a contravention, without reasonable excuse, of an ECQ direction for an election:

- regulating the number of scrutineers each candidate may have at a polling booth or another place where a scrutineer is entitled to be present, or
- prohibiting a candidate or scrutineer from being present at a polling booth or another place where the candidate or scrutineer would otherwise be entitled to be present.¹⁹²

Further, the Bill also establishes a maximum penalty of 20 penalty units (\$2,669) for a failure to comply, without a reasonable excuse, with a direction of a returning officer, a presiding officer for a polling booth, or an ECQ staff member (where directed to re-count) at a polling booth or another place where a candidate or scrutineer is entitled to be present (‘the relevant place’), regarding:

- the movement of the candidate or scrutineer at the relevant place

¹⁸⁹ LSA, s 4(1).

¹⁹⁰ LSA, s 4(2).

¹⁹¹ Bill, cl 28 (LGEA, proposed s 200Z).

¹⁹² Bill, cl 28 (LGEA, proposed s 200ZA).

- an area in the relevant place in which the candidate or scrutineer may or may not be, or
- the maximum number of scrutineers who may be in a particular area in the relevant place.¹⁹³

The Bill proposes to amend the State Penalties Enforcement Regulation 2014, such that non-compliance with the directions mentioned above is an offence for which a penalty infringement notice may be issued under the *State Penalties Enforcement Act 1999*.¹⁹⁴

Issue of fundamental legislative principle

The LSA requires that legislation has sufficient regard to the rights and liberties of individuals.¹⁹⁵ Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate.

The Office of the Queensland Parliamentary Counsel's (OQPC's) *Fundamental Legislative Principles: The OQPC Notebook* (FLP Notebook) specifies that a penalty should be proportionate to the offence:

In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.

... Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.¹⁹⁶

Committee comment

In relation to proportionality of penalties, the explanatory notes state:

Penalties for these offences are significant to provide disincentive for non-compliance and in recognition of the serious public health risks involved.¹⁹⁷

Regarding the consistency of penalties, the explanatory notes state:

The maximum penalties prescribed are commensurate with the penalties applying to similar offences in the LGEA, the *Local Government Electoral (2020 Quadrennial Election) Regulation 2020* and the *Electoral Act 1992*.¹⁹⁸

In the Above Act and regulations, maximum penalties for similar offences range from 10 penalty units to 20 penalty units. This is, as the explanatory notes suggest, comparable to the maximum penalties introduced by the Bill, of between 10 and 20 penalty units.

When considering the establishment of penalties in the Local Government Electoral (2020 Quadrennial Election) Regulation 2020, which was a regulation to facilitate the holding of the 2020 quadrennial local government elections in a COVID-safe manner, the committee also found that penalties in that instance were consistent with those applicable for equivalent offences under the *Public Health Act 2005* and the LGEA.¹⁹⁹

The committee is satisfied that the creation of these new offences is justified, and that the level of the new penalties is proportionate, noting they are commensurate with those for various equivalent, established offences. The committee considers that the prescription of the offences as penalty infringement notice offences is also a practical and reasonable measure to help support compliance

¹⁹³ Bill, cl 28 (LGEA, proposed s 200ZB).

¹⁹⁴ Bill, cl 33 (State Penalties Enforcement Regulation 2014, proposed amended schedule 1).

¹⁹⁵ LSA, s 4(2)(a).

¹⁹⁶ OQPC, *Fundamental Legislative Principles: The OQPC Notebook* (FLP Notebook), January 2008, p 120.

¹⁹⁷ Explanatory notes, p 14.

¹⁹⁸ Explanatory notes, p 14.

¹⁹⁹ Economics and Governance Committee, Report No. 41, 56th Parliament – *Subordinate legislation tabled between 5 February 2020 and 22 April 2020*, June 2020, p 9.

and enforcement with the provisions to protect the health and safety of voting citizens, electoral staff and other electoral participants.

4.1.2 Rights and liberties of individuals – reasonableness and fairness of treatment of individuals

4.1.2.1 Rates and charges

As detailed in section 3.2.1 of this report, the Bill proposes to amend the COBA and the LGA to enable a local government to make an ‘extraordinary decision’. An extraordinary decision permits a council to decide, by a resolution made other than at the budget meeting for the 2021-22 financial year, what rates and charges are to be levied for the period of the financial year starting on a day not earlier than the day the resolution is made and ending on 30 June 2022.²⁰⁰

This would enable a council to increase the rates or charges levied for that year, or to decrease applicable rates and charges.

Issue of fundamental legislative principle

As noted above, the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.²⁰¹ The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals.²⁰²

The provisions introduce the power for a local authority to increase the rates levied on property owners through an extraordinary decision. This will affect a property owner, by possibly resulting in their experiencing an increase in rates, without an equivalent increase in services.

Committee comment

The explanatory notes set out the rationale for these provisions as being to:

... afford local governments the authority to revisit rates and charges levied at the annual budget meeting for the 2021-22 financial year in order to be responsive to changing economic circumstances and impacts on operations caused by the ongoing COVID-19 public health emergency.²⁰³

The explanatory notes advise that the measure is temporary and does not have a retrospective element:

The proposed authority is consistent with that granted to local governments for the 2020-21 financial year by way of a temporary regulation-making power and regulation, with any revised rates and charges being prospectively levied and applying only for the remainder of the 2021-22 financial year. For example, if a local government adopted its budget in July 2021, the local government could then resolve at a later point (outside of the annual budget meeting) to re-levy rates and charges for the remainder of the 2021-22 financial year with the new rate applying no earlier than the day the resolution is made.²⁰⁴

In justification of the potential FLP breach, the explanatory notes state:

Ultimately, any change in rates mid-year (individual impact) would be justified on the basis of ensuring the ongoing financial sustainability of local governments and their ability to continue to provide essential services to their communities as a whole, notwithstanding the uncertain economic conditions.²⁰⁵

The Local Government Legislation Amendment Regulation (No. 1) 2020 enabled Queensland local governments to decide by resolution, at a meeting other than a budget meeting, what rates and charges are to be levied for a relevant part of the 2020-21 financial year. This is largely similar to the provisions set out above. The committee, in its consideration of human rights in respect of this

²⁰⁰ Bill, cl 7 (COBA, proposed s 96B); cl 24 (LGA, proposed s 94B).

²⁰¹ LSA, s 4(2)(a).

²⁰² OQPC, FLP Notebook, January 2008, p 133.

²⁰³ Explanatory notes, p 11.

²⁰⁴ Explanatory notes, pp 11-12.

²⁰⁵ Explanatory notes, p 12.

regulation, was satisfied that the limitations on the right to property were reasonable and demonstrably justified in the circumstances.

The committee considers the extension of this power to vary rates is justified in this instance, given:

- the extraordinary circumstances, associated with COVID-19
- that the provisions would only apply to the 2021-22 financial year and that the revised rate or charge would not be levied retrospectively
- that a local government that makes an extraordinary decision must amend its annual budget to reflect this decision and adopt the amended budget at the same meeting
- that the LGA contains a safeguard on the use of the power, in that s 121 of the Act empowers the Minister to revoke a decision of a local government where it is in the public interest to do so, or where the decision breaches statutory local government principles.

4.1.2.2 *Conduct of elections*

The Bill proposes to amend the LGEA to specify a number of matters regarding the conduct of local government elections (see section 3.2.2 of this report), including:

- providing that the ECQ may fix a day by which a voters roll for an election must be compiled²⁰⁶
- allowing the Minister, in consultation with the ECQ, to postpone a polling day by fixing a date that is more than 2 months after the original polling day²⁰⁷
- providing that a returning officer may fix a day for taking or resuming an adjourned poll that is not more than 2 months after the original polling day²⁰⁸
- providing for the Minister to make a direction that a poll be conducted by postal ballot, and allow the ECQ to declare that a stated class of electors may vote in a way approved by the ECQ²⁰⁹
- providing that the ECQ may fix a time and day for which an elector may apply to cast a postal vote in an election²¹⁰
- providing for the ECQ to declare that electoral visitor voting is not available at the start of a by-election or a fresh election, and to make alternative arrangements to enable an affected elector to vote (if a declaration is made, the ECQ must make alternative arrangements to enable an elector affected by the declaration to vote in the election)²¹¹
- allowing the ECQ to declare a class of electors who may cast an electronically assisted vote in an election (the ECQ may make procedures about how electors may cast electronically assisted votes in an election)²¹²
- providing that the ECQ may give a direction in relation to the display of distribution of HTV cards and other election material at a polling booth²¹³

²⁰⁶ Bill, cl 28 (LGEA, proposed s 200P).

²⁰⁷ Bill, cl 28 (LGEA, proposed s 200S).

²⁰⁸ Bill, cl 28 (LGEA, proposed s 200R).

²⁰⁹ Bill, cl 28 (LGEA, proposed s 200T).

²¹⁰ Bill, cl 28 (LGEA, proposed s 200U).

²¹¹ Bill, cl 28 (LGEA, proposed s 200W).

²¹² Bill, cl 28 (LGEA, proposed s 200Y).

²¹³ Bill, cl 28 (LGEA, proposed s 200Z).

- providing that the ECQ may give directions to scrutineers and candidates about where they may be present and the number of scrutineers each candidate may have for a by-election or fresh election²¹⁴
- providing that a returning officer or presiding officer for a polling booth or a member of the ECQ staff who has been given a direction under s 96A of the LGEA (recounting of votes) may give a direction about the movement of scrutineers or candidates at a relevant place, areas where they may or may not be, and the number of scrutineers allowed in particular areas²¹⁵
- providing that a returning officer may direct a member of ECQ staff to carry out the counting of votes for an election at a stated place and that the returning officer may arrange for the counting of votes to be filmed.²¹⁶

These provisions would expire on the COVID-19 legislation expiry day (30 September 2021).²¹⁷

Issue of fundamental legislative principle

The LSA requires that legislation has sufficient regard to the rights and liberties of individuals.²¹⁸ The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals.²¹⁹

All of the above provisions would affect the rights and liberties of individuals in various ways, such that an individual would require a change in their ordinary activity or might have an additional burden imposed on them.

Committee comment

The explanatory notes refer to the temporary nature of the changes, and provide this justification:

The impacts are justified on the basis that public health considerations may necessitate changes to the way a by-election or fresh election is conducted to reduce the spread of COVID-19. The amendments are temporary and will only apply, if necessary, to a by-election for which a notice of election is published on or before the COVID-19 legislation expiry day or to a fresh election if a regulation that provides for the election to be held is made on or before the COVID-19 legislation expiry day.²²⁰

The Electoral (By-elections Before Next General Election) Regulation 2020 made provision about matters for which it was necessary to allow or facilitate the holding of a by-election in a way that helped minimise serious risks to the health and safety of persons caused by the public health emergency involving COVID-19. The provisions in the Bill are largely similar to the provisions set out in the regulation. In considering that regulation, and the potential effects of the provisions on the rights and liberties of individuals, the committee was satisfied that any FLP breaches were justified, given the significant public health risks posed by COVID-19.²²¹

The committee is also satisfied that the impacts on individuals' rights and liberties are justified in this instance, noting the provisions are designed to minimise health and safety risks, and will apply only for a limited period.

²¹⁴ Bill, cl 28 (LGEA, proposed s 200ZA).

²¹⁵ Bill, cl 28 (LGEA, proposed s 200ZB).

²¹⁶ Bill, cl 28 (LGEA, proposed s 200ZC)

²¹⁷ Bill, cl 28 (LGEA, proposed s 200ZG).

²¹⁸ LSA, s 4(2)(a).

²¹⁹ OQPC, FLP Notebook, January 2008, p 133.

²²⁰ Explanatory notes, p 13.

²²¹ Economics and Governance Committee, Report No. 41, 56th Parliament – *Subordinate legislation tabled between 5 February 2020 and 22 April 2020*, June 2020, p 10.

4.1.2.3 Holding local government meetings by audio or audio visual link

The Bill proposes to extend the operation of provisions in the CBR and the LGR that provide for the holding of council and local government committee meetings by audio or audio visual link (see report section 3.2.3).²²² The CBR and the LGR require the council or local government to ensure that real-time viewing or listening is available for the public where the audio visual provisions are engaged.²²³

The meetings may also be closed to the public for health and safety reasons associated with COVID-19,²²⁴ in which case the meeting is not required to be available for real-time viewing or listening.²²⁵

These provisions were introduced to provide 'additional provisions for council meetings to minimise serious risks to health and safety of persons caused by the public health emergency involving COVID-19'.²²⁶

Issue of fundamental legislative principle

The LSA requires that legislation has sufficient regard to the rights and liberties of individuals.²²⁷ The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals.²²⁸

These provisions will affect an individual's right to attend, observe and participate in council or local government committee meetings in person or to view or listen to them via live stream. This will also affect an individual's right to participate in public life.

Committee comment

The explanatory notes provide this justification for the potential FLP breach:

While the amendments restrict an individual's ability to observe or listen to discussions and decisions that would otherwise be conducted in an open meeting, the potential breach is justified on the basis of lessening public health risks during the ongoing COVID-19 public health emergency.²²⁹

The committee notes that these provisions were originally introduced by the Local Government Electoral (2020 Quadrennial Election) Regulation 2020. The committee, when considering those provisions, did not raise any concerns of FLP relating to the additional provisions for council, local government and committee meetings. The committee did, however, note the limitation on the human right to take part in public life (s 23 of the HRA), but was satisfied that the limitation was reasonable and demonstrably justified.²³⁰

During this inquiry, the committee has noted stakeholder concerns that some councils may be engaging the provisions in a manner contrary to the principles of transparency and open governance that underpin the local government legislation, where they might otherwise have capacity to facilitate public access to the meetings in a COVID-safe manner.

²²² Bill, cls 10 (CBR, proposed amended s 255G) and 31 (LGR, proposed amended s 277G). See CBR, chapter 8, part 2A; LGR, chapter 8, part 2, division 4.

²²³ CBR, s 255E; LGR, s 277D.

²²⁴ CBR, s 255F; LGR, s 277E.

²²⁵ CBR, ss 255E(3) and 255F; LGR, ss 277D(3) and 277E.

²²⁶ CBR, s 255A; LGR, s 277A.

²²⁷ LSA, s 4(2)(a).

²²⁸ OQPC, FLP Notebook, January 2008, p 133.

²²⁹ Explanatory notes, p 16.

²³⁰ Economics and Governance Committee, Report No. 41, 56th Parliament – *Subordinate legislation tabled between 5 February 2020 and 22 April 2020*, June 2020, pp 8-10.

As discussed in report section 3.2.3, the committee considers council obligations to publish agendas and meeting minutes ensure a minimum level of transparency is maintained in respect of council meetings. The committee has made further comment on this matter at report sections 3.2.3 and 5.1.3.

4.1.3 Rights and liberties of individuals – reversal of the onus of proof

4.1.3.1 *Contravening a direction without a reasonable excuse*

The Bill introduces provisions which state that a penalty applies if a person contravenes a direction *without a reasonable excuse*.²³¹ The effect of these provisions has been discussed in section 4.1.1 of this report regarding penalties.

Issue of fundamental legislative principle

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not reverse the onus of proof in criminal proceedings without adequate justification.²³²

Legislation should not reverse the onus of proof in criminal matters, and it should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence:

... for a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.²³³

Generally, in criminal proceedings:

- the legal onus of proof lies with the prosecution to prove the elements of the relevant offence beyond reasonable doubt
- the accused person must satisfy the evidential onus of proof for any defence or excuse he or she raises and, if the accused person does satisfy the evidential onus, the prosecution then bears the onus of negating the excuse or defence beyond reasonable doubt.²³⁴

Committee comment

The ‘reasonable excuse’ provisions are not canvassed in the explanatory notes in the context of this FLP issue.

Such ‘reasonable excuse’ provisions are discussed in some detail in the OQPC publication *Principles of good legislation: Reversal of onus of proof*. That discussion starts with the following:

If legislation prohibits a person from doing something ‘without reasonable excuse’ it would seem in many cases appropriate for the accused person to provide the necessary evidence of the reasonable excuse. While there is no Queensland case law directly on point, the Northern Territory Supreme Court has held that the onus of proving the existence of a reasonable excuse rested with the defendant on the basis that the reasonable excuse was a statutory exception that existed as a separate matter to the general prohibition ... That approach is consistent with the principles used to determine whether a provision contains an exception to the offence or whether negating the existence of the reasonable excuse is a matter to be proved by the prosecution once the excuse has been properly raised ...

... [It] is understood that in Queensland, ‘reasonable excuse provisions’ are drafted on the assumption that the *Justices Act 1886*, section 76 will apply and place both the evidential and legal onus on the defendant to raise and prove the existence of a reasonable excuse. On the other hand, ... departments

²³¹ Bill, cl 28 (LGEA, proposed ss 200Z, 200ZA, 200ZB).

²³² LSA, s 4(3)(d).

²³³ OQPC, FLP Notebook, January 2008, p 36.

²³⁴ OQPC, *Principles of good legislation: Reversal of onus of proof*, June 2013 (version 1), p 3, legislation.qld.gov.au/file/Leg_Info_publications_FLP_Reversal_of_Onus1.pdf.

have often taken the view in their Explanatory Notes that a provision containing an exemption where a reasonable excuse exists is an excuse for which only the evidential onus lies with the accused.²³⁵

The OQPC discussion concludes:

It seems likely that in most cases a reasonable excuse will constitute a statutory exception to be proved by the defendant. However, in the absence of an express statement as to the allocation of the onus, the question will ultimately need to be determined by a court having regard to the established rules of statutory interpretation.²³⁶

Elsewhere, the OQPC has noted:

Generally, for a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.

For example, if legislation prohibits a person from doing something 'without reasonable excuse', it is generally appropriate for a defendant to provide the necessary evidence of the reasonable excuse if evidence of the reasonable excuse does not appear in the case for the prosecution.²³⁷

As noted above, in the present case, the explanatory notes for the Bill are silent on this issue. In considering the issue regarding similar provisions in other Bills, explanatory notes have justified the reversal of the onus of proof on the basis that establishing the defence would involve matters which would be within the defendant's knowledge or on which evidence would be available to them.²³⁸

Here, the provisions may be seen to reverse the onus of proof, in providing that a person does not commit an offence if the person has a reasonable excuse. The person bears the onus of proof to show that they had a reasonable excuse.

On balance, in this instance, the committee is satisfied any breach of FLP is justified.

4.1.4 Rights and liberties of individuals – affecting right and liberties, or imposing obligations, retrospectively

4.1.4.1 Regulation making power

If an election is affected by the COVID-19 public health emergency, the Bill would permit the making of a regulation about a matter if the LGA or the COBA does not make provision, or sufficient provision, about the matter.²³⁹

The regulation may have retrospective operation to a day not earlier than the day of commencement of the relevant sections of the Bill.²⁴⁰

These proposed provisions, and any regulations made under them, would expire on COVID-19 legislation expiry day (30 September 2021).²⁴¹

Issue of fundamental legislative principle

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect the rights and liberties, or impose obligations retrospectively.²⁴²

²³⁵ OQPC, *Principles of good legislation: Reversal of onus of proof*, June 2013 (version 1), p 25.

²³⁶ OQPC, *Principles of good legislation: Reversal of onus of proof*, June 2013 (version 1), p 26.

²³⁷ OQPC, FLP Notebook, January 2008, p 36.

²³⁸ For a recent example, see Fisheries (Sustainable Fisheries Strategy) Amendment Bill 2018, explanatory notes, p 17.

²³⁹ Bill, cl 8 (COBA, proposed s 240D); cl 25 (LGA, proposed s 260AD).

²⁴⁰ Bill, cl 8 (COBA, proposed s 240D(3)); cl 25 (LGA, proposed s 260AD(3)); explanatory notes, pp 19, 22.

²⁴¹ Bill, cl 8 (COBA, proposed s 240D(4)); cl 25 (LGA, proposed s 260AD(4)).

²⁴² LSA, s 4(3)(g).

Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.²⁴³

The regulation making power is broad and can conceivably concern any matter in relation to an election affected by the COVID-19 public health emergency. This could affect an individual's rights and liberties in numerous ways of varying proportions.

Committee comment

The explanatory notes do not address the issue of retrospectivity. However, in relation to the provisions for elections affected by the COVID-19 public health emergency, the Attorney-General, in the human rights statement of compatibility, recognises that the freedom of movement, freedom of expression, taking part in public life and privacy and reputation will be impacted. The effect on a person's rights and liberties could be significant.

The Attorney-General states in relation to the regulation making power in proposed new s 200ZE of the LGEA:

In relation to any potential regulation made under the proposed regulation-making power, in the absence of any information about the nature of the regulation and the prevailing health conditions at the time the regulation is made, it is difficult to balance any potential limitation on human rights with the purpose of the amendments. The human rights certificate that accompanies any regulation made under this power will provide detailed consideration as to how the regulation is compatible with human rights.²⁴⁴

The committee considers that the introduction of provisions that could have retrospective effect is acceptable in the circumstances, noting that any regulations:

- may have retrospective effect only to the date of the commencement of the relevant sections
- must be consistent with the purposes of proposed part 9B, and the LGEA more broadly, to:
 - ensure the transparent conduct of elections of councillors of Queensland's local governments²⁴⁵
 - facilitate the holding of an election that is affected by the COVID-19 public health emergency in a timely way that helps minimise serious risks to public health and safety.²⁴⁶

4.1.5 Institution of parliament – delegation of legislative power

4.1.5.1 Regulation making power

The Bill proposes to amend the LGEA to provide that a regulation may make provision about a matter to facilitate the holding of an election in a timely way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency.²⁴⁷

Examples given in the provision of what a regulation may cover include:

- enabling certain people to give a direction about any matter necessary to facilitate the holding of the election
- details about the kind of direction and circumstances in which a direction may be given
- enabling the electoral commission to make procedures for the application of a provision.

²⁴³ OQPC, FLP Notebook, January 2008, p 55.

²⁴⁴ Statement of compatibility, pp 16-17.

²⁴⁵ LGEA, s 3(a).

²⁴⁶ Bill, cl 28, proposed part 9B, s 200M (Purpose of part).

²⁴⁷ Bill, cl 28 (LGEA, proposed s 200ZE).

The Bill describes the matters a regulation may deal with, including creating an offence with a maximum penalty of up to 20 penalty units (\$2,669).²⁴⁸

The regulations will allow:

- the ECQ to vary the cut-off date for voters rolls and nominations
- the Minister, in consultation with the ECQ, to postpone the polling day by fixing a date that is longer than 2 months after the original polling day
- the returning officer to fix a date for the taking of an adjourned poll that is not more than 2 months after the original polling day
- the ECQ to vary the cut-off date for applications for a postal vote
- the ECQ to declare additional classes of voters who make an electronically assisted vote
- the ECQ to issue directions about the display and distributions of HTV cards
- the ECQ to issue directions relating to the number of scrutineers a candidate may have for a by-election or fresh election and the movement of scrutineers and candidates at a polling booth or other place they are entitled to be present.²⁴⁹

Any regulations made under this part expire on the COVID-19 legislation expiry day (30 September 2021).²⁵⁰

Issue of fundamental legislative principle

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.²⁵¹

The Bill provides for broad regulation-making powers, raising the question as to whether these matters would be more appropriately dealt with in primary legislation.

Committee comment

Frequently, matters are made the subject of regulation on the ground that there is a need for flexibility. The explanatory notes state:

... it is in the public interest to include a regulation-making power to enable alternative arrangements to be put in place where there are legislative impediments or gaps that would otherwise prevent a by-election or fresh election proceeding in an appropriate way depending on the prevailing circumstances around the public health risks of COVID-19.²⁵²

The explanatory notes state the arrangements are justified on the basis that:

... allowing such procedures to be made, and directions to be given, may be necessary depending on the prevailing circumstances at the time a by-election or fresh election is held so as to minimise risks to health and safety caused by the COVID-19 public health emergency. Further, the ECQ as an independent statutory body that conducts local government elections, in consultation with Queensland Health, is best placed to assess prevailing circumstances and manage these temporary measures. It is also appropriate to provide the Minister the ability to postpone polling day for an election for an extended period of time

²⁴⁸ Bill, cl 28 (LGEA, proposed s 200ZF).

²⁴⁹ Explanatory notes, p 15.

²⁵⁰ Bill, cl 28 (LGEA, proposed s 200ZG).

²⁵¹ LSA, s 4(4)(a).

²⁵² Explanatory notes, p 14.

(longer than two months from the original polling day), as it may be necessary to coordinate and manage the Government's response to serious outbreaks of COVID-19.²⁵³

The committee considers the regulation making powers are appropriate in this instance, noting that regulations can be engaged more quickly than primary legislation to respond to the evolving public health situation.

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.

Committee comment

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins. However, the explanatory notes did fail to identify specific clause numbers, particularly under the heading 'Consistency with fundamental legislative principles'. To do so would assist members and other readers in identifying and considering these issues.

²⁵³ Explanatory notes, p 15.

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.²⁵⁴

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 s 13 of the HRA.²⁵⁵

The HRA protects fundamental human rights drawn from international human rights law.²⁵⁶ 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.

5.1 Human rights compatibility

The committee notes that this Bill is put before the Parliament as a response to the COVID-19 pandemic with the aim of protecting Queenslanders from this new disease. The HRA states, in s 16, that: ‘Every person has the right to life and has the right not to be arbitrarily deprived of life’. The Queensland Human Rights Commission, in examining the scope of this right, has noted:

This right includes an obligation on states to take steps to protect the lives of individuals. Examples include positive measures to address threats to life...²⁵⁷

The committee recognises that in putting in place measures to restrict the spread of an infectious disease, and thereby enhancing the rights of Queenslanders under s 16, other rights of Queenslanders may be adversely impacted.

The Queensland Human Rights Commission also recognises that competing rights may interact in this matter, stating:

Generally, rights are not absolute – that is, they are allowed to be limited, but only after careful consideration and only in a way that is necessary, justifiable and proportionate.²⁵⁸

The committee has examined the Bill for human rights compatibility. The committee considers that the Bill is compatible with human rights because although it contains a number of limitations on rights, the committee is satisfied that these limitations are reasonable and justifiable, in accordance with s 13 of the HRA.

The committee notes that committee members, the Parliament, and the public more broadly, all benefit from statements of compatibility which provide a detailed examination of provisions and their potential impact on particular rights, as well as the reasonableness and the appropriateness of the purposes those provisions serve.

The committee’s consideration of particular provisions of the Bill and the human rights issues they enliven, and the information set out in the statement of compatibility, is set out below.

²⁵⁴ HRA, s 39.

²⁵⁵ HRA, s 8.

²⁵⁶ The human rights protected by the HRA are set out in ss 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.

²⁵⁷ Queensland Human Rights Commission, *Fact sheet: Right to life – Section 16 of the Human Rights Act 2019*, July 2019, p 1, webpage, https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0004/19885/QHRC_factsheet_HRA_s16.pdf

²⁵⁸ Queensland Human Rights Commission, *Fact sheet: Queensland’s Human Rights Act 2019*, July 2019, p 1, https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0009/19908/QHRC_factsheet_QueenslandHumanRightsAct.pdf

5.1.1 Extraordinary decisions of local governments to adjust rates and charges

As discussed in sections 3.2.1 and 4.1.2.1 of this report, the Bill would permit local governments to adjust rates and charges during the 2021-22 financial year in response to the effects of the COVID-19 pandemic.²⁵⁹

The statement of compatibility provides:

The proposal to permit local governments to decide, outside of the annual budget meeting, what rates and charges are to be levied for the remainder of the 2021-2022 financial year could limit property rights, as local governments may acquire land where there are overdue rates and charges on land in a local government area that are unpaid for a period of time, under the CBR and the LGR. If rates and charges are increased, ratepayers may be required to pay additional rates and charges which will have the effect of depriving a person of additional money (comparative to the rates and charges prior to the increase).²⁶⁰

Each of the four types of rates and charges that may be levied under the COBA and LGA²⁶¹ are for a service, facility or activity supplied or undertaken by a local council for the benefit of the general community. The statement of compatibility does not contemplate which service, facility or activity supplied or to be undertaken for the benefit of the general community, to which the revised rate or charge might relate. The explanatory notes acknowledge, however, that rates may increase ‘without an equivalent increase in services’,²⁶² presumably in a circumstance where council revenue has been impacted by the pandemic.

Local governments are public entities under the HRA and must act in a manner that is compatible with the human rights protected by the HRA, and give proper consideration to relevant human rights when making decisions.²⁶³ These obligations will need to be met by a council at the time of considering whether to make a decision to vary rates or charges.

Committee comment

Contributions from ratepayers help support public access to a broad range of council services that may serve to promote other important economic, social and cultural rights. Potential risks to councils’ financial sustainability, and to their resulting ability to continue to deliver these services and associated rights-promoting benefits to individuals within their community, are valid and important considerations – indeed, maintaining these services is linked to the value of an individual property right.

While the committee considers that the statement of compatibility could have offered greater explanation to justify the provisions, the committee notes advice provided elsewhere by the DSDILGP and by the LGAQ, which explained the need for the proposed amendments to allow local governments to decide rates and charges for the 2021-22 financial year outside of the annual budget meeting. Further, the committee notes:

- the provisions could be engaged to decrease rates and charges, as well as to increase them
- the COBA and LGA provide for local governments to grant concessions to landowners for whom the payment of rates and charges would cause hardship²⁶⁴ (which can include deferrals of

²⁵⁹ Bill, cls 7, 24.

²⁶⁰ Statement of compatibility, p 12.

²⁶¹ COBA, s 94; LGA, s 92.

²⁶² Explanatory notes, p 11.

²⁶³ Section 9 of the HRA recognises that each of a local government, a councillor and a local government employee are public entities. Section 58 of the HRA specifies that it is unlawful for a public entity to act or make a decision in a way that is not compatible with human rights; or in making a decision, to fail to give proper consideration to a human right relevant to the decision.

²⁶⁴ LGA, Part 10 (see s 120(c), which recognises financial hardship as an eligible concession criteria); CBR, Part 10 (see s 112(c) regarding financial hardship as a concession criteria).

payment, rebates on all or part of the due amounts, and interest-free payments plans) to help reduce any imposition on property rights

- the safeguard on the use of extraordinary decisions contained in s 121 of the LGA, which provides for the Minister's intervention where a decision of a local government is inconsistent with the local government principles or where it is otherwise in the public interest to suspend or revoke a decision of the local government.

Overall, the committee is satisfied that any potential limit on individual property rights is reasonable and justifiable, though any local government making a rates decision under the provisions will also need to be consider the potential engagement of s 24 of the HRA (regarding property rights).

5.1.2 Local government elections and by-elections

As discussed in sections 3.2.2 and 4.1.2.2 of this report, the Bill proposes to change the way that local government by-elections and fresh elections that are affected by the COVID-19 public health emergency are conducted.²⁶⁵ These amendments limit rights protected by the HRA including the right to participate in public affairs, and to vote and be elected at local government elections; the right to freedom of movement; the right to freedom of expression; and the right to not be discriminated against.

5.1.2.1 Right to take part in public life

Section 23 of the HRA protects a person's right to take part in public life:

... every person in Queensland has the right, and is to have the opportunity, without discrimination to participate in the conduct of public affairs, directly or indirectly through freely chosen representatives.²⁶⁶

...

... every eligible person has the right and is to have the opportunity, without discrimination ... to have access, on general terms of equality, to the public service and to public office.²⁶⁷

Councillor office vacancies

The Bill contains amendments to the COBA and LGA which permit the Minister to give a direction to council about whether or not an office of the councillor which becomes vacant before the COVID-19 legislation expiry day must be filled. If the vacancy must be filled, the Minister may give notice extending the 2 month period by which a vacancy is required to be filled after becoming vacant.²⁶⁸

With respect to s 23 of the HRA, the committee considered the proposed amendments to the COBA and LGA which permit the Minister to give a direction to the council about whether a vacant office must be filled, and to extend the period within which the council must fill the vacant office.

While the relevant provisions of the Bill do not of themselves preclude a person from participating in the conduct of public office, and/or accessing public office, they may defer the opportunity for some persons to realise these rights (through election to council) by delaying a councillor election.

Committee comment

While the committee notes this potential limitation on the rights protected by section 23, the committee considers that the measures are reasonable in the circumstances given the temporary nature of any interference. The committee also recognises that not deferring a local government election alternately could potentially:

- create health risks for voters, candidates, campaigners and ECQ staff

²⁶⁵ Bill, cl 8, 25, 27-29.

²⁶⁶ HRA, s 23(1).

²⁶⁷ HRA, s 23(2)(b).

²⁶⁸ Bill, cl 8 (COBA, proposed s 240C); cl 25 (LGA, proposed s 260AC).

- result in a constrained campaigning environment for candidates and potentially reduced opportunities for voting Queenslanders to seek and receive electoral information (affecting rights to freedom of expression and political communication)
- otherwise lead to compromises in the scope of Queenslanders' engagement of their right to take part in public life by voting or standing as candidates for election.

Amending time limits for compiling the voter roll and the nomination of candidates, and adjourning or postponing polls

The Bill would allow for amendments to the time limits for voter enrolment and for the nomination of candidates, as well as allowing for the adjournment or postponement of a poll for up to 2 months.²⁶⁹ These provisions significantly alter the way a local government election may occur. Each of these provisions limits the right to take part in public life.

The statement of compatibility refers to the following justification for these provisions (general justification):

... providing flexibility around the statutory processes and timeframes for the cut-off day for voters rolls and nomination of candidates and adjourning or postponing a polling day will allow the conduct of a local government by-election or fresh election to account for delays that may be caused by COVID-19 and to allow for alternative arrangements for the local government by-election or fresh election to be made...²⁷⁰

The committee notes that the engagement of the provisions could serve to reduce the timeframe during which eligible voters can enrol or prospective candidates can nominate, as well as potentially deferring the exercise of the vote. The nature of any such impacts would need to be proportionate to the threat posed by the COVID-19 pandemic, and the need to safeguard public health and safety.

Committee comment

The COVID-19 health emergency is ongoing in Queensland. The committee recognises that the provisions seek to facilitate local government by-elections and fresh elections continuing as far as possible despite the pandemic – an important purpose that serves to support the public in engaging their right to participate in public life. However, ensuring that the electoral process is inclusive, and that eligible voters have an appropriate opportunity to register and exercise their vote, is consistent with the centrality of the right to vote in the Australian legal system (and equally so for eligible candidates and their right to seek election).

While the committee has concerns about the human rights limitations associated with potentially reduced voter roll and nomination timeframes, these concerns are somewhat allayed by the fact that the provisions will only apply in limited circumstances and that under the proposed amendments, it must be in the public interest for the ECQ, the returning officer, or the Minister to take the relevant actions. The temporary nature of the provisions also assists in satisfying the committee of the reasonableness of their limitations.

The committee also notes that provisions for amended timeframes for state elections and by-elections were included in the Public Health Emergency Act and Extension Act, and that the statement of compatibility for the latter legislation explained that the amendments would support 'possible alternative arrangements for the conduct of the by-election which may be required as a result of COVID-19', including, for example, the earlier closure of the roll and nominations:

... should it be necessary to facilitate the increased use of postal voting at the by-election to reduce the risk of the spread of COVID-19.²⁷¹

²⁶⁹ Bill, cl 25 (LGEA, proposed ss 200P, 200Q, 200R, 200S).

²⁷⁰ Statement of compatibility, p 16.

²⁷¹ COVID-19 Emergency Response and Other Legislation Amendment Bill 2020, statement of compatibility, p 19.

While the committee is generally satisfied that the provisions are reasonable and appropriate in the circumstances, the committee would appreciate the Attorney-General providing further information during the second reading debate, to support members in their consideration of this matter.

Conduct of poll by postal ballot

The Bill provides for the Minister to direct an election to be conducted by postal ballot.²⁷² This provision potentially limits an elector's ability to vote in person in a local council election.

Section 23(2) of the HRA confers a right on every eligible elector to vote at a local government election that guarantees the free expression of the will of the electors. In justifying the proposed amendment, the statement of compatibility sets out only a general justification. The statement does not provide detail on the potentially significant consequences on polls conducted by postal ballot of the time limit for applying to cast a postal vote which would be introduced by the Bill.²⁷³

Committee comment

The committee recognises the possibility that electors could be disenfranchised by this provision, but notes that the Minister must be satisfied that it would be in the public interest for a poll for an election to be conducted by postal ballot, and that the ECQ may declare that electors of a stated class may vote in the election other than by postal vote, including, for example, by making an electronically assisted vote, or voting in another stated way approved by the electoral commission.²⁷⁴

Amending the time limit for applying to cast a postal vote

The LGEA provides that a postal ballot application must be received by the returning officer no later than 7pm on the day that is 12 days before the polling day.²⁷⁵ The Bill would permit the ECQ to fix a time and day by which an elector may apply to cast a postal vote in an election which may be earlier or later than the existing period in the LGEA.²⁷⁶

With respect to postal voting and postal ballots, the statement of compatibility provides the following reason for the proposed amendments:

... facilitating the increased use of postal voting, postal ballots and electronically assisted voting will reduce the need for persons to attend in person to vote at a polling booth, and for polling booths to be staffed based on anticipated attendance. This will in turn reduce person-to-person contact and protect the health and safety of individuals and the public more generally ...²⁷⁷

Committee comment

The committee notes that the impact of the provision regarding time limits for applying to cast a postal vote is likely to be alleviated by the proposed provision that permits the ECQ to declare that electors of a 'stated class' may cast a postal vote without having made an application.²⁷⁸ The committee also notes, however, that an elector who does not come within the 'stated class' may be precluded from voting if they do not make a postal ballot application within the prescribed time.

The committee readily acknowledges the benefits of postal voting for reducing the risk of COVID-19 transmission. The committee would, however, have appreciated further detail in the statement of

²⁷² LGEA, proposed s 200T(2).

²⁷³ Bill, cl 28 (LGEA, proposed s 200U).

²⁷⁴ See Bill, cl 28 (LGEA, proposed s 200T).

²⁷⁵ See Bill, cl 28 (LGEA, ss 79(2)(d), 81(2A)).

²⁷⁶ See Bill, cl 28 (LGEA, proposed s 200U).

²⁷⁷ Statement of compatibility, p 16.

²⁷⁸ See Bill, cl 28 (LGEA, proposed s 200V).

compatibility in relation to the impact of the provision regarding the time limit for applying to cast a postal vote on the right to take part in public life.²⁷⁹

Removal of electoral visitor voting

The Bill proposes to permit the ECQ to declare that electors will not be visited under section 77 (Arrangements for electoral visitor voting) of the LGEA.²⁸⁰

The removal of electoral visitor voting would impact on access to voting for voters with a disability, illness or advanced pregnancy, and those who care for them.²⁸¹ The committee notes, however, that this form of voting is not available in many voting systems, nor engaged by many Queensland voters, and that electronically-assisted voting, postal voting and telephone voting may constitute a reasonable, COVID-19 safe alternative. The committee notes that the provisions recognise the availability of these voting methods, requiring the ECQ to ‘make alternative arrangements’ to enable an affected elector to vote in the election, ‘including, for example, by casting an electronically assisted vote or postal vote’.²⁸²

The statement of compatibility provides that the purpose of the limitation on human rights is to reduce ‘person-to-person contact and the potential for issuing officers to spread the virus as they travel between different residences’.²⁸³

Committee comment

The committee notes the clear nexus between the suspension of in-person electoral visitor voting and the purpose articulated in the statement of compatibility. The committee therefore considers that the limitations imposed by the proposed provisions on the rights protected in ss 23(1) and 23(2), as well as in ss 15(2), (3) and (4) of the HRA, are reasonable and justifiable provided that the alternative arrangements kept in place provide such voters with a satisfactory means of voting.

Limiting display and distribution of how-to-vote cards and other election material

The Bill would permit the ECQ to give directions concerning the distribution and display of HTV cards, personal canvassing in or near polling booths, and the display of political statements.²⁸⁴

This provision limits the rights to freedom of expression, freedom of movement, and certain rights to take part in public life.²⁸⁵ According to the statement of compatibility, this provision is justified because it ‘will reduce person-to-person contact and contagion risks’.²⁸⁶

Committee comment

The committee recognises that the risk of transmitting COVID-19 may be reduced by the ECQ giving directions about HTV cards or other election material. The committee has considered the limitation on certain rights relating to taking part in public life and decided that the limitation in this instance is reasonable and justified.

The Bill would also limit the right to freedom of movement by permitting the ECQ to give directions concerning personal canvassing in or near polling booths.²⁸⁷ The committee considers that social

²⁷⁹ See HRA, s 23.

²⁸⁰ See Bill, cl 28 (LGEA, proposed s 200W).

²⁸¹ See Bill, cl 28 (LGEA, proposed s 200W(5)).

²⁸² Bill, cl 28 (LGEA, proposed s 200W(5)(b)).

²⁸³ Statement of compatibility, p 16.

²⁸⁴ Bill, cl 28 (LGEA, proposed s 200Z(2)).

²⁸⁵ See HRA, ss 19, 21, 23(1), 23(2).

²⁸⁶ Statement of compatibility, p 16.

²⁸⁷ Bill, cl 28 (LGEA, proposed s 200Z(2)(c)); see also HRA, s 19.

distancing requirements to mitigate the risk of COVID-19 being contracted provide an adequate justification for the limitation.

Restricting the movement of candidates or scrutineers at particular places

The Bill would permit the ECQ to make directions curtailing the presence and movement of candidates or scrutineers at polling booths and other places. Two new offences are created in respect of these provisions.²⁸⁸

By allowing for restrictions to be imposed on persons' access to places, in addition to those already present in the LGEA, these provisions may limit the right to freedom of movement, with particular relevance for the scrutineering of votes.²⁸⁹ The potential filming of vote counting, while presenting some privacy challenges, is put forward to provide a substitute to scrutineering where such restrictions may be engaged.

The statement of compatibility justifies these measures on the basis that they would 'limit person-to-person contact and the risk of super-spreading events'.²⁹⁰

Committee comment

The committee considers that this limitation on the right to movement is justified given that social distancing is a key means of reducing the spread of COVID-19, though notes the importance of scrutineering to safeguarding the rights in s 23 of the HRA.

Filming counting of votes

The Bill would allow the returning officer to arrange for vote counting to be filmed by a member of staff.²⁹¹ This provision may limit the right to participate in public life, and the right to privacy.²⁹²

Committee comment

The committee notes that the statement of compatibility includes the provision about filming in a list of the proposed amendments that limit freedom of movement and the right to privacy,²⁹³ but the statement of compatibility does not separately analyse the potential limitation on those rights.

The committee considers the filming of the vote count to be compatible with the right to privacy because personal information is not recorded on a ballot. In an unusual case a voter may record their name on the ballot despite the secrecy of the voting process, such that personal information may be captured by the filming. This circumstance is not discussed in the statement of compatibility.

However, this potential limitation must be balanced with the purpose of the provisions, which support the conduct of vote counting without interference with the secrecy of the ballot or limitation on the right to take part in public life.

5.1.3 Local government meetings

As discussed in sections 3.2.3 and 4.1.2.3 of this report, the Bill would extend the operation of temporary amendments to the CBR and the LGR which permit local councils to close meetings to the public.²⁹⁴

²⁸⁸ Bill, cl 28 (LGEA, proposed ss 200ZA and 200ZB). See offences in proposed ss 200ZA(4) and 200ZB (4).

²⁸⁹ See HRA, s 19.

²⁹⁰ Statement of compatibility, p 16.

²⁹¹ Bill, cl 28 (LGEA, proposed s 200ZC(3)).

²⁹² See HRA, ss 23, 25.

²⁹³ See statement of compatibility, p 15.

²⁹⁴ Bill, cls 10, 12, 31.

Right to take part in public life

The statement of compatibility identifies that these provisions limit the right to take part in public life.²⁹⁵ The justification provided for the measures is the increased ‘risk for the spread of COVID-19 due to the gathering of people in enclosed spaces’.²⁹⁶

The committee notes that these provisions may also limit the right to freedom of expression, which includes a right to receive information.²⁹⁷

The effect of extended s 277E of the LGR and s 255F of the COBR is that council meetings may be closed to the public for a reason not connected to the circumstances of the particular meeting (for example, the intended discussion of a matter listed in s 242J of the CBR or s 254J of the LGR, for which a meeting may ordinarily be closed²⁹⁸), but because the chairperson of the meeting is satisfied that it is not practicable for the public to attend in person, despite the regulations making provision for meetings to be held by audio and audio visual means.

The statement of compatibility fails to:

- identify how closing a meeting held by audio or audio visual link, involving no physical gathering of people to the public, achieves the purpose of reducing the risk of spread of the virus by people gathering in person
- explain why it is necessary to close a meeting for which it is not practicable for the public to attend in person because of health and safety reasons associated with COVID-19, when the meeting can be held by audio or audio visual link. In this instance, the real-time viewing requirements in s 255E(2) of the CBR and s 277D(2) of the LGR will apply and interested members of the public will be able to listen to the meeting
- explain the justification for sections enabling meetings to be closed when audio or audio visual link may be available to enable public access to meetings.

Committee comment

The committee considers the statement of compatibility has not sufficiently addressed the purpose of this limitation on human rights, or why the legislation provides for meetings to be conducted via audio or audio visual link or closed to the public, without identifying or imposing limits on the circumstances in which the latter option might be engaged.

The committee notes the DSDILGP has advised elsewhere that the closed meeting provisions are necessary given some councils – and particularly smaller remote and regional councils – may not have the technical capacity (including reliability of internet access) to support the live streaming of

²⁹⁵ See HRA, s 23(1).

²⁹⁶ Statement of compatibility, p 20.

²⁹⁷ See HRA, s 21.

²⁹⁸ These sections provide the for a local government or committee of a local government to close a meeting to discuss one of the following matters: appointment, discipline or dismissal of the chief executive officer; industrial matters affecting employees; the local government’s budget; rating concessions; legal advice obtained by the local government or legal proceedings involving the local government including, for example, legal proceedings that may be taken by or against the local government; matters that may directly affect the health and safety of an individual or a group of individuals; negotiations relating to a commercial matter involving the local government for which a public discussion would be likely to prejudice the interests of the local government; negotiations relating to the taking of land by the local government under the *Acquisition of Land Act 1967*; a matter the local government is required to keep confidential under a law of, or formal arrangement with, the Commonwealth or a state. The sections also state, however, that a decision and resolution in respect of these matters (other than a procedural resolution) must not be made in a closed meeting.

meetings, which may preclude their use of the audio or audio visual provisions²⁹⁹ – a legitimate obstacle that might have been articulated in the statement, to support the committee's, and members', considerations of this matter.

The committee understands that similar Victorian legislation allows for the audio or video recording of meetings and the publication of those recordings following the meeting (in addition to, or as an alternative to, live streaming), which might have offered a more accessible approach for some local governments.

These factors aside, noting the temporary nature of the Bill's extension of the provisions, the caveat that the meeting closure provisions may be engaged only where it is not considered practicable for the public to attend due to health and safety reasons associated with the COVID-19 public health emergency, and the continuing application of requirements for the publication of meeting agendas and minutes to provide transparency in relation to meetings, the committee is satisfied that the human rights limitations associated with the provisions are reasonable and justified.

5.1.4 Infringement notice offences and fines for nominated laws

As discussed in section 3.2.2 and 4.1.1 of this report, the Bill creates three new infringement notice offences in connection with directions that may be issued by the ECQ for a local government election.

The statement of compatibility identifies 4 relevant rights protected by the HRA: property rights; right to liberty and security of person; fair hearing; and rights in criminal proceedings.

Committee comment

The committee is satisfied that if there is any limitation to these human rights, it is reasonable and justified.

5.2 Statement of compatibility

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.³⁰⁰ The committee is required to consider the tabled statement of compatibility and report to the Legislative Assembly about the statement.³⁰¹

Committee comment

A statement of compatibility was tabled with the introduction of the Bill. The committee is of the view that the statement generally contains a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights. Nevertheless, the committee considers that greater detail in the statement of compatibility would have enhanced the statement of compatibility and been useful for the committee in its consideration of the Bill's compatibility with human rights.

²⁹⁹ DJAG and DSDILGP, correspondence, 25 March 2021, attachment, p 8. See also: Ms Bronwyn Blagoev, Executive Director, Strategy and Service Delivery, DSDILGP, public briefing transcript, Brisbane, 22 March 2021, p 5.

³⁰⁰ HRA, s 38.

³⁰¹ HRA, s 39.

Appendix A – Submitters

Sub #	Submitter
001	Australian College of Strata Lawyers
002	Electoral Commission Queensland
003	Queensland Hotels Association
004	Crime and Corruption Commission
005	Redlands2030 Inc.
006	Queensland Resources Council, Queensland Farmers' Federation and AgForce Queensland (joint submission)
007	National Retail Association
008	SEQ Community Alliance
009	Queensland Law Society
010	Local Government Association of Queensland

Appendix B – Officials at public departmental briefing

Department of Justice and Attorney-General

- Ms Kristina Deveson, Acting Senior Director, Courts Innovation Program, Magistrates Court Service
- Mr David McKarzel, Executive Director, Office of Regulatory Policy, Liquor, Gaming and Fair Trading

Department of State Development, Infrastructure, Local Government and Planning

- Ms Bronwyn Blagoev, Executive Director, Strategy and Service Delivery, Local Government Division
- Mr Jordon Watts, Acting Director, Legislation Governance and Capability, Local Government Division

Appendix C – Witnesses at public hearing

Queensland Law Society

- Ms Elizabeth Shearer, President
- Mr Matt Dunn, General Manager, Advocacy, Guidance and Governance

Queensland Hotels Association

- Mr Bernie Hogan, Chief Executive
- Mr Damien Steele, Industry Engagement Manager

Chamber of Commerce & Industry Queensland

- Mr Gus Mandigora, Senior Policy Adviser

Local Government Association of Queensland

- Mr Mike Lollback, Manager, Member & Advisory Services
- Ms Shayne Sutton, Manager, Intergovernmental Relations and Special Projects

Queensland Farmers' Federation

- Dr Georgina Davis, Chief Executive Officer

AgForce Queensland

- Ms Lauren Hewitt, Policy Specialist
- Mr Tom Marland, South East Regional Councillor

Queensland Resources Council

- Ms Katie-Anne Mulder, Policy Director, Resources

Redlands2030 Inc.

- Mr Steve MacDonald, President

SEQ Community Alliance

- Mr Chris Walker, President

Department of Justice and Attorney-General

- Mrs Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services
- Mr David McKarzel, Executive Director, Office of Regulatory Policy, Liquor, Gaming and Fair Trading
- Ms Kristina Deveson, Acting Senior Director, Courts Innovation Program, Magistrates Court Service

Department of State Development, Infrastructure, Local Government and Planning

- Ms Bronwyn Blagoev, Executive Director, Strategy and Service Delivery, Local Government Division
- Mr Jordon Watts, Acting Director, Legislation Governance and Capability, Local Government Division

Appendix D – COVID-19 legislation extended by the Bill

Extract – Sourced from DJAG and DSDILGP, correspondence, 17 March 2021, addendum.

Powers in the ER Act

Part	Description
Parts 1-5	<ul style="list-style-type: none"> • a legislative modification framework of general application across the statute book (the modification framework) allowing legislative requirements to be modified by secondary instruments under the following global heads of power: <ul style="list-style-type: none"> ○ reducing physical contact between persons; ○ statutory timeframes; and ○ proceedings of courts and tribunals
Part 7	<ul style="list-style-type: none"> • regulation making power for retail leases and other prescribed leases
Part 8	<ul style="list-style-type: none"> • regulation making power for residential tenancies and rooming accommodation

Legislative amendments

Legislation	Responsible Agency	Temporary measures
<i>Body Corporate and Community Management Act 1997</i> , chapter 7, part 3 and chapter 8, part 14	Department of Justice and Attorney-General	<ul style="list-style-type: none"> • allow bodies corporate to adopt sinking fund budgets that do not meet the requirement to reserve an appropriate proportional share of amounts necessary to be accumulated to meet anticipated major expenditure over at least the next 9 years after the body corporate's current financial year, thereby allowing bodies corporate to reduce contributions payable by owners • relax requirements for bodies corporate to initiate proceedings to recover lot owner contributions that have been outstanding for 2 years, thereby enabling bodies corporate to defer commencing debt recovery action against lot owners experiencing financial distress due to COVID-19 • allow body corporate committees to postpone the due date for contributions, to provide lot owners suffering financial hardship as a result of COVID-19 with additional time to pay their contributions • prevent bodies corporate from charging penalty interest on outstanding lot owner contributions • increase (double) the maximum amounts that bodies corporate can borrow when authorised by ordinary resolution (that is, for most schemes, allow the body corporate to borrow up to \$500 multiplied by the number of lots in the scheme, and double the upper limit for borrowing under the Body Corporate and Community Management (Small Schemes Module) Regulation 2008 to \$6,000)

Legislation	Responsible Agency	Temporary measures
<i>Building Units and Group Titles Act 1980</i> , part 6A and part 7, division 3	Department of Justice and Attorney-General	<ul style="list-style-type: none"> • permit body corporate committees to postpone the due date for proprietor contributions, to provide proprietors suffering financial hardship as a result of COVID-19 additional time to pay contributions
<i>Casino Control Act 1982</i> , section 57A	Department of Justice and Attorney-General	<ul style="list-style-type: none"> • refers to Part 11A of the <i>Gaming Machine Act 1991</i>, which provides the Minister with a time limited ability to defer or waive a casino tax payable for a relevant month under the <i>Casino Control Act 1982</i>
<i>Corrective Services Act 2006</i> , chapter 6, part 15A	Queensland Corrective Services	<ul style="list-style-type: none"> • expand the application of section 268 (Declaration of emergency) to cover all corrective services facilities (including the Helana Jones Centre and work camps) • clarify the chief executive's powers regarding corrective service facilities administered by engaged service providers under section 272 • extend the duration of prescribed acting Parole Board Queensland member appointments under section 228 from 3 months to one year
<i>Disaster Management Act 2003</i> , part 12A	Queensland Fire and Emergency Service	<ul style="list-style-type: none"> • provide for a longer period (up to 90 days) by which the declaration of the disaster situation in regard to the COVID-19 emergency can be extended • set aside the entitlement to compensation for loss or damage suffered as a result of the exercise of powers under the <i>Disaster Management Act 2003</i> related to the COVID-19 emergency

Legislation	Responsible Agency	Temporary measures
<i>Electoral Act 1992</i> , part 12C	Department of Justice and Attorney-General	<ul style="list-style-type: none"> • ensure the Government and the ECQ, in line with advice from the Chief Health Officer, can intervene, as necessary, to mitigate the spread of COVID-19 in the community in the lead up to, and during, any future by-election, including by: <ul style="list-style-type: none"> ○ allowing the cut-off day for the electoral rolls and the nomination of candidates stated in the writ to be a day earlier than the day stated in section 84 of the <i>Electoral Act 1992</i> ○ allowing the Government or Speaker, as the case may be, to substitute later days than those stated in the writ, including changes to the by-election's polling day ○ allowing alternative arrangements for voting, for example allowing the ECQ or a returning officer to direct an issuing officer not to visit an electoral visitor voter or provide that a regulation may be made, in consultation with the ECQ, to declare that all electors in the by-election or electors of a stated class are to vote in the by-election by way of postal vote ○ providing the ECQ with the ability to issue directions in relation to the display or distribution of how-to-vote cards in or near polling booths or the number and movement of scrutineers at a polling booth at a by-election, with an offence applying to persons who contravene such directions
<i>Environmental Protection Act 1994</i> , chapter 11A	Department of Environment and Science	<ul style="list-style-type: none"> • provide the Minister with the power to make a declaration waiving compliance of certain conditions of particular environmental approvals (e.g. an environmental authority) if reasonable given the COVID-19 public health emergency. Declarations will likely relate to monitoring or remediation conditions where there is no direct risk of environmental harm associated with non-compliance of the condition • allow the administering authority to issue temporary environmental authorities if reasonable given the COVID-19 public health emergency. Conditions can be placed on the temporary environmental authorities to prevent or minimise environmental harm
<i>Gaming Machine Act 1991</i> , part 11A	Department of Justice and Attorney-General	<ul style="list-style-type: none"> • provides the Minister with a time limited ability to defer or waive a gaming machine tax and a health services levy payable for a relevant month under the <i>Gaming Machine Act 1991</i>, and other gaming taxes payable for a relevant month under the <i>Keno Act 1996</i>, <i>Lotteries Act 1997</i> and <i>Casino Control Act 1982</i>
<i>Keno Act 1996</i> , section 116A	Department of Justice and Attorney-General	<ul style="list-style-type: none"> • refers to Part 11A of the <i>Gaming Machine Act 1991</i>, which provides the Minister with a time limited ability to defer or waive a keno tax payable for a relevant month under the <i>Keno Act 1996</i>

Legislation	Responsible Agency	Temporary measures
<i>Liquor Act 1992</i> , part 10A	Department of Justice and Attorney-General	<ul style="list-style-type: none"> • insert a new temporary power for the Commissioner for Liquor and Gaming to issue a Takeaway Liquor Authority to allow a licensee or permittee to sell takeaway liquor as specified in the authority, regardless of the limitations of their current licence or permit. The authority may only be issued to: <ul style="list-style-type: none"> ○ operators of licensed venues whose ordinary operations have been disrupted due to the public health directions; or ○ operators of licensed venues located in a restricted area or where the Commissioner for Liquor and Gaming is satisfied the venue is a source of liquor supply for residents of a restricted area; to allow the licensee or permittee to sell takeaway liquor as specified in the authority, regardless of the limitations of their current licence or permit
<i>Lotteries Act 1997</i> , section 99A	Department of Justice and Attorney-General	<ul style="list-style-type: none"> • refers to Part 11A of the <i>Gaming Machine Act 1991</i>, which provides the Minister with a time limited ability to defer or waive a lottery tax payable for a relevant month under the <i>Lotteries Act 1997</i>
<i>Manufactured Homes (Residential Parks) Act 2003</i> , section 146A	Department of Communities, Housing and Digital Economy	<ul style="list-style-type: none"> • provide a temporary regulation-making power about modifying or suspending the processes for increasing or reducing site rent and modifying the processes for disputing a proposed increase in site rent during the COVID-19 emergency
<i>Youth Justice Act 1992</i> , section 264A	Department of Children, Youth Justice and Multicultural Affairs	<ul style="list-style-type: none"> • provide the option to appoint non-public service employees as temporary detention centre employees, for only as long as reasonably required, and only if reasonably necessary for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres

Regulations

Regulation	Responsible agency	Amendments
Body Corporate and Community Management (Accommodation Module) Regulation 2020	Department of Justice and Attorney-General	<ul style="list-style-type: none"> enable body corporate committees to make decisions to change rights, privileges or obligations of lot owners in relation to access to, or the use of, common property and body corporate assets, if the committee considers a change is reasonably necessary to ensure compliance with a public health direction
Body Corporate and Community Management (Commercial Module) Regulation 2020	Department of Justice and Attorney-General	<ul style="list-style-type: none"> enable body corporate committees to make decisions to change rights, privileges or obligations of lot owners in relation to access to, or the use of, common property and body corporate assets, if the committee considers a change is reasonably necessary to ensure compliance with a public health direction
Body Corporate and Community Management (Small Schemes Module) Regulation 2020	Department of Justice and Attorney-General	<ul style="list-style-type: none"> enable body corporate committees to make decisions to change rights, privileges or obligations of lot owners in relation to access to, or the use of, common property and body corporate assets, if the committee considers a change is reasonably necessary to ensure compliance with a public health direction
Body Corporate and Community Management (Standard Module) Regulation 2020	Department of Justice and Attorney-General	<ul style="list-style-type: none"> enable body corporate committees to make decisions to change rights, privileges or obligations of lot owners in relation to access to, or the use of, common property and body corporate assets, if the committee considers a change is reasonably necessary to ensure compliance with a public health direction

Regulation	Responsible agency	Amendments
Corrective Services (COVID- 19 Emergency Response) Regulation 2020	Queensland Corrective Services	<ul style="list-style-type: none"> • provide for an extension of the length of time a declaration of emergency can be made, under section 268 of the <i>Corrective Services Act 2006</i>, from 3 to 90 days or until the Queensland Minister for Health and Minister for Ambulance Services declares and publishes the end of the COVID-19 emergency period under section 319(2) of the <i>Public Health Act 2005</i> • amend the Parole Board Queensland meeting quorum requirements under section 234 of the <i>Corrective Services Act 2006</i> such that all parole matters can be heard by a quorum of three members , with the exception of prescribed prisoner parole applications which require a quorum of 5 members • create additional entry procedures for corrective service facilities when a declaration of emergency under section 268 of the <i>Corrective Services Act 2006</i> is in force to allow persons entering a corrective services facility to be screened for COVID-19, including by taking the person's temperature, and empowering the chief executive to refuse entry where a person displays a high temperature (in excess of 38 degrees Celsius) or flu-like symptoms • ensure offenders subject to relevant orders and managed in the community can be supervised by corrective service officers remotely
Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020	Department of Justice and Attorney-General	<ul style="list-style-type: none"> • permit domestic and family violence proceedings to be conducted by audio or audio visual link • permit private applications for domestic violence orders and variations to domestic violence orders to be verified between an applicant and a Magistrate, as an alternative to verifying by statutory declaration • permit private applications for domestic violence orders and variations to domestic violence orders being filed electronically
Economic Development (COVID-19 Emergency Response) Regulation 2020	Department of State Development, Infrastructure, Local Government and Planning	<ul style="list-style-type: none"> • allow for an inspection to occur at an agreed time and place as an alternative arrangement for the inspection and purchase of hard copies of documents • provide alternative options to placing a notice in a hard copy newspaper for notifying Priority Development Areas development applications and amendment applications

Regulation	Responsible agency	Amendments
Education Legislation (COVID-19 Emergency Response) Regulation 2020	Department of Education	<ul style="list-style-type: none"> • modify requirements for physical presence requirements at places or meetings and allow for meetings and investigations under the <i>Education (Queensland College of Teachers) Act 2005</i> to be conducted by communication technology; • enable the chief executive to extend timeframes under the <i>Education (General Provisions) Act 2006</i> and Education General Provisions Regulation 2017, including to extend timeframes for the conduct of P&C annual general meetings; • enable the Non-State Schools Accreditation Board to extend timeframes under the <i>Education (Accreditation of Non-State Schools) Act 2017</i> and Education (Accreditation of Non-State Schools) Regulation 2017) if required for the purposes of the ER Act
Explosives Legislation (COVID-19 Emergency Response) Regulation 2020	Resources Safety and Health Queensland	<ul style="list-style-type: none"> • defer the expiry date and extending the maximum period for a fireworks contractor licence and fireworks operator licence beyond the 3-year maximum period, until the COVID-19 legislation expiry day, to defer licence renewal costs during the COVID-19 emergency • provide the ability for the Chief Inspector of Explosives to consider alternative documentary evidence in support of the necessary training competencies in relation to the renewal of a shot-firer's occupational licence during the COVID-19 emergency
Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020	Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships	<ul style="list-style-type: none"> • application hearings and all conferences and oral representations may held or made using communication technology; • modify the constitutional requirements of the commission to allow for the commission to be constituted by the commissioner or a deputy commissioner and one local commissioner; and • allow the requirement for the Family Responsibilities Board to meet in person at least once a year to be conducted using communication technology

Regulation	Responsible agency	Amendments
<p>Health Legislation (COVID-19 Emergency Response) Regulation 2020</p>	<p>Queensland Health</p>	<p>Modifications to the <i>Food Act 2006</i>:</p> <ul style="list-style-type: none"> • if a statutory instrument made under the ER Act modifies the statutory time limits for deciding applications, ensure timeframes for requesting further information or documents are consistent with the modification; • extend the period within which a local government must decide an application for renewal, restoration or amendment of a licence before it is taken to be refused from 30 days to 90 days; • extend the period within which the chief executive must decide an application for amendment of conditions on an auditor approval from 30 days to 90 days; • extend the period within which an application for compensation must be decided before it is deemed refused from 28 days to 90 days; and • extend the period by which a QCAT information notice of the outcome of a review must be given to an applicant before the original decision is taken to be confirmed from 30 days to 90 days <p>Modifications to the <i>Pest Management Act 2001</i>:</p> <ul style="list-style-type: none"> • allow a pest management technician to make, and the chief executive to accept, an application for renewal of a pest management licence up to 30 days after the licence has expired where it is considered necessary to achieve the main purpose of the ER Act. Consistent with section 8(4) of the ER Act, this modification will apply retrospectively for any licence that expired on or after 19 March 2020; and • extend the period by which a Queensland Civil and Administrative Tribunal information notice of the outcome of a review must be given to an applicant before the original decision is taken to be confirmed from 60 days to 90 days

Regulation	Responsible agency	Amendments
Justice Legislation (COVID-19 Emergency Response- Community Titles Schemes and Other Matters) Regulation 2020	Department of Justice and Attorney-General	<ul style="list-style-type: none"> • modify the <i>Collections Act 1966</i> to enable the chief executive to extend the deadline for annual financial reporting • modify the <i>Body Corporate and Community Management Act 1997</i> and <i>Building Units and Group Titles Act 1980</i> to allow committees to modify the way meetings are held, including to facilitate remote attendance and electronic voting, and allow requirements for in-person inspection of records to be met in alternative ways • amend regulations under the <i>Body Corporate and Community Management Act 1997</i> and <i>Building Units and Group Titles Act 1980</i> to increase flexibility for certain fees related to dispute resolution to be waived • amend regulations under the <i>Liquor Act 1992</i> to provide for the waiver of relevant application fees
Justice Legislation (COVID-19 Emergency Response- Documents and Oaths) Regulation 2020	Department of Justice and Attorney-General	<ul style="list-style-type: none"> • modify arrangements for the making, signing and witnessing of oaths and documents (including affidavits, statutory declarations, oaths, general powers of attorney, deeds , particular mortgages, wills, enduring powers of attorneys and advance health directives) to avoid the need for persons to be physically present and thus avoid the risks to health and life arising from COVID-19 • permit witnessing for various documents to occur over audio visual link • permit electronic transmission of signed versions of the document between various participants in the document creation process

Regulation	Responsible agency	Amendments
Justice Legislation (COVID-19 Emergency Response- Proceedings and Other Matters) Regulation 2020	Department of Justice and Attorney-General	<ul style="list-style-type: none"> • provide temporary modifications to arrangements in the: <ul style="list-style-type: none"> ○ <i>Crime and Corruption Act 2001</i> (CC Act) to allow CCC hearings to be conducted via audio or audio visual link ○ CC Act to allow a relevant notice issued by the Chairperson of the CCC to be sent by email and signed electronically ○ Criminal Code to allow for the presentation and discontinuance (nolle prosequi) of indictments to be effected via audio or audio visual link ○ <i>Evidence Act 1977</i> to permit the videorecording, and use in proceedings, of all, or part of, the testimony of witnesses in lieu of the witness' direct testimony ○ <i>Justices Act 1886</i> to allow appearances by adults in response to a Notice to Appear in the Magistrates Court to be conducted via audio or audio visual link ○ <i>Property Law Act 1974</i> to determine the place of settlement for land contracts if a land registry office is closed due to the COVID-19 emergency
Local Government (COVID-19 Emergency Response) Regulation 2020	Department of State Development, Infrastructure, Local Government and Planning	<ul style="list-style-type: none"> • enable investigators from the Office of the Independent Assessor to require a person to answer questions related to the investigation of the conduct of a councillor or an offence against a conduct provision by attending in person or by audio or audio visual link, or by providing answers to the questions by email or other electronic means
Manufactured Homes (Residential Parks) (COVID- 19 Emergency Response) Regulation 2020	Department of Communities, Housing and Digital Economy	<ul style="list-style-type: none"> • additional requirements for market reviews of site rent which occurred in 2020 and disputes about these • modify requirements in the <i>Manufactured Homes (Residential Parks) Act 2003</i> to allow meetings to take place using audio or audio visual links
Planning (COVID-19 Emergency Response) Regulation 2020	Department of State Development, Infrastructure, Local Government and Planning	<ul style="list-style-type: none"> • provide alternative arrangements under the <i>Planning Act 2016</i> for planning authorities to keeping documents physically available for inspection and purchase

Regulation	Responsible agency	Amendments
Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020	Department of Communities, Housing and Digital Economy	<ul style="list-style-type: none"> allow renters experiencing domestic and family violence to manage their interest in a residential lease quickly and safely, with limited liability for end of lease costs prevent renters who suffered excessive hardship because of COVID-19 from being listed in a tenancy database for COVID-19 rent arrears limit reletting costs that can be charged to eligible renters who end their residential lease early to the equivalent of one week's rent if their household has lost at least 75 per cent of their income and has less than \$5,000 in savings allow further short-term tenancy statement extensions for moveable dwelling agreements if necessary to manage COVID-19 restrictions adjust entry and repair rights and obligations to support COVID-19 activity restrictions provide for a misuse of notice to leave offence
Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020	Department of Justice and Attorney-General	<ul style="list-style-type: none"> preserve the rights of a lessee under an affected lease to continue to seek rent relief, in respect of the response period (the period 29 March - 30 September 2020) or the extension period (the period 1 October - 31 December 2020), or to seek to mediate a dispute through the Queensland Small Business Commissioner and, if mediation is unsuccessful, to apply to the Queensland Civil and Administrative Tribunal or a court to resolve the dispute
Youth Justice (COVID-19 Emergency Response) Regulation 2020	Department of Children, Youth Justice and Multicultural Affairs	<ul style="list-style-type: none"> modify arrangements to allow a restorative justice conference agreement to be considered signed if the relevant persons have agreed to the agreement, and to allow for copies of the agreement to be provided after, rather than during, the conference

Other secondary instruments

Instrument	Responsible agency	Temporary measures
<i>Gaming Tax Notice 2020</i>	Department of Justice and Attorney-General	<ul style="list-style-type: none"> defers payment of the March 2020 gaming machine tax to June 2021 for clubs, hotels and casinos defers payment of the March 2020 health services levy to July 2021 for hotels
<i>Gaming Tax Notice (No. 2) 2020</i>	Department of Justice and Attorney-General	<ul style="list-style-type: none"> defers payment of the lottery tax for the period July 2020 to December 2020 until 31 March 2021

