



# **Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021**

**Report No. 11, 57th Parliament  
Economics and Governance Committee  
August 2021**

## **Economics and Governance Committee**

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### **Acknowledgements**

The committee acknowledges the assistance provided by Queensland Health.

All web address references were current as at 31 July 2021.

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## Abbreviations

ALA	Australian Lawyers Alliance
ALC	Australian Logistics Council
Amendment Act	<i>Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020</i>
Bill	Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021
CCC	Crime and Corruption Commission
CHO	Chief Health Officer
CLA	Committee of the Legislative Assembly
Committee	Economics and Governance Committee
Declared Emergencies Act	<i>Public Health (Declared Public Health Emergencies) Amendment Act 2020</i>
Disaster Management Act	<i>Disaster Management Act 2003</i>
Documents and Oaths Regulation	Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020
ECQ	Electoral Commission of Queensland
Electoral Act	<i>Electoral Act 1992</i>
Environmental Protection Act	<i>Environmental Protection Act 1994</i>
ER Act	<i>COVID-19 Emergency Response Act 2020</i>
ER Extension Act	<i>COVID-19 Emergency Response and Other Legislation Amendment Act 2020</i>
ER Further Extension Act	<i>COVID-19 Emergency Response and Other Legislation Amendment Act 2021</i>
ER Further Extension Bill	COVID-19 Emergency Response and Other Legislation Amendment Bill 2021
FLP Notebook	Officer of the Queensland Parliamentary Counsel, <i>OQPC Notebook: Fundamental Legislative Principles</i> , January 2008
FLPs	fundamental legislative principles

Former Health Committee	Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
Gaming Machine Act	<i>Gaming Machine Act 1991</i>
HRA	<i>Human Rights Act 2019</i>
Justice Legislation Regulation	Justice Legislation (COVID-19 Emergency Response—Proceedings and Other Matters) Regulation 2020
KCCI	Kingaroy Chamber of Commerce and Industry Inc.
LGEA	<i>Local Government Electoral Act 2011</i>
Liquor Act	<i>Liquor Act 1992</i>
LSA	<i>Legislative Standards Act 1992</i>
Manufactured Homes Act	<i>Manufactured Homes (Residential Parks) Act 2003</i>
Manufactured Homes Regulation	Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020
Minister	Hon Yvette D’Ath MP, Minister for Health and Ambulance Services
OQPC	Office of the Queensland Parliamentary Counsel
PH Emergency Act	<i>Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020</i>
PH Emergency Extension Act	<i>Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021</i>
PH Emergency Extension Bill	Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2021
POQA	<i>Parliament of Queensland Act 2001</i>
Public Health Act	<i>Public Health Act 2005</i>
QCCL	Queensland Council for Civil Liberties
QHA	Queensland Hotels Association
QHRC	Queensland Human Rights Commission
QLA	Queensland Law Society
QNMU	Queensland Nurses and Midwives Union

QPCOU	Queensland Police Commissioner Officers' Union
QPS	Queensland Police Service
RANZCP Queensland Branch	Royal Australian and New Zealand College of Psychiatrists Queensland Branch
RSA	Responsible Service of Alcohol
Standing Orders	Standing Rules and Orders of the Legislative Assembly
TLA	Takeaway Liquor Authority
TUL	temporary use licence
UNHRC	United Nations Human Rights Committee
WHO	World Health Organisation

## Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the Public Health and Other Legislation (Further Extension of Expiring Provisions) 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 the many individuals and organisations who made written submissions on the Bill, and those who provided evidence at the committee's public hearing. I also thank Queensland Health and our Parliamentary Service staff for their assistance.

I commend this report to the House.



Linus Power MP

Chair



## Recommendation

### Recommendation 1

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The committee recommends the Public Health and Other Legislation (Further Extension of Expiring Provisions) 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 (Standing Orders).<sup>1</sup>

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).<sup>2</sup>

### 1.2 Inquiry referral and background

On 16 June 2021, the Public Health and other Legislation (Further Extension of Expiring Provisions) Bill 2021 (Bill) was introduced into the Legislative Assembly by the Hon Yvette D'Ath MP, Minister for Health and Ambulance Services (Minister). On 18 June 2021, the Bill was referred to the committee for detailed examination and report to the Assembly by 6 August 2021.<sup>3</sup>

The policy objectives of the Bill are to:

- further extend the operation of a range of temporary legislative measures implemented to facilitate the ongoing health response to COVID-19 and to minimise economic impacts and other related disruptions ('COVID-19 emergency measures'), to apply up to 30 April 2022 or an earlier date prescribed by regulation
- implement minor additional amendments and insert new provisions into the *Public Health Act 2005* (Public Health Act), to support the efficient and responsive management of Queensland's quarantine system and improved recouping of quarantine-related expenses, by:
  - clarifying that quarantine directions may be served electronically
  - providing for the establishment of a new prepayment system for quarantine fees, including allowing for the prescription of cohorts for whom fees must be paid in advance or for whom fees may be waived; and supporting more flexible payment and collection arrangements (including refund provisions).<sup>4</sup>

The explanatory notes advise that these objectives are informed by the current global epidemiological situation, including 'sustained growth in new cases and the spread of highly transmissible COVID-19 variants' overseas, and associated persistent risks for community transmission in Queensland arising from cross-border and interstate cross-border travel.<sup>5</sup>

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<sup>1</sup> *Parliament of Queensland Act 2001* (POQA), s 88; Standing Rules and Orders of the Legislative Assembly (Standing Orders), SO 194.

<sup>2</sup> POQA, s 93; *Human Rights Act 2019* (HRA), s 39.

<sup>3</sup> Queensland Parliament, Record of Proceedings, 16 June 2021, pp 1868-1871; Queensland Parliament, Record of Proceedings, 18 June 2021, p 2193.

<sup>4</sup> Explanatory notes, pp 5-6, 15-16; Dr John Wakefield, Director-General, Queensland Health, public briefing transcript, Brisbane, 5 July 2021, p 2; Queensland Parliament, Record of Proceedings, 16 June 2021, pp 1870-1871.

<sup>5</sup> Explanatory notes, p 2.

A number of submitters questioned the referral of the Bill to this committee, having noted that the Minister initially nominated the Health and Environment Committee to examine the Bill and report back to the Parliament on its proposals.<sup>6</sup>

The committee wishes to clarify that the decision to refer the Bill to the committee was made by the Committee of the Legislative Assembly (CLA), which comprises the Speaker, 3 government members, 3 opposition members, and one cross-bench member.<sup>7</sup> Under the Standing Orders, the CLA is charged with monitoring and reviewing the operation of committees, and in respect of this role, has the power to vary the committee responsible for the Bill 'where appropriate'.<sup>8</sup>

At the time of the referral, the Health and Environment Committee was engaged in the examination of the Voluntary Assisted Dying Bill 2021 – proposed legislation involving complex matters that, much like the Bill examined here, has attracted significant stakeholder interest and discussion, given the serious topic with which it deals. Had responsibility for examining the Bill remained with that committee, it is possible that its ability to give these 2 pieces of legislation the detailed consideration that they require may have been constrained.

The committee also wishes to highlight its familiarity with many of the provisions to be extended by the Bill, having previously considered one of the last 2 pieces of legislation to extend COVID-19 emergency measures, in the COVID-19 Emergency Response and Other Legislation Amendment Bill 2021 (ER Further Extension Bill),<sup>9</sup> subsequently enacted as the *COVID-19 Emergency Response and Other Legislation Amendment Act 2020* (ER Further Extension Act) (the other legislation being the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2021 (PH Emergency Extension Bill), which was examined by the Health and Environment Committee,<sup>10</sup> prior to its passing and enactment as the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* (PH Emergency Extension Act)).

### 1.3 Inquiry process

During its examination of the Bill, the committee:

- invited written submissions on the Bill from the public, identified stakeholders and email subscribers,<sup>11</sup> and received a total of 588 submissions, comprising:
  - 557 individual submissions
  - 31 'form submissions'<sup>12</sup> in respect of which approximately 340 total submissions were made (a list of all individual and form submitters is provided at Appendix A)

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<sup>6</sup> Eg see submissions 107, 367, 472, 546, Form B (558), Form T (576).

<sup>7</sup> *Parliament of Queensland Act 2001*, s 81; Queensland Parliament, 'Committee of the Legislative Assembly', webpage, <https://www.parliament.qld.gov.au/work-of-committees/committees/CLA#> (see 'Membership' tab).

<sup>8</sup> Standing Orders, SO 135A(b); 136(4).

<sup>9</sup> See Economics and Governance Committee, *Report No. 6, 57<sup>th</sup> Parliament – COVID-19 Emergency Response and Other Legislation Amendment Bill 2021*, April 2021, <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2021/5721T459.pdf>

<sup>10</sup> See Health and Environment Committee, *Report No. 4, 57<sup>th</sup> Parliament – Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020*, February 2021, <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2021/5721T54.pdf>

<sup>11</sup> The committee issued its call for submissions on 22 June 2021 and required submissions to be provided by 5pm on Wednesday 7 July 2021. To publicise the inquiry and call for submissions, the committee contacted over 1,200 email subscribers and 1,000 identified stakeholder organisations and individuals, as well as publishing inquiry information on its website and in social media posts.

<sup>12</sup> Where the committee received 3 or more submissions with substantially uniform content, those submissions were treated as 'form submissions', with the committee publishing one example of the form only, together with a list of the names of submitters.

- received a written briefing on the Bill from Queensland Health, prior to a public briefing from departmental officials on 5 July 2021 (a list of the officials who appeared at the briefing is provided at Appendix B)
- requested and received written advice from Queensland Health on issues raised in submissions
- held a public hearing with stakeholders on 19 July 2021 (a list of the witnesses who participated in the hearing is provided at Appendix C).

The submissions, written advice from Queensland Health, and transcripts of the briefing and hearing are available on the committee's webpage.<sup>13</sup>

#### 1.4 Government consultation on the Bill

The explanatory notes advise that Queensland Health undertook targeted consultation with key stakeholders on the policy proposals to further extend the application of most of the temporary COVID-19 emergency measures to 30 April 2022, including issuing a consultation summary paper for comment.<sup>14</sup> Those involved in this process included 'key representative bodies from the health, tourism, business, legal, hospitality, entertainment, gaming, aged care and disability sectors', with Queensland Health receiving 31 submissions in response.<sup>15</sup>

Each of the following departments also undertook additional consultation on the extension of measures 'within their respective legislative portfolios':

- the Department of Justice and Attorney-General
- the Department of State Development, Infrastructure, Local Government and Planning
- the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships
- the Department of Communities, Housing and Digital Economy.<sup>16</sup>

The explanatory notes advise that a broader community consultation process in respect of the further extensions of COVID-19 emergency measures 'has not been possible ... given the need to ensure the amendments are introduced and passed before the expiry of the measures on 30 September 2021'.<sup>17</sup>

In relation to the proposed amendments to the legislative framework for the payment and collection of quarantine fees, the explanatory notes state:

While the Bill will establish a more flexible framework for the payment of quarantine fees, the scheme will be tailored to particular cohorts through the regulation and guidance material issued by Queensland Health. Impacted stakeholders will be consulted during the development of the implementing regulations and guidance materials.<sup>18</sup>

Many individual submitters objected to the lack of community consultation on the Bill's further extension of COVID-19 emergency measures,<sup>19</sup> with some suggesting that in failing to engage in such a public process, the government had denied Queenslanders the opportunity to have their say<sup>20</sup> and to provide 'any suggestions for an alternative solution set'.<sup>21</sup> A number of submitters particularly

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<sup>13</sup> <https://www.parliament.qld.gov.au/work-of-committees/committees/EGC>

<sup>14</sup> Explanatory notes, pp 37-38.

<sup>15</sup> Explanatory notes, pp 37-38.

<sup>16</sup> Explanatory notes, p 38.

<sup>17</sup> Explanatory notes, p 38.

<sup>18</sup> Explanatory notes, p 38.

<sup>19</sup> Eg see submissions 13, 56, 203, 221; Form E, Form U, Form V.

<sup>20</sup> Eg see submissions 56, 170, 465; Form U, Form V.

<sup>21</sup> Submission 413 (Armanda Martin). See also submissions 107, 196, 370, 377, 380, 403, 404, 444, 477, 517, 526, 538; Form U.

made reference to the fact that the Chief Health Officer (CHO) is not an elected official, but has been given authorisation under relevant COVID-19 emergency measures to impose significant restrictions on ordinary activities without any formal mechanism for public confirmation of support or otherwise.<sup>22</sup> Many of these submitters called for increased public engagement efforts, including consideration of more diverse perspectives and greater public discourse regarding the state's approach to the management of COVID-19,<sup>23</sup> as well as suggesting a potential public vote or referendum to ensure the government response is in keeping with the will of its people.<sup>24</sup>

In response to stakeholder comments about the need for greater public debate and accountability regarding the engagement of COVID-19 emergency measures, Queensland Health noted that:

The Parliament has provided oversight of the Queensland Government's health and economic responses to COVID-19, through the relevant Parliamentary Committees, to ensure the suitability of these measures and provide an opportunity for the public to provide feedback about the health response.<sup>25</sup>

In particular, Queensland Health highlighted:

- inquiries into the health and economic responses to COVID-19 that were respectively undertaken by the former Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (former Health Committee) and by this committee over a period from 22 April 2020 until the dissolution of the Parliament on 6 October 2020, and which included public submissions processes and a series of public hearings with stakeholders<sup>26</sup>
- the Health and Environment Committee's inquiry into the PH Emergency Extension Bill, which (when enacted) extended until 30 September 2021 the amendments to the Public Health Act that are to be further extended by the Bill; and which saw that committee receive 124 submissions and testimony from 16 organisations at a public hearing
- this committee's inquiry into the ER Further Extension Bill, which (when enacted) extended until 30 September 2021 the remaining temporary COVID-19 emergency measures (ie those not extended by the PH Emergency Extension Act) that are to be further extended by the Bill; and which saw the committee receive 10 submissions and testimony from 11 peak bodies and other organisations.<sup>27</sup>

Submitter views on particular aspects of the Bill are examined further in Chapters 3 and 4 of this report.

## 1.5 Should the Bill be passed?

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

### Recommendation 1

The committee recommends the Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021 be passed.

<sup>22</sup> Eg see submissions 6, 13,30, 141, 147, 192, 193, 209, 260, 290, 308, 320, 337, 346, 366, 367, 382, 421, 460, 468, 470, 524, 545.

<sup>23</sup> Eg see submissions 101, 109, 153, 196, 219, 258, 268, 308, 318, 344, 348, 374, 394, 411, 439, 486; Form X.

<sup>24</sup> Eg see submissions 3, 29, 96, 126, 128, 170, 173, 183, 214, 379; Form N, Form O.

<sup>25</sup> Queensland Health, correspondence, 15 July 2021, p 10.

<sup>26</sup> Queensland Health, correspondence, 15 July 2021, p 10.

<sup>27</sup> Queensland Health, correspondence, 15 July 2021, p 10.

## 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' as far as possible.<sup>28</sup>

These measures were initially introduced in 4 key Acts that provided a whole-of-government response to the COVID-19 emergency:

- the *Public Health (Declared Public Health Emergencies) Amendment Act 2020* (Declared Emergencies Act)<sup>29</sup>
- the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* (PH Emergency Act)<sup>30</sup>
- the *COVID-19 Emergency Response Act 2020* (ER Act)<sup>31</sup>
- the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* (Amendment Act)<sup>32, 33</sup>

These items of legislation implemented amendments to a significant number of different Acts across the statute book, as well as facilitating the making of a series of extraordinary regulations and statutory instruments to modify certain legislative requirements governing activities affected by COVID-19.<sup>34</sup>

In terms of the public health response to COVID-19, the amendments to the Public Health Act served to:

- increase powers for emergency officers and the CHO to limit or respond to the spread of COVID-19 in Queensland, including by issuing directions to require physical distancing, restrict movement and gatherings, require persons to quarantine or self-isolate, and implement other containment measures<sup>35</sup>
- authorise the sharing of confidential information for contact tracing<sup>36</sup>
- encourage compliance with quarantine requirements, border restrictions and other public health directions, by providing appropriate penalties for contraventions<sup>37</sup>

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<sup>28</sup> Queensland Parliament, Record of Proceedings, 16 June 2021, p 1869.

<sup>29</sup> Passed on 5 February 2020; received assent on 7 February 2020.

<sup>30</sup> Passed on 18 March 2020; received assent on 19 March 2020.

<sup>31</sup> Passed on 22 April 2020; received assent on 23 April 2020.

<sup>32</sup> Passed on 21 May 2020; received assent on 25 May 2021.

<sup>33</sup> Dr John Wakefield, Director-General, Queensland Health, public briefing transcript, Brisbane, 5 July 2021, p 2.

<sup>34</sup> Explanatory notes, pp 3-4.

<sup>35</sup> *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* (PH Emergency Act), pt 11. Note: Prior to the PH Emergency Act being enacted, the declaration of a public health emergency for COVID-19 had already triggered emergency officers' access to a range of powers under the *Public Health Act 2005* (Public Health Act) to assist in responding to a public health emergency, including powers of entry, powers to compel persons to do or refrain from certain activities, and additional powers for medical emergency officers to detain a person if that person has or may have a serious disease or illness. See: Public Health (Declared Public Health Emergencies) Amendment Bill 2020, explanatory notes, p 1.

<sup>36</sup> *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* (Amendment Act), s 64. The provisions allowed the Chief Health Officer (CHO) to authorise the disclosure of confidential information about notifiable conditions (of which COVID-19 is recognised), including information supplied for contact tracing.

<sup>37</sup> PH Emergency Act, pt 12; Note – the *Corrective Services and Other Legislation Amendment Act 2020* complemented amendments in the PH Emergency Act by increasing the penalties applicable for a failure to comply with a public health direction (see s 55X, which amended s 362D of the Public Health Act).

- increase the period for which a regulation may extend a declared public health emergency, from 7 to 90 days<sup>38, 39</sup>.

Additionally, later amendments incorporated into the subsequent *Community Services Industry (Portable Long Service Leave) Act 2020*, which received assent on 22 June 2020, provided for fees to be charged for costs associated with the mandatory quarantine of persons in government-provided accommodation, including allowing for all or part of a fee to be waived, to enable a hardship scheme to apply<sup>40, 41</sup>.

Measures implemented in response to other aspects of the public health emergency, including with the aim of supporting rapid and flexible responses to disruptions to a broad range of activities and other impacts of the pandemic and associated restrictions, included:

- provision for meetings of the Legislative Assembly to take place using teleconference or videoconference technology during the COVID-19 emergency, and to clarify that Members of Parliament may participate in parliamentary committee meetings via technological means
- the establishment of emergency 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
- the establishment of a temporary Queensland Small Business Commissioner to deliver expanded advocacy functions for Queensland small businesses and administer mediation services in relation to small business tenancy disputes
- the establishment of a legislative modification framework of general application across the statute book, to enable the making of extraordinary regulations (or in limited situations, statutory instruments) as necessary to amend legislative requirements relating to attendance at places or meetings (including mandated physical presence for some things); the making of and associated use of documents; statutory timeframes for 'the doing or expiry of a thing'; and the proceedings of courts and tribunals<sup>42</sup>
- 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* and *Youth Justice Act 1992*)
- provision for mental health patients to be granted leave to comply with public health directions and enabling declarations to be made about authorised mental health services through an expedited process
- 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
- 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* (Environmental Protection Act), *Liquor Act 1992* (Liquor Act), and *Manufactured Homes (Residential Parks) Act 2003* (Manufactured Homes Act))

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<sup>38</sup> *Public Health (Declared Public Health Emergencies) Amendment Act 2020* (Declared Emergencies Act), s 4.

<sup>39</sup> Explanatory notes, pp 2-3.

<sup>40</sup> *Community Services Industry (Portable Long Service Leave) Act 2020*, pt 13, divs 5–6 (inserting new ch 8, pt 7AA and ch 12, pt 7 into the Public Health Act and s 61A into the Public Health Regulation 2018).

<sup>41</sup> Queensland Health, correspondence, 1 July 2021, p 16.

<sup>42</sup> Explanatory notes, pp 3-4. As contained in the *COVID-19 Emergency Response Act 2020* (ER Act).



- 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*)<sup>43</sup>
- amendments to local government legislation to enable councils to:
  - hold meetings via audio/audio visual link or close meetings to the public for health and safety reasons associated with COVID-19<sup>44</sup>
  - 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 support the ‘safeguarding of the revenue streams for local governments’ and assist in ‘minimising the economic impacts of COVID-19 on the State’)<sup>45</sup>
- amendments to facilitate the holding of state and local government elections in ‘a timely way that minimises serious risks to the health and safety of persons caused by the public health emergency involving COVID-19’.<sup>46</sup>

As most of these measures were progressed through urgent parliamentary processes, and in light of their extraordinary and temporary nature, they were accompanied by sunset clauses and expiry provisions.<sup>47</sup> Most of the provisions were scheduled to expire at the end of 2020, or in the case of the amendments to the Public Health Act, by March 2021.<sup>48</sup> However, three successive Acts of Parliament have served to extend their operation:

- the *COVID-19 Emergency Response and Other Legislation Amendment Act 2020* (ER Extension Act), enacted in December 2020, which extended the expiry of most COVID-19 emergency provisions other than amendments to the Public Health Act and *Mental Health Act 2016* (‘health response amendments’),<sup>49</sup> by replacing specific expiry date references (primarily set at 31 December 2020) with a newly termed ‘COVID-19 legislation expiry day’, set at ‘30 April 2021’ or another earlier day to be prescribed by regulation<sup>50</sup>
- the PH Emergency Extension Act, which subsequently extended the dates of the health response amendments until the end of the day on 30 September 2021<sup>51</sup> (following scrutiny of the enabling legislation by the Health and Environment Committee, prior to its passing in the Legislative Assembly and assent in March 2021)

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<sup>43</sup> As contained in the Amendment Act. See also Justice and Other Legislation (COVID-19 Emergency Response) Amendment Bill 2020, explanatory notes, pp 2-4.

<sup>44</sup> Local Government Regulation 2012, ch 8, pt 2, div 4; City of Brisbane Regulation 2012, ch 8, pt 2A. As amended by the Amendment Act, ss 41, 43, and Local Government Legislation Amendment Regulation (No. 1) 2020, ss 4, 31.

<sup>45</sup> Explanatory notes, p 4.

<sup>46</sup> PH Emergency Act ss 14, 21 (amending the *Electoral Act 1992* (Electoral Act) and *Local Government Electoral Act 2011* (LGEA)). Note: additional amendments to support further COVID-safe fresh elections and by-elections as required were also included in the ER Extension Act.

<sup>47</sup> Queensland Health, correspondence, 1 July 2021, p 3.

<sup>48</sup> Queensland Health, correspondence, 1 July 2021, p 3.

<sup>49</sup> Including those secondary instruments made under the modification framework that were considered to still be required to respond to the pandemic and its effects.

<sup>50</sup> Explanatory notes, p 4. See also COVID-19 Emergency Response and Other Legislation Amendment Bill 2020, explanatory notes, p 3. The ER Extension Act also introduced a limited number of new measures, including a broad transitional regulation-making power to enable regulations to be made where necessary to allow for the return to normal operations in the most effective and efficient way once temporary COVID-19 legislative measures are no longer needed. Transitional regulations expire 2 years after the COVID-19 legislation expiry day.

<sup>51</sup> Explanatory notes, p 3.

- the ER Further Extension Act, which amended the ‘COVID-19 legislation expiry day’ applicable to those measures other than the health response amendments, also to 30 September 2021<sup>52</sup> (following scrutiny of the enabling legislation by this committee, prior to its passing in the Legislative Assembly and assent in April 2021).

Whilst acknowledging that there have been ‘overall low numbers of COVID-19 in Queensland’ and relatively fewer restrictions on movement and the gathering of people than in other states, the explanatory notes emphasise that recent instances of community transmission in Queensland and other Australian jurisdictions, together with continued large-scale transmission around the world, serve as ‘a clear reminder’ of the unpredictable nature of the virus and ‘how rapidly COVID-19 can spread and overwhelm health systems’.<sup>53</sup>

Noting persistent risks associated with global epidemiological conditions and the continued detection of cases in overseas arrivals, the explanatory notes state:

...it is expected that the declared public health emergency and COVID-19 related amendments ... will need to continue into early 2022 to manage international arrivals in hotel quarantine and respond to any localised outbreaks in Queensland while the vaccine rollout progresses.<sup>54</sup>

On this basis, the Bill proposes to extend the operation of the Public Health Act amendments and other various COVID-19 emergency measures to 30 April 2022,<sup>55</sup> which the Minister advised will also ‘allow time for Queensland Health to assess the effectiveness of the vaccine rollout and what this may mean for the COVID-19 response’.<sup>56</sup>

In addition to providing for the extension of these existing measures, the Bill also proposes further amendments to ‘support rapid contact tracing and the efficient management of quarantine systems’,<sup>57</sup> by:

- clarifying that quarantine directions may be given electronically with a person’s consent
- making provision for the establishment of a prepayment system for quarantine fees for certain cohorts of travellers, and for the third party collection of outstanding liabilities, to ‘improve the state’s ability to recoup quarantine related expenses’ and provide more flexible and sustainable payment and collection arrangements.<sup>58</sup>

The provisions for the further extension of the COVID-19 emergency measures and the amendments in respect of quarantine directions and fee payment arrangements are respectively examined in chapters 3 and 4 of this report.

Chapters 5 and 6 outline the committee’s consideration of FLP and human rights issues relevant to the Bill.

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<sup>52</sup> Or an earlier day prescribed by legislation. See ER Act, s 4A, as amended.

<sup>53</sup> Explanatory notes, p 1.

<sup>54</sup> Explanatory notes, p 5.

<sup>55</sup> Explanatory notes, p 5. Note: some measures will be extended for an additional 2 months to allow a transition period. See: Queensland Health, correspondence, 1 July 2021, p 4.

<sup>56</sup> Queensland Parliament, Record of Proceedings, 16 June 2021, p 1870.

<sup>57</sup> Queensland Parliament, Record of Proceedings, 16 June 2021, p 1870.

<sup>58</sup> Explanatory notes, p 6; Queensland Health, correspondence, 1 July 2021, p 5.

### 3 Extension of COVID-19 emergency measures

The Bill proposes to extend the operation of COVID-19 emergency measures identified by the government as still required to respond to COVID-19, by:

- altering the expiry dates for the health response amendments to 30 April 2022<sup>59</sup>
- amending the definition of ‘COVID-19 legislation expiry day’ as applicable to a broad range of other COVID-19 emergency measures, also to 30 April 2022, or an earlier date as prescribed by regulation.<sup>60</sup>

The Bill also contains supporting amendments to references to dates in several other affected Acts and regulations,<sup>61</sup> including providing a transition period for some measures.<sup>62</sup>

On introducing the Bill, the Minister emphasised that while the extension of the legislative framework underpinning the response to COVID-19 recognises that importance of ensuring the government is able to continue to ‘respond quickly to risks as they emerge’:<sup>63</sup>

- its ‘time limited’ nature ensures that the relevant measures ‘are operational for only as long as needed’<sup>64</sup>
- despite the proposed new 30 April 2022 expiry date, the amendments may also ‘expire sooner if an earlier date is prescribed by regulation or the public health emergency ends’.<sup>65</sup>

The Minister noted in this respect that ‘consistent with the previous amending legislation, which has either repealed measures that are no longer required or allowed these measures to lapse’, there are a number of temporary measures that the Bill would not extend.<sup>66</sup>

While this chapter focusses primarily on the measures proposed for extension that were the subject of stakeholder commentary, full summaries of all measures proposed for extension, and all those that the Bill would not further extend, are respectively provided in Appendix D and Appendix E to this report.<sup>67</sup>

#### 3.1 Overall stakeholder views

The overwhelming majority of submissions to the inquiry were received from individuals who opposed the proposed extension of the COVID-19 emergency powers, primarily in reference to the health response and the engagement of powers to issue directions regarding the wearing of masks, the imposition of lockdowns and other restrictions on freedom of movement, and quarantine arrangements. The imposition of restrictions on Queensland citizens, it was submitted, has gone ‘far enough and for too long’,<sup>68</sup> with some highlighting that a continuation through to 30 April 2022 would

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<sup>59</sup> Bill, cls 27, 28, 32, 33.

<sup>60</sup> Bill, cl 8 (amending the ER Act, s 4A).

<sup>61</sup> At the public briefing on the Bill, the Director-General of Queensland Health, Dr John Wakefield, acknowledged the ‘wide-ranging’ nature of the proposed amendments, which cover ‘17 different Acts across various portfolios as well as numerous regulations and other subordinate legislation’. See public briefing transcript, Brisbane, 5 July 2021, p 2. See also Bill, cls 4, 10, 12, 13, 19, 21, 22, 24, 25, 50, 51, 53, and 54.

<sup>62</sup> Queensland Parliament, Record of Proceedings, 16 June 2021, pp 1869-1870. This includes provision to allow for a temporary authority to carry out an environmentally relevant activity issued on or prior to 30 April 2022 to continue to have effect for a period up to 30 June 2022 (Bill, cls 12 and 13, amending ss 547D and 547I of the *Environmental Protection Act 1994* (Environmental Protection Act)).

<sup>63</sup> Queensland Parliament, Record of Proceedings, 16 June 2021, p 1871.

<sup>64</sup> Queensland Parliament, Record of Proceedings, 16 June 2021, p 1869.

<sup>65</sup> Queensland Parliament, Record of Proceedings, 16 June 2021, p 1870.

<sup>66</sup> Explanatory notes, pp 14-15.

<sup>67</sup> As provided by Queensland Health – see Queensland Health, correspondence, 1 July 2021, Attachment 1 and Attachment 2.

<sup>68</sup> Form C. See also submissions 5, 12, 56, 60, 68, 72, 78, 95, 138, 160, 163, 176, 177, 178, 209, 250, 278, 288, 326, 367, 374, 379, 417, 426, 460, 464, 466, 479, 487, 532, 545.

mean that Queenslanders will have effectively lived under ‘state of emergency’ conditions for more than 2 years<sup>69</sup> – something they considered to constitute an unacceptable ‘overreach’ on the part of government.<sup>70</sup> Some of these submitters considered the current expiry date of 30 September 2021 for most COVID-19 emergency measures represented a ‘natural end date’ beyond which the amendments should not be extended,<sup>71</sup> while others called for the immediate repeal and cessation of powers.<sup>72</sup> The views of these submitters are examined in more detail in chapter 3.2 of this report, regarding the proposed extension of public health response measures.

Several other stakeholders expressed general support for the Bill’s proposed extension of COVID-19 emergency measures, including the Royal Australian and New Zealand College of Psychiatrists Queensland Branch (RANZCP Queensland Branch), Queensland Law Society (QLS) and Queensland Nurses and Midwives’ Union (QNMU).<sup>73</sup> The Crime and Corruption Commission (CCC), Strata Community Association Queensland (SCAQ) and Electoral Commission of Queensland (ECQ) also expressed support for the extension of particular provisions as specific to those organisations’ areas of activity.<sup>74</sup> Further, some submitters called for certain support measures to be further extended beyond 30 April 2022, or made permanent – particularly in respect of provisions enabling the use of technology for remote participation in meetings or court or other proceedings, and in relation to the electronic service and witnessing of documents.<sup>75</sup>

However, these expressions of support aside, a number of these and other organisational submitters also called for a more limited and scrutinised approach to the extension of powers. The Queensland Police Commissioned Officers Union (QPCOU) and Queensland Council for Civil Liberties (QCCL), for example, proposed an extension only to 31 December 2021,<sup>76</sup> with the QCCL suggesting the situation could be reviewed at that time as to the need for any further extension moving forward.<sup>77</sup> Mr Michael Cope, QCCL President, explained of this position:

... these powers are extraordinary emergency powers. As a matter of human rights law principle, they should only exist for the maximum amount of time necessary. We say that that is connected with the vaccination of the community...

It might get to 31 December and there is a justification for a further four weeks; I do not know. There might be a justification for post-April; ... we just do not want them extended unless it is absolutely necessary.<sup>78</sup>

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<sup>69</sup> Eg see submissions 1, 35, 61, 186, 196 197, 238, 268, 308, 318, 344, 348, 421, 438, 479; Form C, Form I, Form P, Form R, Form W.

<sup>70</sup> See submissions 19, 43, 44, 145, 147, 160, 163, 192, 208, 265, 269; 273, 337, 346, 355, 363, 382, 406, 436, 466, 483, 496, 513, 522, 524, 530, 543, 545, 552; Form C.

<sup>71</sup> Form A. See also Inga Kamps, submission 139 (‘I believe the current expiry date should be sufficient to enable the government to establish a plan to mitigate and manage the risks associated with covid in the community’) and Jean Summers, submission 157 (‘Logic would say that after September, the risk to the community from any outbreak will be minimal, and certainly not require widespread lockdowns’).

<sup>72</sup> Eg see submission 51, 281, 303, 322, 333, 356, 420, 425, 434, 441, 442, 475, 503, 539; Form L, Form V, Form AB.

<sup>73</sup> Royal Australian and New Zealand College of Psychiatrists Queensland Branch (RANZCP Queensland Branch), submission 45; Queensland Nurses and Midwives’ Union (QNMU), submission 455; Queensland Law Society (QLS), submission 478. See also Xolo Ze Perreira, submission 294.

<sup>74</sup> See Crime and Corruption Commission (CCC), submission 97; Strata Community Association of Queensland (SCAQ), submission 383; and Electoral Commission of Queensland (ECQ), submission 393.

<sup>75</sup> Eg see CCC, submission 97; SCAQ, submission 383; and QLS, submission 478.

<sup>76</sup> Queensland Police Commissioned Officers’ Union (QPCOU), submission 332, p 2; Queensland Council for Civil Liberties (QCCL), submission 391, p 4.

<sup>77</sup> Mr Michael Cope, President, QCCL, public hearing transcript, Brisbane, 19 July 2021, p 15.

<sup>78</sup> Mr Michael Cope, President, QCCL, public hearing transcript, Brisbane, 19 July 2021, p 15. See also Christine Morris (submission 102) and Mieke Tuckey (submission 104), who suggested provision for extension on a 3-month basis (eg from 30 September to 31 December 2021); and Richard Davies (submission 492), who suggested that if health measures must be extended this should be only to 4 December 2021.

The QLS and Queensland Human Rights Commission (QHRC), while acknowledging the likely need for the continuation of some powers, proposed a move towards a more targeted approach to extension, including calling for some of the powers delegated to regulation to be addressed through primary legislation and associated scrutiny processes.<sup>79</sup> Contending that the usual system of checks and balances has effectively ‘been suspended’ during the pandemic response, the QLS stated:

There is no doubt that the public health threat from the pandemic is present and evolving, and executive government does continue to need the capacity to respond swiftly and flexibly. However, it is time that some important elements of the rule of law are reinstated.<sup>80</sup>

The QHRC, with particular reference to the legislative modification framework that has enabled the making of a series of extraordinary regulations, similarly submitted:

It is of fundamental importance to our democracy that we do not allow what could be described as compatibility fatigue to breed a level of complacency with respect to upholding foundational liberties and freedoms and fundamental legislative principles. The immediate urgency of the pandemic may have justified the extraordinary powers in the suite of COVID legislation that has been passed to date. With the advent of vaccines, however, we should be able to identify the measures required to move beyond the state of emergency and the laws that are needed to implement those measures.

Whilst it is no doubt expedient for parliament to delegate legislative power to facilitate swift responses to emerging developments ... there are some measures that clearly warrant the scrutiny and the authority of the parliament and should be enshrined in primary legislation.<sup>81</sup>

Some individual submitters also considered that after 18 months ‘there is no justifiable reason why the Government can’t legislate for more reduced powers that allow Government to deal with the situation at hand while restoring many of the State’s normal democratic processes’, calling for an end to ‘the overuse of delegated legislation, which overrides the usual checks and balances needed for a functioning democracy’.<sup>82</sup>

Finally, a number of stakeholders called for the establishment of additional review mechanisms,<sup>83</sup> with the QLS and QCCL suggesting this take the form of a parliamentary committee with oversight powers in respect of any COVID-19 related legislation and its implementation.<sup>84</sup> The QLS stated:

While expiry provisions/sunset clauses are effective oversight tools, we submit that it is also necessary to give a parliamentary committee oversight powers ...

Inquiries by this committee would therefore not need to wait for the referral of new legislation to replace expiring legislation, but rather, the committee could set review dates and have inquiries triggered by other events. For example, the Economics and Governance Committee or Health and Environment Committee could review measures to ensure there is an ongoing health justification and make recommendations each quarter about whether the measures can cease, depending on the health and related advice.<sup>85</sup>

The QCCL suggested that in the absence of any specific reference to a current committee, this role might be appropriately performed by a select committee.<sup>86</sup>

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<sup>79</sup> Ms Elizabeth Shearer, President, QLS, public hearing transcript, Brisbane, 19 July 2021, p 4; Queensland Human Rights Commission (QHRC), submission 506, pp 5-6. See also submissions 29, 109, 219, 394, 508, 526, 533, 541.

<sup>80</sup> Ms Elizabeth Shearer, President, QLS, public hearing transcript, Brisbane, 19 July 2021, p 4.

<sup>81</sup> Mr Scott McDougall, Human Rights Commissioner, QHRC, public hearing transcript, Brisbane, 19 July 2021, p 9.

<sup>82</sup> Tereza Pepping, submission 109; Danielle Rodgers, submission 219. See also Alana Phillips, submission 508; Form U.

<sup>83</sup> Eg see QCCL, submission 391; QLS, submission 478; Doris Leidmann, submission 531; FORM AD.

<sup>84</sup> QLS, submission 478, pp 2-3; QCCL submission 391, p 4.

<sup>85</sup> Submission 478, pp 2-3.

<sup>86</sup> QCCL, submission 391, p 4; Mr Michael Cope, President, QCCL, public hearing transcript, Brisbane, p 14.

In response to stakeholder comments, Queensland Health acknowledged the ‘differing views about the Government’s legislative response to COVID-19’ and ‘whether it is appropriate to delegate certain powers and the extent to which Parliament should directly manage the public health response’.<sup>87</sup>

Queensland Health advised:

It is worth saying there are different models around Australia, and indeed around the world. In relation to the model we have here, governments give decision-making authority and a lot of latitude to the CHO, but in other models decision-making rests with a minister or cabinet and government. Our observation and experience has been that this model delivers two things, namely, agility and rapidity. There is no rule book for this; therefore, that ability to move quickly, both in an escalation and de-escalation sense, would not be there if it is locked into statute. Nor would it be there if, when you want to execute it, you have to go to parliament, for example.

Why is that a good thing for the Queensland community? It is what it is. We can say that we have 18 months experience of it now. I would like to contrast it to the UK, where I was born. They very much have a parliamentary model. If you apply a pro rata to the population of Queensland versus the UK, we would have had 12,500 deaths from COVID—which is exactly what we predicted right at the beginning—if we did not move. So adjusted for the different populations, Queensland would have had 12,500 people dead. Not only that, but think about what have we traded off for that. My friends and colleagues in the UK have just come out of six months of lockdown, so when you think about it from an economic, social and mental health perspective, I guess we did not know that at the time but I think the evidence suggests that this sort of policy setting and the agility that comes with it maybe allows you to move quickly and get the best possible results. A lot of people have suffered and continue to suffer, but our argument, as with any public health policy, is that this is about minimising the trade-off of suffering. We would argue—and continue to argue—that our track record speaks for itself.<sup>88</sup>

In relation to the proposed extension of COVID-19 emergency measures, including powers for the issuing of health directives and extraordinary regulation-making powers under the legislative modification framework, Queensland Health further stated:

The power of the Chief Health Officer to issue public health directions has made it possible to take prompt preventative measures, such as restrictions on movements and gatherings, and to continually tailor and revoke these measures as appropriate so as to minimise adverse impacts on individuals, businesses and the Queensland economy. This framework has made it possible to revoke or ease public health restrictions as soon as it has been safe to do so, ensuring that restrictions are only applied for the shortest period of time necessary to address the public health risk. Most recently, the powers to make and enforce public health directions were used to impose a three-day lockdown of Southeast Queensland, Palm Island and Townsville on 29 June 2021 to prevent the potential spread of COVID-19, including the highly-contagious Delta variant, after a confirmed case was detected in the community. Had the Government not been able to act quickly and decisively in these circumstances, and during previous outbreaks, it may have been necessary to keep restrictions in place for longer, as has been experienced in other States, and to expand the lockdown to other parts of Queensland.

In addition to addressing the immediate risks of COVID-19 to public health and safety, the Government has been able to provide regulatory relief to individuals and businesses to minimise disruption to ordinary activities and facilitate the continued functioning of Queensland's institutions and the economy to the extent possible during the public health emergency. This has been made possible by a range of temporary COVID-19 amendments, modifications and extraordinary regulations and statutory instruments made under the modification framework authorised by the COVID-19 Emergency Response Act. These measures have facilitated a whole-of-government approach that has been successful in responding quickly and flexibly to a range of things disrupted, caused or affected by the pandemic.<sup>89</sup>

The further extension to 30 April 2022, Queensland Health advised, would ensure the government can ‘continue to respond quickly and effectively to protect the health and safety of the community,

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<sup>87</sup> Queensland Health, correspondence, 15 July 2021, p 10.

<sup>88</sup> Dr John Wakefield, Director-General, Queensland Health, public briefing transcript, Brisbane, 5 July 2021, pp 7-8.

<sup>89</sup> Queensland Health, correspondence, 15 July 2021, p 9.

facilitate the continued functioning of businesses and institutions and support Queensland's economic recovery'.<sup>90</sup>

In response to suggestions that an earlier expiry date should be considered and the provisions reviewed for extension at that time given their extraordinary nature and possible impacts, Queensland Health reaffirmed that 'despite the proposed extension until 30 April 2022, the emergency powers would cease earlier if the public health emergency ends before the expiry date',<sup>91</sup> and that their expiry could also be 'brought forward at any time if these extraordinary measures are no longer required'.<sup>92</sup> Additionally:

... all of the measures extended by the Bill are expressly made subject to the requirements and protections of the Human Rights Act. This means that the exercise of powers – including the giving of public health directions and the making of extraordinary regulations and statutory instruments — must not limit a human right unless the limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.<sup>93</sup>

Finally, in respect of calls for the establishment of an additional review or oversight mechanism, including a possible select or parliamentary committee inquiry, Queensland Health acknowledged the work of this committee and the former Health Committee in scrutinising the health and economic responses to COVID-19 during 2020, and noted that scrutiny of the COVID-19 emergency measures has continued through committee inquiries into the PH Emergency Extension Bill and ER Further Extension Bill, together with broader committee examination of the subordinate legislation made under the extended framework the legislation has provided:

... in addition to these inquiries, the relevant Parliamentary Committees have provided ongoing oversight by scrutinising and reporting on extraordinary regulations and other secondary instruments made under the temporary COVID-19 legislative framework.<sup>94</sup>

Further stakeholder commentary regarding the extension of particular COVID-19 emergency measures and their engagement, and Queensland Health's responses to those comments, is set out below.

### 3.2 Public health response measures

As previously noted, the bulk of submissions to the inquiry focussed on the proposed extension of public health measures and related aspects of the health response to COVID-19. These submissions, which came primarily from individuals across different parts of the state (and in some instances, from other jurisdictions), highlighted the significant levels of community frustration about the impact on households and businesses of the restrictions imposed under the expanded powers for the CHO and other emergency officers that would be further extended by the Bill, together with the growing suspicion and mistrust in some parts of the community as to the grounds on which these powers are being engaged.

A significant number of submitters characterised the engagement of these provisions to date as representing an 'abuse of power',<sup>95</sup> variously describing the imposed health restrictions as 'draconian',<sup>96</sup> tyrannical,<sup>97</sup> 'inhumane',<sup>98</sup> reminiscent of historical authoritarian and totalitarian

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<sup>90</sup> Queensland Health, correspondence, 15 July 2021, p 9.

<sup>91</sup> Queensland Health, correspondence, 15 July 2021, p 9.

<sup>92</sup> Queensland Health, correspondence, 15 July 2021, p 11.

<sup>93</sup> Queensland Health, correspondence, 15 July 2021, p 11.

<sup>94</sup> Queensland Health, correspondence, 15 July 2021, p 10.

<sup>95</sup> Eg see submissions 8, 10, 25, 43, 100, 119, 176, 230, 288, 319, 350, 367, 416, 466, 483, 485, 512, 514; Form B.

<sup>96</sup> Eg see submissions 5, 20, 41, 46, 50, 230, 246, 259, 301, 309, 336, 345, 357, 406, 420, 421, 434, 442, 467, 488, 492, 511; Form D.

<sup>97</sup> Eg see submissions 12, 52, 53, 72, 122, 144, 153, 174, 187, 190, 194, 204, 215, 269, 286, 288, 312, 379, 410, 425, 434, 442, 453, 468, 488, 499, 503, 511, 530; Form V.

<sup>98</sup> Eg see submissions 52, 198, 286, 293, 314, 398; Form G.

regimes,<sup>99</sup> and generally inconsistent with a free and democratic society.<sup>100</sup> Some submitters also questioned the legitimacy of the provisions, suggesting they may be unconstitutional and/or invalid to the extent that they may be inconsistent with other Commonwealth laws,<sup>101</sup> as well as being potentially counter to human rights legislation and other international instruments and conventions.<sup>102</sup>

For many, these views were inextricably linked to their rejection of the expressed rationale for the proposed extension, with most perceiving the risks of COVID-19 to be overstated, and/or the impacts of the imposed restrictions to be disproportionate to those risks. Key themes of these stakeholder submissions included:

- given the relatively low number of cases in Queensland as a proportion of the population, including only 7 deaths recorded to date, the state's situation does not equate to a public health emergency,<sup>103</sup> particularly given the range of other chronic conditions affecting the community that may pose higher mortality risks<sup>104</sup>
- other countries are adopting different approaches that do not involve the same level of restrictions (some submitters cited the examples of Sweden, Florida, Texas, the United Kingdom, or Singapore,<sup>105</sup> including highlighting that Singapore has opted to treat the virus no differently than the flu<sup>106</sup>)<sup>107</sup>
- the imposition of mask mandates, lockdowns and broader restrictions on freedom of movement may be having more ill effects on public health than the virus itself,<sup>108</sup> as well as causing significant economic disruption (with submitters citing a range of detrimental effects on social, psychological and general physical wellbeing,<sup>109</sup> and some also emphasising that COVID-19 may manifest only as flu symptoms for many people)<sup>110</sup>
- there appears to have been no change to the breadth of powers available or the way they have been engaged over time, as would seem appropriate for an exit strategy moving forward.<sup>111</sup>

In terms of the ill-effects of directions issued under COVID-19 emergency powers, one individual asserted in relation to the imposition of lockdowns and associated restrictions on movement in particular:

- There is No evidence that shutting areas/States down for any length of time reduces the 'curve' – predictions seemed to be based on academic, epidemiologist's algorithms rather than educated doctor's real experience. Sweden, Florida (high numbers of elderly) and Texas have not had shutdowns and have returned to normal life.

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<sup>99</sup> Eg see submissions 20, 66, 83, 118, 303, 343, 384, 387, 410, 459, 482, 507, 541; Form K, Form Y.

<sup>100</sup> Eg see submission 3, 29,31, 46, 90, 106, 268, 296, 348, 372, 409, 416, 421, 426, 439, 450, 454, 458, 482, 486, 489, 491, 43, 494, 497, 505, 508, 516, 522, 523, 536, 545; Form O, Form AB.

<sup>101</sup> Eg see submissions 1, 2, 4, 5, 7, 10, 40, 95, 116, 138, 144, 169, 190, 207, 202, 233, 235, 238, 243,251, 259, 262,310, 311, 327, 372, 413, 429, 425, 434, 442, 459, 482, 488, 511, 515, 516, 521,528, 530, 547; Form J, Form F, Form V.

<sup>102</sup> Eg see submissions 2, 29, 199, 251, 372, 376, 413, 418, 468, 497, 515, 516, 517, 524; Form AC; Form T.

<sup>103</sup> Eg see submissions 30, 34, 119, 178, 270, 314, 527, 546; Form O.

<sup>104</sup> Eg see submissions 31, 127, 148, 453, 499, 517.

<sup>105</sup> Eg see submissions 35, 43, 60, 82, 92, 98, 104, 114, 129, 148, 289, 273, 326, 388, 401, 404, 449, 453, 543.

<sup>106</sup> Eg see submissions 35, 98, 289, 326, 449, 453, 535.

<sup>107</sup> Some submitters pointed to the 'focussed protection' approach advocated by signatories to the 'Great Barrington Declaration', which proposes different levels of protections for different population groups according to their risk profile. Eg see Associate Professor David Neville, submission 27; Lica Bienholz, submission 280; Liz Walker, submission 511; Form E.

<sup>108</sup> Eg see submissions 49, 82, 168, 449; Form W.

<sup>109</sup> Eg see submissions 20, 63, 153, 174, 176, 273, 280, 297, 307, 314, 329, 345, 358, 365, 376, 392, 404, 410, 412, 413, 435, 440, 468, 494.

<sup>110</sup> Eg see submissions 21, 92, 293, 413, 461, 523; Form L, Form M, Form N.

<sup>111</sup> Eg see submissions 1, 35, 48, 95, 135, 186, 196, 215, 220, 308, 318, 344, 348, 354, 404, 406, 414, 467.



- *Shutting down the state, or part there of again, will destroy businesses, families, lives, education, educational institutions and the cohesion of society. It will also increase domestic violence, self-harm, mental illness and suicide.*<sup>112</sup>

Another submitter listed lockdown impacts that ‘far outweigh the benefits’ as including:

- a) increased morbidity and mortality because of the delaying of health care, especially in the areas of cancer investigation and treatment, cardiac disease and diabetes.
- b) effect on mental health in terms of anxiety, depression and suicide.
- c) educational impacts at primary, secondary and tertiary levels.
- d) economic impacts, especially on small business owners and their families.<sup>113</sup>

Further, several submitters shared their own stories about the nature of the impacts on them or their family and community members.<sup>114</sup>

Notably, in setting out such concerns, a significant number of submitters also:

- questioned the accuracy of testing methods,<sup>115</sup>
- expressed supported for the mainstream use of alternative treatment modes that the World Health Organization (WHO) has strongly recommended against and some of which the CHO has prohibited from prescription by medical professionals for the treatment of COVID-19 outside of clinical trials, due to insufficient evidence of their effectiveness and risks of toxicity and other adverse patient outcomes<sup>116</sup>
- expressed scepticism and apprehension regarding vaccines and risks associated with them.<sup>117</sup>

For many of these submitters, some of the questioning and contemplation of possible alternative approaches coincided with observations about apparent inconsistencies in decision making and broader concerns about a lack of transparency regarding the basis on which decisions are being made.

It was submitted, for example:

In QLD thousands have been given relatively free licence to attend a football game at Suncorp stadium whilst heavy restrictions remain in place for people wishing to attend religious services, marry or mourn the loss of a loved one, to name just a few.<sup>118</sup>

... we locked down and had people mask up in portions of the State for 3 cases. On Sunday we increased to 5 cases – but the lock down restrictions were eased – and funnily enough the football at Suncorp went ahead. Just questioning the logic??<sup>119</sup>

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<sup>112</sup> Alison Verbruggen, submission 273, p 1. (bold omitted from original)

<sup>113</sup> Dr Angela Carter, submission 550, p 1.

<sup>114</sup> Eg see submissions 7, 120, 188, 224, 297, 306, 307, 331, 381, 410, 435, 460, 482, 483, 494,495, 505, 509, 520, 526, 533.

<sup>115</sup> Eg see submissions 9, 21, 29, 43, 100, 105, 148, 168, 169, 220, 226, 260, 273, 282, 284, 289, 301, 307, 309, 356, 367, 371, 401, 413, 418, 420, 425, 430, 434, 440, 441, 442, 451, 454, 459, 512, 514, 523, 524, 530, 534, 543, 544, 552, 588.

<sup>116</sup> Eg see submissions 29,47, 107, 196, 208, 210, 269, 273, 303, 320, 324, 357, 366, 367, 370, 401, 404, 413, 423, 434, 441, 442, 425, 444, 449, 454, 471477, 479, 487, 488, 504, 510, 514, 542, 543, 550; Form E, Form K, Form Q, Form S, Form Y, Form AD.

<sup>117</sup> Eg see submissions 10, 29, 47, 83, 122, 182, 208, 282, 290, 301, 303, 320, 324, 367, 401, 413, 413, 435, 471, 479, 487, 488, 509, 529 531, 540.

<sup>118</sup> Alison Kingdom, submission 346, p 1.

<sup>119</sup> Michael Bannister, submission 517, p 1.

Objecting to what they identified as ‘ambiguity around the information given to the public’,<sup>120</sup> submitters called for:

- enhanced communication with the public on the scientific basis for decisions,<sup>121</sup> including the release of ‘data, modelling and forecasts’ used in the decision process<sup>122</sup>
- ‘clear messaging around restrictions’ and increased consistency about the levels of restrictions imposed<sup>123</sup>
- greater clarity as to the criteria for engaging powers,<sup>124</sup> with some form submitters observing that the threshold for instituting restrictions in Queensland currently ‘stands at almost zero COVID-19 cases, and that has been the case for more than six months’.<sup>125</sup>

The Queensland Human Rights Commissioner, Mr Scott McDougall, further suggested the community would benefit ‘if there were a requirement for the Chief Health Officer to publish her consideration of human rights, much like a statement of compatibility or a human rights certificate, within three to five days’ of issuing a public health direction.<sup>126</sup> Mr McDougall identified the proposal as an opportunity to ‘strengthen public confidence in the decisions that are being made’, expressing his view that it ‘would go a long way to building and maintaining the community confidence that Queensland clearly does have in our Chief Health Officer’.<sup>127</sup>

Further commentary regarding issues raised in respect of isolation and quarantine directions, and directions relating to contact tracing and the use of QR code readers, is examined in sections 3.2.1 and 3.2.2 of this report.

In its response to submissions, Queensland Health acknowledged stakeholder concerns about the proposed extension of emergency powers, including comments regarding the rationale and impacts of the public health directions that have been issued to date. The department did not provide a detailed response in respect of the overall management of the health response or requirements of particular public health directions, noting that such matters are not set out in the Bill itself.<sup>128</sup> However, Queensland’s CHO, Dr Jeannette Young, explained of the evidential basis on which decisions are made:

... as Queensland’s Chief Health Officer, I am supported by an excellent team of experts and advisers here in Queensland. I also receive advice and support from a range of sources, including other state and territory Chief Health Officers and the broader Australian Health Protection Principal Committee. The contributions from numerous sources have enabled Queensland to respond proportionately to the risk posed by the pandemic.<sup>129</sup>

In the statement of compatibility, the Minister also advises of the current approach:

Experience abroad underscores that voluntary containment measures are inadequate prevent the spread of COVID-19 and that governments must proactively pursue more prescriptive approaches to respond effectively to this unprecedented public health emergency.... Quarantine and isolation are proven to slow the transmission of COVID-19 and are indispensable to the State’s ability to effectively

<sup>120</sup> Elliot Bonser, submission 23, p 1.

<sup>121</sup> Eg see submissions 23, 43, 100, 168, 192, 210, 217, 247, 367, 371, 376, 413, 488, 531, 544; Form B, Form U, Form Z.

<sup>122</sup> Form U. Form Z submitters also stated: ‘Queensland citizens deserve to be given comprehensive details of the actual science which the Queensland Government has relied on to mandate laws which contravene freedom and liberty’.

<sup>123</sup> Kingaroy Chamber of Commerce and Industry Inc. (KCCI), submission 533 p 2.

<sup>124</sup> Lica Bienholz, submission 280, p 2. See also: QCCL, submission 391, p 3.

<sup>125</sup> Form AA.

<sup>126</sup> Public hearing transcript, Brisbane, 19 July 2021, p 9.

<sup>127</sup> Public hearing transcript, Brisbane, 19 July 2021, p 10.

<sup>128</sup> Queensland Health, correspondence, 15 July 2021, p 15.

<sup>129</sup> Public briefing transcript, Brisbane, 5 July 2021, p 3.

contain and limit the spread of the disease, manage and respond to outbreaks and ensure that the health system has the capacity to provide treatment to vulnerable and other persons who require urgent medical care.<sup>130</sup>

During the public briefing on the Bill, Dr Young also responded to the idea that the application of set thresholds or criteria for the imposition of lockdowns might reduce confusion and provide greater public certainty regarding the engagement of those measures. While acknowledging the potential appeal of this notion, Dr Young advised:

The issue is that it would be restrictive. For instance, the reason I advised the Premier that we did not need to continue the lockdown, despite getting more cases, was because it was the Alpha variant. There are so many variables involved in all of these decisions and you need to take all of them on.

The other part of the decision-making is how receptive are Queenslanders to doing the other things that would assist. Having that QR code has been absolutely fantastic. We just did not have that before. It is then understanding whether people are using that and the fact that business, although it was not mandatory yet, had taken on board the code—remember it is not mandatory until the end of this week, but they were already doing that. There are a whole range of things.

Then understanding where this virus is changing and how it is becoming more infectious and what that means. There are just so many things. Thank goodness we have not had to do too many lockdowns. Each time we do a lockdown we can learn things from that and then change how we do it next time. I remember one of the lockdowns, I wanted to do it, I felt it was absolutely essential and then when I went out and asked people to immediately put on masks and do those things I thought it would take days for people to hear it and respond and they responded within an hour. I had gone from saying that in a press conference up in William Street to driving back to my office and everyone was wearing masks. So the next time round I thought, 'Well, maybe we don't need to do that lockdown because people are just so responsive', so we didn't...

... At this point in time we are still learning and this is a very different pandemic to the normal pandemics that we have had over the last 100 years. It is so different to the one 10 years ago because we are getting these variants of concern. You do not normally see that. They are happening so rapidly. We are getting mutations in the spike protein that is making these viruses become more infectious.

We are having to learn and modify our response and then modify it again. So, yes, we could put something into legislation today, but I suspect in a month's time it would not be relevant and we would have to immediately change it. That is why I am so grateful that the parliament has given me this chance to have this ability to respond and to respond so quickly, because we know, and we have seen it in other states, if you are going to lock down you do it hard and fast, you do it early, as early as you possibly can so then you can do it for the least amount of time. You need to be able to respond really fast and just do it then.<sup>131</sup>

Further, in relation to the QHRC's proposal for public health directions to be accompanied by a statement of compatibility, Queensland Health advised that it 'will continue to work with the QHRC and other stakeholders to consider whether additional safeguards are reasonably available'.<sup>132</sup> Dr Young emphasised, however:

Although the powers provided to my position as Chief Health Officer and those of emergency officers appointed under the Public Health Act are necessarily broad, they are given with reasonable constraints, including consideration of human rights and broader impacts on the health and welfare of Queenslanders.<sup>133</sup>

### 3.2.1 Isolation and quarantine directions

The Bill's extension of the framework for the issuing of public health directions would enable the CHO to continue to issue directions requiring persons to quarantine or self-isolate, and for emergency officers to detain someone for a period of up to 14 days.<sup>134</sup> The extension of the measures

<sup>130</sup> Statement of compatibility, pp 17, 22.

<sup>131</sup> Public briefing transcript, Brisbane, 5 July 2021, p 7.

<sup>132</sup> Queensland Health, correspondence, 15 July 2021, p 11.

<sup>133</sup> Public briefing transcript, Brisbane, 5 July 2021, p 4.

<sup>134</sup> Explanatory notes, pp 2, 17.

would also enable the Queensland Government to continue to charge fees for mandatory quarantine in government-provided accommodation.<sup>135</sup>

Under Queensland's quarantine arrangements, anyone arriving in Queensland must quarantine for 14 days in government-arranged accommodation in Brisbane, the Gold Coast and Cairns if they have been:

- overseas in the last 14 days (unless they have travelled on a quarantine-free flight from a Queensland safe travel zone country)<sup>136</sup>
- in a declared COVID-19 hotspot in the last 14 days or since the hotspot was declared (whichever is shorter), and the place is a COVID-19 hotspot at the time they enter Queensland.<sup>137</sup>

Persons may apply for an exemption from hotel quarantine; however, exemptions are rarely granted.<sup>138</sup> A person can only leave quarantine earlier than the full 14-day quarantine period if they are in quarantine due to coming from a place that used to be a hotspot and is no longer a hotspot.<sup>139</sup>

Persons required to quarantine are charged quarantine fees,<sup>140</sup> which include room costs, a linen service fee<sup>141</sup> and meals, and which are payable within 30 days of the date of the invoice, unless the person has successfully applied for a fee waiver.<sup>142</sup> Fee waivers are assessed on the following grounds:

- people who had a confirmed international arrival date into Queensland before midnight on 17 June 2020, even if they arrive after 1 July 2020
- financial hardship
- vulnerability
- other extenuating circumstances.<sup>143</sup>

Due to the potential spread of COVID-19, fresh air breaks during hotel quarantine are permitted only under exceptional circumstances.<sup>144</sup>

COVID-19 testing is conducted on a person's arrival at the hotel and on days 5 and 12 or 13 of quarantine.<sup>145</sup>

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<sup>135</sup> Explanatory notes, p 3.

<sup>136</sup> Quarantine-free travel between Australia and New Zealand commenced on 18 April 2021. The 'travel bubble' can be paused or suspended without notice based on changes in the COVID-19 situation.

<sup>137</sup> Queensland Government, 'Quarantine in government arranged accommodation', <https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/protect-yourself-others/quarantine/hotel-quarantine>.

<sup>138</sup> Queensland Government, 'Exemptions', <https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/current-status/public-health-directions/exemptions>.

<sup>139</sup> Queensland Government, 'Quarantine in government arranged accommodation', <https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/protect-yourself-others/quarantine/hotel-quarantine>.

<sup>140</sup> As at 1 July 2021, the following fees applied: One adult in one room, \$3,220; 2 adults in one room, \$4,130; 2 adults and 2 children (aged 3 years or older and under 13 years) in one room, \$5,040.

<sup>141</sup> The linen service fee includes personal laundry outside of the day's daily provision of towels and linen, and any requested cleaning products.

<sup>142</sup> Queensland Government, 'Quarantine fees and payment', <https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/protect-yourself-others/quarantine/fees-payment>.

<sup>143</sup> Queensland Government, 'Quarantine fees and payment', <https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/protect-yourself-others/quarantine/fees-payment>.

<sup>144</sup> Queensland Government, 'Quarantine in government arranged accommodation', <https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/protect-yourself-others/quarantine/hotel-quarantine>.

<sup>145</sup> Queensland Government, 'Planning for your quarantine stay when arriving from overseas', [www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/protect-yourself-others/quarantine/planning-for-your-quarantine-stay-when-arriving-from-overseas#during-quarantine](http://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/protect-yourself-others/quarantine/planning-for-your-quarantine-stay-when-arriving-from-overseas#during-quarantine).

### 3.2.1.1 *Stakeholder views*

A number of stakeholders commented on the engagement of quarantine powers specifically, including expressing concerns in relation to the management of exemptions, and the costs and adequacy of the management of existing facilities.

In relation to the outcome of exemption decisions, some stakeholders observed discrepancies between the treatment of different individuals, including raising concerns about:

- apparent differences between the rules for ‘celebrities and footballers’ as compared with other members of the population<sup>146</sup>
- government officials being able to ‘travel interstate to see footy games without quarantining’ while others with critically ill family members were required to quarantine or faced a delay before the government approved an exemption (if an exemption was approved at all)<sup>147</sup>
- situations in which fully vaccinated members of the public ‘have still been required to quarantine and not able to visit their newborn premature baby and dying parents’, while ‘for the right price and/or feature on main stream media, others have been exempted’.<sup>148</sup>

In light of these examples, it was suggested that further clarity be provided as to what constitutes compassionate and compelling grounds for exemption,<sup>149</sup> with the QCCL further calling for the introduction of a process of review for people in hotel quarantine.<sup>150</sup>

Asserting that ‘it is fundamental that a person who is detained should have a right of review before a Court’, the QCCL submitted:

Section 29 of the *Human Rights Act* prohibits the arbitrary detention of a person. Subsection 7 of that section specifically provides that a person deprived of liberty is entitled to apply to a court for a declaration regarding the lawfulness of their detention. It would be our view, that the absence of a right of review under part 7A of the *Public Health Act*, is a violation of the *Human Rights Act*.<sup>151</sup>

Noting that Victoria had introduced a ‘system of independent detention review officers who review all aspects of a person’s detention and provide a report to the Chief Health Officer’,<sup>152</sup> the QCCL observed that, although it is ‘not a satisfactory substitute of review by a Court’, such a system would ‘at least be an improvement on the current regime, where the review process is a classic example of an appeal from Caesar unto Caesar’.<sup>153</sup>

In addition, the QCCL called for broader changes to the current quarantine regime, including instituting home quarantine for fully vaccinated people:

Following the lead of Ireland, quarantine practice should be changed so that those who can demonstrate they are fully vaccinated are not required to quarantine in a hotel or other facility. It is not the same situation as a vaccine passport. This is a case where the government is detaining people with a view to preventing the spread of the virus. However, the evidence is clear that vaccinated person is far less likely to pass on the virus than [an] unvaccinated person. Such people should be entitled, at least, to quarantine at home subject to an appropriate testing regime.<sup>154</sup>

Stakeholders also saw scope for a range of other improvements to the quarantine system. Dr Cornelia Turni opposed the extension of most COVID-19 emergency measures on the basis that ‘the only reason

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<sup>146</sup> Suzi Hill, submission 39, p 1; Jim Callow, submission 57, p 1. See also submissions 3, 9, 5, 7, 343, 450.

<sup>147</sup> Ksenia Novakovich, submission 314, p 1.

<sup>148</sup> Brenda Grimes, submission 472, p 5. See also Elizabeth Ishii, submission 460, pp 1-2.

<sup>149</sup> Confidential submission; Stephanie Ambrose, submission 218, p 1.

<sup>150</sup> Submission 391, p 5.

<sup>151</sup> Submission 391, p 5.

<sup>152</sup> Submission 391, p 5.

<sup>153</sup> Submission 391, p 5.

<sup>154</sup> Submission 391, p 4.

we have outbreak is the mishandling of Quarantine’,<sup>155</sup> and recommended a focus instead on the improvement of the quarantine system, asserting:

If the government would put decent measures in place in these quarantine facilities, then we would not have a problem. Instead, the facilities are not properly managed and the staff has no training nor experience of the concept of quarantine, of the virus and its transmission and the general procedures of preventing outbreaks.

If I would run my laboratory like this all my staff would be sick. So instead of emergency powers, fix up your quarantine facilities. Get some proper managers. You have doctors and scientist highly trained in running such facilities, hire some proper managers.<sup>156</sup>

The QNMU recommended that the hotel quarantine system be reviewed, stating:

With emerging evidence suggesting that COVID-19 is transmittable via airborne methods ... and recent variants being more transmissible in general ..., it is apparent that the hotel quarantine model requires urgent review. In particular, its suitability with regard to best practice from an infection control perspective, as well as the mental health perspective, given that hotel rooms are not negative pressure rooms designed to contain a virus nor house occupants for extended periods of time without being able to leave the confines of the room.<sup>157</sup>

The QHRC also confirmed its view that the right to humane treatment in detention was ‘potentially unreasonably limited by the use of hotel rooms that do not provide access to regular fresh air (including through the use of opening windows and balconies)’.<sup>158</sup> This including noting research suggesting aerosol/airborne transmission of COVID-19, including emerging variants, ‘particularly in hotel quarantine settings where there has been little or no access to daily fresh air or interaction between guests’.<sup>159</sup> The QHRC also cited the *National Review of Hotel Quarantine*, ‘which considered the impact on mental health of hotel quarantine and noted that “hotel infrastructure should enable access to open spaces and fresh air independently (that is, without escort)”’.<sup>160</sup> Noting that purpose-built facilities in Queensland ‘are still many months away’, the QHRC recommended quarantine hotels be selected ‘with adequate ventilation and access to fresh air to protect the health and wellbeing of all people deprived of their liberty by a public health direction’.<sup>161</sup>

The QCCL echoed the QHRC’s concerns about fresh air and ventilation for people staying in hotel quarantine, with QCCL President, Michael Cope, stating:

The starting point is that a basic matter of principle—and it comes out of section 30 of the Human Rights Act—that people are entitled to be treated with dignity and detained in appropriate conditions. Locking people up without access to fresh air, in our view, does not meet that criteria.<sup>162</sup>

Several stakeholders advocated for the replacement of the current hotel quarantine arrangements with the use of purpose-built facilities.<sup>163</sup> The Kingaroy Chamber of Commerce and Industry Inc. (KCCI) suggested the Queensland Government ‘plan to build the Wellcamp Quarantine Facility and invest in the construction of it’ and ‘not wait for the federal government to do so’.<sup>164</sup> In light of infection control and mental health concerns associated with hotel quarantine, the QNMU considered it would be

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<sup>155</sup> Submission 537, p 1.

<sup>156</sup> Submission 537, p 1.

<sup>157</sup> Submission 455, p 3.

<sup>158</sup> Submission 506, p 12; QHRC, *Hotel quarantine: unresolved complaint under s 88 of the Human Rights Act 2019*, 15 October 2020.

<sup>159</sup> Submission 506, p 12; See for example T Greenhalgh and others, ‘Ten scientific reasons in support of airborne transmission of SARS-COV-2’ *The Lancet* (online, 15 April 2021), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)00869-2/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)00869-2/fulltext).

<sup>160</sup> Submission 506, p 12; See also Jane Halton AO, *National Review of Hotel Quarantine*, 23 October 2020.

<sup>161</sup> Submission 506, p 13.

<sup>162</sup> Public hearing transcript, Brisbane, 19 July 2021, p 15.

<sup>163</sup> Eg see submissions 63, 87, 340, 345, 506, 455, 533.

<sup>164</sup> Submission 533, p 2.

‘prudent to consider a dedicated COVID-19 quarantine and treatment facility external to existing hospitals, including the new construction of such a facility, which would have potential further activation and usage in future public health emergencies’.<sup>165</sup> The QNMU elaborated:

Such a facility could also be used for local populations who test positive for COVID-19 and could negate the need to be admitted to expensive acute care facilities. These facilities should not just be accessible for returning travellers. The QNMU believes this facility should be of similar design to the Howards Springs facility in the Northern Territory. Regardless, any proposals regarding quarantine and/or treatment facilities must undergo consultation with relevant stakeholders, such as the local population.<sup>166</sup>

The QHRC also affirmed its position that purpose built facilities are the preferred approach given the limitations of hotel facilities, with Human Rights Commissioner Scott McDougall stating that all levels of government should be working towards their establishment.<sup>167</sup>

### 3.2.1.2 *The department’s response*

In response to comments from the QHRC and the QCCL regarding limitations on human rights associated with the management of the quarantine system and its conditions, Queensland Health advised:

The Department takes seriously its obligations under the Human Rights Act and is committed to implementing additional safeguards where practicable to ensure that the exercise of emergency powers does not limit human rights more than is necessary to achieve the legitimate purposes of the Bill. Detailed consideration has been given to justifying potential limitations on human rights during the development of all COVID-19 legislation, including primary legislation, subordinate legislation, statutory instruments and public health directions issued under the Public Health Act.<sup>168</sup>

Acknowledging calls for the establishment of possible review or appeal mechanism, Queensland Health advised that it would continue to work with stakeholders in looking at whether additional safeguards might be ‘reasonably available within the overall context of the Government’s COVID-19 response’.<sup>169</sup>

Further, responding to submitters’ support for the construction and use of dedicated quarantine facilities or the engagement of home quarantine arrangements, Queensland Health stated:

These comments are beyond the scope of the Bill as they relate to administrative or operational details, potential program improvements, requirements in specific public health directions or opportunities for future legislative or administrative reform.<sup>170</sup>

### 3.2.2 **Contract tracing and the use of QR code readers**

As previously noted, the Bill would:

- extend the operation of powers for the CHO to issue public health directions in respect of certain business and organisational activities (including mandating the use of QR code readers at certain premises)
- extend existing provisions which enable the CHO to authorise the sharing of confidential information supplied for the purposes of contact tracing.<sup>171</sup>

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<sup>165</sup> Submission 455, p 3.

<sup>166</sup> Submission 455, p 3.

<sup>167</sup> Public hearing transcript, Brisbane, 19 July 2021, p 13.

<sup>168</sup> Queensland Health, correspondence, 15 July 2021, p 11.

<sup>169</sup> Queensland Health, correspondence, 15 July 2021, p 11.

<sup>170</sup> Queensland Health, correspondence, 15 July 2021, p 15.

<sup>171</sup> Amendment Act, s 64. The provisions allowed the CHO to authorise the disclosure of confidential information about notifiable conditions (of which COVID-19 is recognised), including information supplied for contact tracing.

In Queensland, contract tracing information is collected by the 'Check In Qld' app, which was rolled out statewide on 28 February 2021.<sup>172</sup> From 1 May 2021, it became mandatory for Queensland hospitality businesses to use the Check In Qld app when signing in patrons to their premises.<sup>173</sup> The compulsory use of the Check In Qld app was extended on 9 July 2021 to a number of new sectors, including shopping centres and supermarkets, beauty and personal care services, venues that attract large crowds, indoor weddings and funerals and places of worship, and leisure and recreation facilities, with penalties for non-compliance.<sup>174</sup>

Information collected by the Check In Qld app may be disclosed to, and used:

- by authorities with powers and responsibilities in relation to COVID-19 (and those helping them) such as the Chief Health Officer and Queensland Health (including the Hospital and Health Services) for compliance activities, and for the purposes of overseeing and managing the Queensland Government's COVID-19 response;
- where the use or disclosure is authorised or required by law.<sup>175</sup>

Following the successful application for a search warrant by officers of the Queensland Police Service (QPS) to access QR code data for the investigation of a crime, the QPS revised its internal policy regarding the access of QR code data.<sup>176</sup> The revised policy directed officers not to apply for a search warrant for data collected by COVID-19 tracing apps except in extraordinary circumstances with prior approval from a Deputy Commissioner.<sup>177</sup>

### 3.2.2.1 *Stakeholder views*

Privacy and the potential use of the collected data for law enforcement purposes were key themes of stakeholder commentary regarding the use of QR code readers for the collection of information for contact tracing purposes.<sup>178</sup>

The QHRC and the ALA noted the QPS's revised internal policy; however, both stakeholders considered the QPS policy did not provide sufficient privacy safeguards and, in common with the QCCL, sought legislative protection of the data.<sup>179</sup> While generally supportive of the legislative protection provided under Commonwealth legislation for the Commonwealth government's 'COVID Safe app',<sup>180</sup> the ALA called for the inclusion of provisions similar to those legislated by the Western Australian Parliament 'to prevent police accessing data from the "Safe WA" app to gather intelligence, even for serious criminal investigations' and, more specifically, suggested amendment

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<sup>172</sup> Premier and Minister for Trade, Hon Anastacia Palaszczuk MP; Minister for Health and Ambulance Services, Hon Yvette D'Ath MP; and Minister for Communities and Housing, Minister for Digital Economy and Minister for the Arts, Hon Leeanne Enoch MP, 'New Check In Qld app makes COVID-Safe simpler in Queensland', media release, 28 February 2021.

<sup>173</sup> Queensland Government, 'Check In Qld app', 16 April 2021 (accessed via the Australian Web Archive searchable in Trove on 20 July 2021); Queensland Health, *Superseded - Restrictions on Businesses, Activities and Undertakings Direction (No. 19)*, 1 May 2021.

<sup>174</sup> Queensland Government, 'Check In Qld App', <https://www.covid19.qld.gov.au/check-in-qld>.

<sup>175</sup> Queensland Government, 'Check In Qld Privacy Policy', <https://www.covid19.qld.gov.au/check-in-qld/privacy>.

<sup>176</sup> 'Queensland Police Service tightens internal protocols on COVID Check In app access after officers perform "lawful" data search', ABC News, 29 June 2021, <https://www.abc.net.au/news/2021-06-29/queensland-coronavirus-check-in-app-police-data-search/100249624>

<sup>177</sup> Queensland Health, correspondence, 15 July 2021, p 14.

<sup>178</sup> Eg see submissions 33, 43, 273, 343, 352, 391, 506, 552; Form AC.

<sup>179</sup> Sara Grace, President, Queensland Chapter, ALA, public hearing transcript, Brisbane, 19 July 2021, pp 1-2; QCCL, submission 391, p 5; QHRC, submission 506, pp 18-19.

<sup>180</sup> Sara Grace, President, Queensland Chapter, ALA, public hearing transcript, Brisbane, 19 July 2021, p 2.



of Queensland's *Police Powers and Responsibilities Act 2000* to specify that a warrant would not be issued to access the data.<sup>181</sup>

The ALA also called for:

- provision for 'heavy penalties and sanctions for the leadership of the police, law enforcement and security agencies when they facilitate or turn a blind eye to the unlawful gathering of data, such as COVID-tracing app data'<sup>182</sup>
- the amendment of the *Evidence Act 1977* 'to provide that any evidence obtained by illegal accessing of personal data, such as COVID-tracing profiles, is not admissible'.<sup>183</sup>

Noting that police already have access to multiple sources of information—for example, cell phone tower data and credit card transaction data—the QLS and QCCL emphasised that the information collected by the Check In Qld app should be used only for the specifically identified purpose of contact tracing.<sup>184</sup>

Acknowledging the role of the Check In Qld app in preventing the community spread of COVID-19, some stakeholders emphasised the need to ensure public confidence in the app.<sup>185</sup> The ALA cautioned that the effectiveness of such apps was dependent on their being widely used, which, in turn, was 'dependent on members of the community having absolute confidence and trust that, when using these apps, their data will not be misused'.<sup>186</sup> The QCCL was of the view that 'giving people confidence that the information will not be used for any other purpose' would also 'enhance the accuracy of the data being collected by ensuring that people do not provide false names and contact details'.<sup>187</sup>

While at the public hearing it was acknowledged that enabling access to Check In Qld app data within a criminal context could potentially have benefits for the individual involved – for example, in a circumstance in which an accused person's data could exonerate them by proving they were in a different location, QLS President Ms Elizabeth Shearer clarified in this respect that the QLS has no objection to access in such circumstances: 'Privacy does not arise as an issue if it is somebody seeking to access their own data. The concern arises if it is a third party seeking the data'.<sup>188</sup> Consistent with the views articulated by the ALA that police being able to access information may 'reduce people buying into the public health initiative',<sup>189</sup> the QLS highlighted the importance of striking the right balance between 'achieving the right public health outcome versus the curtailment of liberties'.<sup>190</sup>

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<sup>181</sup> Submission 33, p 6; Sara Grace, President, Queensland Chapter, ALA, public hearing transcript, Brisbane, 19 July 2021, p 2.

<sup>182</sup> Submission 33, p 6.

<sup>183</sup> Submission 33, p 6.

<sup>184</sup> QCCL, submission 391, p 5. Matthew Dunn, General Manager, Advocacy, Guidance and Governance, QLS, public hearing transcript, Brisbane, 19 July 2021, p 5; Elizabeth Shearer, President, QLS, public hearing transcript, Brisbane, 19 July 2021, pp 5, 7.

<sup>185</sup> Sara Grace, President, Queensland Chapter, ALA, public hearing transcript, Brisbane, 19 July 2021, p 1; QCCL, submission 391, p 5; Matthew Dunn, General Manager, Advocacy, Guidance and Governance, QLS, public hearing transcript, Brisbane, 19 July 2021, p 5.

<sup>186</sup> Submission 33, p 5.

<sup>187</sup> Submission 391, p 5.

<sup>188</sup> Public hearing transcript, Brisbane, 19 July 2021, p 6.

<sup>189</sup> Matthew Dunn, General Manager, Advocacy, Guidance and Governance, QLS, public hearing transcript, Brisbane, 19 July 2021, p 5.

<sup>190</sup> Matthew Dunn, General Manager, Advocacy, Guidance and Governance, QLS, public hearing transcript, Brisbane, 19 July 2021, p 5.

Other concerns raised by submitters relating to the use of the Check In Qld app included concerns about:

- the compulsory use of the app restricting people’s civil liberties and freedom<sup>191</sup>
- the compulsory use of the app being in conflict in with the *Privacy Act 1988* (Cth)<sup>192</sup>
- collected data being sold through partnerships and collaborations with foreign entities, collected without consent, and retained or disclosed outside Australia.<sup>193</sup>

### 3.2.2.2 *The department’s response*

In response to stakeholder comments, Queensland Health advised that ‘proactive and effective’ contact tracing has been ‘critical to preventing widespread community transmission of COVID-19 when positive cases have been detected in the community’, and stated that ‘the app will continue to play an important role in future contact tracing efforts by providing access to relevant and timely information’.<sup>194</sup>

Noting the issues raised by the submitters in relation to the privacy and use of the Check In Qld app data, Queensland Health advised:

The ‘Check in Qld’ contact tracing app operates within Queensland’s existing information privacy law, including the Human Rights Act and the *Information Privacy Act 2009*. Police are required to make an application for a search warrant to obtain contact tracing data for law enforcement purposes and can only do so in circumstances authorised by law. The reasons for which police can apply for a search warrant to access contact tracing data has been limited by a binding ‘Commissioner’s Instruction’ to extraordinary circumstances such as the protection of the security of the State or Commonwealth and requires Deputy Commissioner level approval.<sup>195</sup>

## 3.3 Other COVID-19 emergency measures

As previously noted, in addition to extending health related COVID-19 emergency measures, the Bill provides for the extension to 30 April 2022 (with some transitional arrangements) of various measures implemented ‘to enable institutions to continue to function and, where possible, minimise the disruption caused by the pandemic’.<sup>196</sup>

The key measures addressed by stakeholders, and Queensland Health’s response to that stakeholder commentary, are outlined below.

### 3.3.1 Support for flexible business operations

In response to the effects of the pandemic and associated health restrictions on businesses, a number of COVID-19 measures have been implemented to:

- assist Queensland businesses and individuals suffering financial and operational stress caused by the public health emergency
- minimise the disruptive effects of the pandemic by allowing businesses to operate outside the usual conditions of their operating licenses, or otherwise subject to the relaxation of certain requirements.

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<sup>191</sup> Eg see Dr Karen Prince-Popovich, submission 552; Louisa Pearce, submission 343; Form O, Form U.

<sup>192</sup> Eg see Riga Walsh, submission 459; Louisa Pearce, submission 343; Susan Fry, submission 352; Rachel Adams, submission 520; Form AC.

<sup>193</sup> Form AC, Form B.

<sup>194</sup> Queensland Health, correspondence, 15 July 2021, p 14.

<sup>195</sup> Queensland Health, correspondence, 15 July 2021, p 14.

<sup>196</sup> Queensland Parliament, Record of Proceedings, 16 July 2021, p 1870.

In respect of assistance for affected businesses, in addition to direct financial support initiatives, certain legislative relief measures were enacted including:

- regulatory measures to implement the National Cabinet decision to impose a set of good faith leasing principles (set out in the National Cabinet Mandatory Code of Conduct for commercial leases during COVID-19) by:
  - providing certain protections to a retail lessee under an ‘affected lease’
  - preventing a lessor from taking particular actions, such as eviction or termination of the lease
  - allowing parties to a dispute about an affected lease or a small business tenancy dispute to have the dispute mediated through the Office of the Queensland Small Business Commissioner<sup>197</sup>
- time limited provisions allowing for the responsible Minister to issue a notice waiving or deferring the payment of gaming taxes<sup>198</sup> payable for a set period if the Minister is satisfied this is necessary to alleviate the financial burden caused by the COVID-19 emergency on gaming operators.<sup>199</sup>

In terms of legislative changes to minimise disruptions to businesses by enabling them to operate outside usual regulatory conditions, as an example:

- changes to planning legislation<sup>200</sup> have provided for the declaration of an ‘applicable event’, for the duration of which:
  - shops, warehouses and transport depots may be declared as uses that can operate 24 hours a day, 7 days a week
  - businesses can apply for a temporary use licence (TUL) to allow them to extend their operating rights during the applicable event (where a change of operating use would typically require a planning approval or variation to an existing approval, proponents are instead able to complete an application for a TUL (for which there is no application fee), and if their application is successful, alter their operations for the duration of the applicable event)<sup>201</sup>
- changes to the Liquor Act have enabled the Commissioner for Liquor and Gaming to issue a Takeaway Liquor Authority (TLA) to allow licensed operators of restaurants, bars and cafes to sell takeaway liquor as specified in the TLA when the normal operation of their business has been affected (for example, by lockdowns and social distancing related capacity constraints), regardless of the limitations of their current licence or permit.<sup>202</sup>

While the Bill does not affect access to the TUL provisions, which remain available to operators so long as the pandemic continues to be recognised as an ‘applicable event’ – a status that can be

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<sup>197</sup> Explanatory notes, pp 9-10.

<sup>198</sup> 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.

<sup>199</sup> Explanatory notes, pp 9-10, 13. Note – a gaming tax notice also requires the approval of the Treasurer.

<sup>200</sup> Specifically, the *Planning Act 2016* and *Economic Development Act 2012*.

<sup>201</sup> Public Health and Other Legislation (Public Health Emergency) Amendment Bill 2020, explanatory notes, pp 4-5, 28-29; State Development, Local Government, Infrastructure and Planning, ‘COVID-19 response planning’, webpage, <https://www.statedevelopment.qld.gov.au/economic-development-qld/about-edq/legislation/covid-19-planning-response>.

<sup>202</sup> *Liquor Act 1992* (Liquor Act), part 10A (‘Takeaway liquor authorities for COVID-19 emergency response’), inserted by the Amendment Act and previously extended by the ER Act, ER Extension Act and ER Further Extension Act.

extended by notice issued by the responsible Minister,<sup>203</sup> it does provide for the extension of each of the commercial rent relief measures, gaming tax relief measures and TLA issuing powers.<sup>204</sup>

### 3.3.1.1 *Stakeholder views and the department's response*

The Australian Logistics Council (ALC) commented on the 'regulatory relaxations' that have 'assisted in the prompt restocking of stores and the efficient provision of out of hours home deliveries, delivering significant amenity benefits to customers and communities'. The ALC stated that the 'ability to make truck deliveries outside of peak hours long-term also assists in terms of easing congestion, as more deliveries could be spread across the day'.<sup>205</sup> Further, the ALC advised that its members had received very few complaints regarding freight movement and that 'residential amenity' had not been significantly impacted.<sup>206</sup>

Noting this, ALC supported the continued efficient movement of freight and recommended that:

1. the Office of Productivity and Red Tape Reduction—
  - (a) conduct a whole of government evaluation of the practical effect of the relaxation of regulatory changes that are contained in the Bill, such as amending the effects of environmental legislation to permit the movement of freight without, for example, the imposition of delivery curfews
  - (b) the changes be retained unless it can be shown they have no net public benefit
2. the Government report periodically to the Parliament on the progress of this review.<sup>207</sup>

Several other stakeholders expressed concerns about the extension of certain measures. While some conveyed these concerns within the context of the broader opposition to the Bill,<sup>208</sup> the Queensland Hotels Association (QHA) directed its commentary at the provisions enabling the issuing of TLAs to allow the sale of takeaway liquor by the operators of licensed hospitality venues.<sup>209</sup>

The QHA advised that while it supports the Bill's continued provision for a head of power enabling TLAs to be issued for a COVID-19 shutdown period, it does not support the use of TLAs to provide a broader ability for cafes, restaurants and small bars to sell takeaway alcohol during periods of eased restrictions or normal trade. In this respect, the QHA submitted:

- given that on premise trade has substantially returned in Queensland and consumers can purchase alcohol from a range of outlets, there is no community need nor grounds for extending this measure outside of lockdown periods<sup>210</sup>
- the engagement of the measure outside of shutdown periods is inconsistent with the government's *Tackling Alcohol-Fuelled Violence Policy*, as restaurants and cafes have lower compliance requirements and harm minimisation protections than licensed takeaway operators (and may raise possible issues in respect of the use of non-RSA (Responsible Service of Alcohol) trained delivery persons, among other factors)<sup>211</sup>

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<sup>203</sup> The most recent notice issued by the Minister provided for a continuation of the 'applicable event' status for the COVID-19 public health emergency through to 30 September 2021 inclusive. See *Applicable Event Notice Made Under the Planning Act 2016: COVID-19 Applicable Event 1/2021 (Extension Notice)*, 26 June 2021, <https://dsdmipprd.blob.core.windows.net/general/applicable-event-extension-notice-29-06-2021.pdf>

<sup>204</sup> Explanatory notes, pp 9, 13.

<sup>205</sup> Submission 397, p 2.

<sup>206</sup> Submission 397, pp 1, 4.

<sup>207</sup> Submission 397, p 4.

<sup>208</sup> Eg see submissions 3, 161, 234, 322, 367, 487, 539.

<sup>209</sup> Submission 480.

<sup>210</sup> Submission 480, p 1.

<sup>211</sup> Submission 480, p 1.

- restaurants and cafes already can allow patrons to take away one open and one unopened bottle of wine after dining and their principal business activity is not the sale of liquor<sup>212</sup>
- 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’, as:
  - this represents a transfer of trade to the detriment of small hotels and community clubs, hindering the recovery and growth of businesses that invested in the appropriate liquor type and required facilities underpinning the entitlement to sell takeaway alcohol,<sup>213</sup> with particular adverse implication for small hotels in regional areas<sup>214</sup>
  - hotels face a higher capital investment associated with establishing and maintaining their businesses, including: higher annual liquor licence fees; the requirement to have at least 2 of a commercial kitchen, functions facilities and/or accommodation; and higher licence compliance costs<sup>215</sup> (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)<sup>216</sup>
  - 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.<sup>217</sup>

Further, in summary, the QHA concluded:

The sale of takeaway liquor is not an appropriate activity for a cafe, restaurant or bar liquor licence. It disregards the existing harm minimisation framework and presents an inequitable trading environment which negatively impacts the recovery of hotel businesses who have invested in the appropriate liquor licence and requisite compliance obligations.<sup>218</sup>

### 3.3.1.2 *The department’s response*

Queensland Health noted the ALC’s submission regarding regulatory relaxations to support the movement of freight, but did not address the organisation’s recommendation for a review of regulatory requirements to support the retention of beneficial measures, noting that this is ‘beyond the contents of the Bill’.<sup>219</sup>

In response to the QHA’s comments regarding extended TLA provisions, Queensland Health advised that the further extension of the provisions ‘is necessary to ensure the Government can maintain support to businesses as the ongoing COVID-19 public health responses continue to impact on trading capacity of liquor licensed venues’.<sup>220</sup> The Bill, it was emphasised, only extends the power for the Commissioner to issue a TLA and does not automatically extend any TLAs that have been issued – rather, ‘the Commissioner will consider and decide what, if any, takeaway liquor authorities may be required after 30 September 2021, having regard to the relevant criteria’.<sup>221</sup>

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<sup>212</sup> Submission 480, p 2.

<sup>213</sup> Submission 480, p 3.

<sup>214</sup> Submission 480, p 2.

<sup>215</sup> Submission 480, p 3.

<sup>216</sup> Submission 480, p 4.

<sup>217</sup> Submission 480, p 4.

<sup>218</sup> Submission 480, p 5.

<sup>219</sup> Queensland Health, correspondence, 15 July 2021, p 8.

<sup>220</sup> Queensland Health, correspondence, 15 July 2021, p 12.

<sup>221</sup> Queensland Health, correspondence, 15 July 2021, p 13.

While acknowledging the QHA's view that the need for the issuing of TLAs has decreased and the continued engagement of the measure outside of shutdown period may have adverse effects on small hotels and community clubs, Queensland Health stated:

Many licensed venues continue to operate at reduced patron capacity due to the public health directions restricting the ordinary operation of licensed venues (e.g. limiting patron capacity or social distancing rules).

...

The view that the measure is a detriment to small hotels and community clubs is noted. However, the submission does not provide any quantifiable evidence to suggest temporary takeaway liquor authorities issued to restaurants, cafes and small bars have significantly impacted on sales of takeaway liquor from commercial hotels, clubs or bottle shops across the State.

The QHA has also acknowledged in its submission there is a need for the power to be extended to allow takeaway liquor sales during COVID-19 events such as lockdowns. Hoteliers themselves were issued takeaway liquor authorities during the lockdowns in January, March and July 2021 allowing them to sell takeaway liquor despite their venues being closed to patrons. This would not ordinarily be allowed.<sup>222</sup>

In regards to the QHA's questions about the consistency of the measures with the government's *Tackling Alcohol-Fuelled Violence Policy*, further, Queensland Health stated:

The provisions are considered to be consistent with the *Tackling Alcohol-Fuelled Violence Policy* as, in order to issue a takeaway liquor authority, the Commissioner must be satisfied that the granting of the authority is consistent with the purpose of the Liquor Act stated in section 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.

Given this requirement, previously issued takeaway liquor authorities have been granted with appropriate conditions to minimise alcohol-related harm. For instance, the takeaway liquor authority issued to subsidiary on-premises licensees (meals) (i.e. licensed restaurants and cafes) only allows a limited amount and type of takeaway liquor to be sold (2.25 litres of liquor, no straight spirits). This represents approximately only 750 millilitres more than can ordinarily be sold as takeaway from a licensed restaurant (as these licensees can ordinarily sell one opened and one unopened bottle of wine for takeaway to a person that has eaten a meal on the premises).

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.

The Commissioner also has the ability to immediately suspend a takeaway liquor authority for up to 10 days, if harm to members of the public may be caused if urgent action is not taken. The Commissioner can also initiate show cause action to amend or revoke the authority if a licensee or permittee has contravened the authority.<sup>223</sup>

### 3.3.2 Amendments relating to requirements for attendance, meetings and documents

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:

- attendance at places or meetings, the making and associated use of documents, and physical presence requirements for the purpose of reducing physical contact between persons
- statutory timeframes for the doing or expiry of a thing
- proceedings of courts and tribunals.<sup>224</sup>

<sup>222</sup> Queensland Health, correspondence, 15 July 2021, p 13.

<sup>223</sup> Queensland Health, correspondence, 15 July 2021, p 13.

<sup>224</sup> Explanatory notes, p 3.

In this regard, the Bill extends temporary measures that amend attendance requirements for meetings of various groups and agencies and for the conduct of proceedings of courts/tribunals and other bodies, including provisions that facilitate remote attendance, voting, and authorisations using audio or audio-visual links.

The Bill will extend these powers through the following regulations to allow for proceedings and meetings to be conducted by audio or audio-visual link:

- Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020
- Justice Legislation (COVID-19 Emergency Response—Proceedings and Other Matters) Regulation 2020 (Justice Legislation Regulation)
- Local Government (COVID-19 ER) Regulation 2020
- Manufactured Homes ((Residential Parks) (COVID ER)) Regulation 2020
- City of Brisbane Regulation 2012
- Local Government Regulation 2012<sup>225</sup>

In respect of the Justice Legislation Regulation, the Bill will continue temporary modifications relating to:

- the presentation of indictments and entering of a discontinuance (*nolle prosequi*)
- the availability of video-recorded evidence
- the issuing of CCC notices and the use of audio and audio-visual links for CCC hearings
- appearances in response to a Notice to Appear
- the place of settlement in relation to contracts for the sale of land.<sup>226</sup>

### 3.3.2.1 *Stakeholder views*

A number of individual submitters expressed opposition to the extension of provisions relating to audio and video attendance in circumstances as specified above, within the context of broader opposition to the Bill.<sup>227</sup>

One individual submitter stated that videoconferencing as outlined in the provisions ‘should be limited in its application’ for several reasons:

- Videoconferencing ‘may take the power away from the individual as face to face contact with members of a court and counsel is essential for a fair trial or decision’.
- While telehealth appointments may be helpful, they are not a replacement for in-person examinations and consultations, which could put a person’s health at risk.
- Privacy needs to be considered in relation to personal information being captured on videoconferences given the potential for cyber hacking.<sup>228</sup>

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<sup>225</sup> Explanatory notes, pp 7, 8, 9, 11.

<sup>226</sup> Queensland Health, correspondence, 1 July 2021, p 10; Explanatory notes, p 8.

<sup>227</sup> Eg see Robyn Booth, submission 3, p 1; Sarah Keetley, submission 487, p 1; Janina Rozycki, submission 539, p 1. See also Riga Walsh, submission 459, who expressed concerns that these and other provisions established under the modification framework may be inconsistent with Federal laws and therefore invalid.

<sup>228</sup> Alison Verbruggen, submission 273, p 5. See also Peter Stacey, submission 543, p 5, who expressed similar concerns in respect of the use of videoconferencing in court proceedings and ‘telehealth’ methods for medical consultations.

Another submitter was concerned about the practical application of these measures, stating that people must be given a choice about whether or not to attend a court hearing, for example, via audio or audio-visual link, as internet access is not always reliable.<sup>229</sup>

The CCC welcomed the extension of the provisions of the Justice Legislation Regulation which have allowed it to conduct hearings via audio and audio-visual links and give notices under the *Crime and Corruption Act 2001* electronically, and which the CCC submitted 'would otherwise have been disrupted by the COVID-19 emergency'.<sup>230</sup> The CCC sought consideration of the proposal that the provisions be given permanent application beyond the COVID-19 emergency, stating:

Although personal service and attendance at hearings would remain the CCC's preferred approach, these technology-based arrangements would allow for more efficient operations in certain situations, for example, if a witness resided in a remote region.<sup>231</sup>

The QLS also outlined the benefits of various COVID-19 emergency measures for the legal sector, but expressed concerns that certain measures were no longer accessible under regulations (though the provision to make such regulations would remain available under the Bill). Referencing regulatory provisions that had enabled the witnessing of documents via videolink in particular, QLS further explained:

There were times when we have not had access to aged-care facilities, but of course we previously had legislation that enabled us to witness documents via videoconference facility so that we could, in those urgent circumstances, facilitate the execution of an enduring power of attorney or a will. Those regulations have expired, and of course around the time they were expiring we enjoyed a period of time where we did not have any lockdowns nor concerns about that. Since the regulations have expired we obviously have encountered some more difficulties. In the absence of having either the ability to witness those important documents by some remote means or having access into those institutions, we are not able to give effect to instructions from people who need to put in place those important documents.<sup>232</sup>

Matthew Dunn of the QLS elaborated:

These particular witnessing provisions were removed or came to an end on 30 June. The Queensland Law Society was one of the organisations that asked for that to occur. At the particular time those submissions were made the delta variant was not something that had graced our shores and caused the problems that it has at this point in time and things were looking quite good. It looked as though access to these sorts of residential and aged-care institutions would be sufficient in order to achieve this. Capacity is obviously one of the significant issues of witnessing these types of documents as well as ensuring that duress and fraud are not present. They are slightly more complex than other types of affidavits, deeds, statutory declarations and things. There is a different order of magnitude in that particular place.<sup>233</sup>

The QLS also expressed concern that while access restrictions remain in place under public health directions, persons in residential aged care facilities, hospitals and disability accommodation are unable to access their legal representatives to create and execute wills and enduring documents. The QLS therefore 'strongly urged' the government to either:

- amend public health directions to permit lawyers to attend to their clients in those settings, or
- permit the modified arrangements for making enduring documents as set out in the Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020 (Documents and Oaths Regulation) to be extended for a further, limited period.<sup>234</sup>

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<sup>229</sup> Jackie Bratley, submission 367, p 3. Ms Bratley highlighted potential issues in respect of court hearings, for example, if 'one side of the audio/visual can cut on purpose or pretend they do not hear'.

<sup>230</sup> Submission 97, p 1.

<sup>231</sup> Submission 97, p 1.

<sup>232</sup> Angela Cornford-Scott, Succession Law Committee, QLS, public hearing transcript, Brisbane, 19 July 2021, p 6.

<sup>233</sup> Public hearing transcript, Brisbane, 19 July 2021, p 7.

<sup>234</sup> QLS, submission 478, p 3.



The QLS further explained:

Currently, lawyers are not included in the list of visitors allowed to enter certain restricted areas, including residential aged care facilities, hospitals and disability accommodation. QLS considers it imperative that legal practitioners be able to [access] these facilities for the purpose of providing legal services to resident clients. This is particularly so in light of the recent expiration of the modified provisions relating to wills and enduring documents. It is unacceptable that patients and residents in these facilities do not have access to legal representatives.

A person's legal representative needs to be able to assist them to create and execute documents such as wills and ending powers of attorney, which can be very time sensitive documents. Lawyers must be able to facilitate the signing of these documents, either by way of in person visits to restricted areas, or via the arrangements provided for in the Documents and Oaths Regulation. We urge the Government to take immediate action to resolve this issue.<sup>235</sup>

### 3.3.2.2 *The department's response*

Queensland Health noted the CCC's support for the extension of provisions relating to the CCC's operations. While also acknowledging the CCC's call for those provisions to be made permanent, Queensland Health noted that such a regulatory change is 'beyond the scope of the Bill'.<sup>236</sup>

In response to QLS's comments regarding the need to engage the extended legislative modification framework to support the re-establishment of modified arrangements for making enduring documents, Queensland Health stated:

The modified arrangements that permitted wills and enduring documents to be witnessed over audio visual link were expired on 30 June 2021 by operation of the Justice Legislation (COVID-19 Emergency Response - Documents and Oaths) Amendment Regulation (No. 2) 2021 in response to concerns raised by stakeholders, including the QLS, about the increased risks associated with the making of these documents, particularly for vulnerable Queenslanders. As stated in the QLS submission, there are concerns about whether a witness can verify the identity of a person or adequately assess a person's capacity to make these documents free from duress and undue influence if they are present over audio visual link.<sup>237</sup>

Queensland Health further advised that the QLS's alternative proposal for the amendment of public health directions to permit lawyers to attend to their clients in restricted settings are 'beyond the scope of the Bill'. However, Queensland Health advised that the comments had been noted and were 'under consideration' as the department 'understands the important role of legal representation in creating and executing wills and enduring documents'.<sup>238</sup>

### 3.3.3 **Body 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* to 'provide measures to alleviate the financial burden caused by the COVID-19 emergency on bodies corporate' and owners/proprietors of lots,<sup>239</sup> together with a series of related regulations to support the continued operations of the sector.<sup>240</sup>

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<sup>235</sup> Submission 478, pp 3, 4.

<sup>236</sup> Queensland Health, correspondence, 15 July 2021, p 8.

<sup>237</sup> Queensland Health, correspondence, 15 July 2021, p 14.

<sup>238</sup> Queensland Health, correspondence, 15 July 2021, p 14.

<sup>239</sup> *Body Corporate and Community Management Act 1997*, s 323A (Purpose of part), inserted by Amendment Act, s 4, and extended by the ER Extension Act and ER Further Extension Act; *Building Units and Group Titles Act 1980*, s 134A (Purpose of part), inserted by Amendment Act, s 7, and extended by the ER Extension Act and ER Further Extension Act.

<sup>240</sup> Queensland Health, correspondence, 1 July 2021, p 9.

The provisions, which are scheduled to expire on the current 'COVID-19 legislation expiry day' of 30 September 2021, and would instead continue through to the proposed new 30 April 2022 expiry day (or an earlier day as prescribed),<sup>241</sup> serve to:

- permit bodies corporate 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<sup>242</sup>
- continue the ability of body corporate committees to change rights, privileges or obligations of lot owners in relation to access to and 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<sup>243</sup>
- permit body corporate committees to postpone the due date for contributions for either:
  - particular lot owners if the committee is reasonably satisfied the lot owner is suffering financial hardship as a result of the COVID-19; or
  - all lot owners regardless of whether all of the proprietors are suffering financial hardship because of the COVID-19 emergency<sup>244</sup>
- 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<sup>245</sup>
- prevent bodies corporate from charging penalty interest on outstanding lot owner contributions (including extending the late payment deadline used in an example, from 1 November 2021 to 1 July 2022<sup>246</sup>)
- 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.<sup>247</sup>

### 3.3.3.1 Stakeholder views

The SCAQ generally expressed support for the extension of the provisions, describing the 'COVID-19 reforms' as 'a set of very practical, common sense reforms' that 'give bodies corporate the flexibility they need to manage their affairs to suit their circumstances and that of all other owners and

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<sup>241</sup> *Body Corporate and Community Management Act 1997*, s 323I; *Building Units and Group Titles Act 1980*, s 134E.

<sup>242</sup> Queensland Health, correspondence, 1 July 2021, p 9.

<sup>243</sup> Queensland Health, correspondence, 1 July 2021, p 9.

<sup>244</sup> Queensland Health, correspondence, 1 July 2021, p 8. See also *Body Corporate and Community Management Act 1997*, s 323E. In deciding whether to extend the due date for contributions, the committee must consider the body corporate's ability to meet the necessary and reasonable spending from the body corporate's administrative fund and sinking fund for the current financial year (s 323E(4)).

<sup>245</sup> *Body Corporate and Community Management Act 1997*, s 323D, applicable until its expiry on the COVID-19 legislation expiry day (see also s 323I).

<sup>246</sup> Bill, cl 4 (amending s 323F of the *Body Corporate and Community Management Act 1997*). The provision in question provides that an account requiring payment of a contribution instalment given to an owner of a lot 2 months before the commencement is not paid until 1 November 2021.

<sup>247</sup> See *Body Corporate and Community Management Act 1997*, ss 323F, 323G and 323H, all applicable until their expiration on the COVID-19 legislation expiry day (see also 323I).

occupiers in the building'.<sup>248</sup> The SCAQ cited anecdotal feedback about increased participation of owners in body corporate meetings and the general business of bodies corporate 'due to the fact they now have a range of flexible options for attendance and participation'.<sup>249</sup> In contrast, the QLS considered a further extension of the 'measures to provide bodies corporate with flexibility to adopt modified arrangements for meetings and inspection of documents' to be unnecessary 'in the current environment'.<sup>250</sup> However, the QLS acknowledged that 'while it may be appropriate for some specific measures to expire, it may be necessary to retain the ability to invoke these measures quickly if circumstances change'.<sup>251</sup>

Both the QLS and the SCAQ supported the further extension of the powers to restrict access to and use of common areas and amenities to comply with public health directives.<sup>252</sup> Whilst stating that the powers given to body corporate committees to close access to common property and amenities are 'of the utmost importance',<sup>253</sup> the SCAQ highlighted that compliance difficulties can arise when public health directions 'allow opening but restrict it to compliance with certain procedures for facilities such as supervision and contract tracing'.<sup>254</sup> The SCAQ explained:

... the issue is generally that most strata amenities are open to residents by way of a key card and there is no staff on site. Compliance can neither be achieved under the [Body Corporate and Community Management Act] nor the COVID-Directions.<sup>255</sup>

With respect to public health directions, the SCAQ submitted that compliance difficulties may also arise when 'shared pools within apartment complexes are technically obliged to check patrons into shared facilities like pools and gyms', explaining that 'bodies corporate are not in a position to monitor the check in for these facilities'.<sup>256</sup> The SCAQ called for increased clarity or specific health directives for bodies corporate, because 'it is difficult to provide guidance when there is no differentiation between a strata pool, gym or other facility which is private to the building occupants and a public pool, gym or facility which is commercially set up'.<sup>257</sup> The SCAQ also called for public health directions to distinguish between apartment complexes that are short-term accommodation schemes, which may have an on-site caretaker to undertake supervision of public amenities, and bodies corporate where residents are permanent.<sup>258</sup>

In relation to the financial relief measures relating to bodies corporate, the SCAQ was supportive of the provisions relating to 'borrowing, deferral of debt recovery and increasing flexibility with respect of sinking fund budgets',<sup>259</sup> but considered there was no need to continue the provisions empowering bodies corporate to waive penalty interest, because body corporate committees already have that discretion.<sup>260</sup> Stating that 'many lot owners who are unaffected by COVID-19 have been getting the benefit of the waiver of penalty interest when they have no valid reason', the SCAQ cautioned that retaining the provision may 'ultimately threaten the financial viability of some schemes'.<sup>261</sup> The SCAQ expressed a preference for the waiving of penalty interest to be at the

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<sup>248</sup> Submission 383, p 1.

<sup>249</sup> Submission 383, p 1.

<sup>250</sup> Submission 478, p 5.

<sup>251</sup> Submission 478, p 1.

<sup>252</sup> SCAQ submission 383, pp 1-2; QLS, submission 478, p 5.

<sup>253</sup> Submission 383, p 1.

<sup>254</sup> Submission 383, p 2.

<sup>255</sup> Submission 383, p 2.

<sup>256</sup> Submission 383, p 2.

<sup>257</sup> Submission 383, p 2.

<sup>258</sup> Submission 383, pp 2-3.

<sup>259</sup> Submission 383, p 2.

<sup>260</sup> Submission 383, p 2.

<sup>261</sup> Submission 383, p 2.

discretion of the committees with lot owners who are 'genuinely affected by COVID-19'<sup>262</sup> applying to the committee for the waiver of penalty interest.<sup>263</sup>

The QLS considered a further extension of the financial relief measures unnecessary in the current environment, but, as previously noted, acknowledged that there may be a need to 'retain the ability to invoke these measures quickly if circumstances change'.<sup>264</sup> Specifically, the QLS was concerned that bodies corporate not find themselves 'under-resourced' and thereby unable to fulfil their obligations:

Those measures were brought in to ameliorate the financial impact of lockdowns and restrictions on the community. The counterbalance of this particular thing is to make sure that bodies corporate have enough money in them to be able to do the maintenance work and to be able to do the structural capital work that might occur to those particular buildings without having to make a special levy down the track.

If you reduce the level of contributions people are making into sinking funds, you are reducing the capacity to be able to do the work that needs to be done; what you are doing, in effect, is pushing off a special levy to down the track which will be a larger impost.<sup>265</sup>

### 3.3.3.2 *The department's response*

With respect to the 'measures for body corporate meetings, inspection of documents, and access to common property', Queensland Health advised that the provisions 'facilitate social distancing that may be required by public health directions'.<sup>266</sup> Queensland Health stated:

The extension of these measures is required due to the potential for future outbreaks of COVID-19 in Queensland that may require introduction of social distancing measures that the current temporary measures are designed to support.<sup>267</sup>

As to the body corporate financial relief measures, Queensland Health advised the extension is required to 'ensure financial relief is available for bodies corporate and lot owners currently suffering financial stress as a result of COVID-19, or who may experience financial hardship due to possible future impacts of COVID-19 in Queensland'.<sup>268</sup>

Queensland Health advised that the measures preventing bodies corporate from charging penalty interest on overdue body corporate contributions, are 'aimed at ensuring bodies corporate do not impose additional financial strain on owners that may be already suffering financial stress as a result of COVID-19'. Queensland Health stated:

Given the potential for future economic impacts associated with COVID-19, and acknowledging it is not clear how many lot owners are still experiencing financial hardship, it is important that the temporary measure preventing bodies corporate from charging penalty interest on overdue contributions continue at this time.<sup>269</sup>

In relation to owner debts to bodies corporate, Queensland Health further advised:

It is important to note that owners remain liable for all unpaid contributions, and bodies corporate may commence debt recovery proceedings to recover unpaid contributions, if considered appropriate in the circumstances. It is also important to note that owners owing a body corporate debt (such as unpaid

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<sup>262</sup> Submission 383, p 2.

<sup>263</sup> Submission 383, p 2.

<sup>264</sup> Submission 478, p 1.

<sup>265</sup> Matthew Dunn, General Manager, Advocacy, Guidance and Governance, QLS, public hearing transcript, Brisbane, 19 July 2021, p 8.

<sup>266</sup> Queensland Health, correspondence, 15 July 2021, p 12.

<sup>267</sup> Queensland Health, correspondence, 15 July 2021, p 12.

<sup>268</sup> Queensland Health, correspondence, 15 July 2021, p 12.

<sup>269</sup> Queensland Health, correspondence, 15 July 2021, p 12.

contributions) are not eligible to vote on the vast majority of motions at body corporate general meetings (other than motions requiring a resolution without dissent) and committee meetings.<sup>270</sup>

### 3.3.4 COVID-safe elections

The Bill proposes to extend the operation of amendments to the *Electoral Act 1992* (Electoral Act) and the *Local Government Electoral Act 2011* (LGEA) implemented to provide the flexibility, if required, to facilitate the holding of state or local government by-elections or fresh local government elections in a COVID-safe way.<sup>271</sup>

#### 3.3.4.1 *Stakeholder views and the department's response*

Several submitters objected to the extension of the amendments relating to the conduct of elections in a COVID-safe way as part their opposition to the extension of provisions more broadly.<sup>272</sup> Specific concerns raised by individual submitters relating to the extension of the measures included a risk of electoral tampering and fraud,<sup>273</sup> and a potential changing of the voting system to online or 'total electronic notification'.<sup>274</sup> Further, submitter Patricia Steffens stated that she could 'see no problem with the voting process to go ahead as normal' given 'the government can allow people to sit next to each other at ... football games'.<sup>275</sup>

The ECQ supported the extension of the emergency provisions to 30 April 2022, and stated:

A further extension of the expiry provisions would continue this flexibility, which is linked to the declaration of the public health emergency, and ensure the ECQ is able to conduct by-elections consistent with evolving public health measures.<sup>276</sup>

In the context of the recent Stretton by-election, the ECQ explained that, in consultation with Queensland Health and other agencies, it had 'operationalised a number of provisions' enacted 'to ensure the current by-elections include appropriate COVID safety measures'.<sup>277</sup> The ECQ observed that this action 'highlighted the continuing relevance and importance of the operation of these provisions included in part 12C of the *Electoral Act 1992* and part 9B of the *Local Government Electoral Act 2011*'.<sup>278</sup>

Noting the 'exercise of powers relating to by-elections is discretionary and must only be utilised to minimise risks to health and safety caused by the COVID-19 emergency,' the ECQ stated it would apply these provisions only 'as necessary to respond to the public health situation at the time of a by-election'.<sup>279</sup>

Queensland Health noted the ECQ's support for the extension of the electoral provisions.<sup>280</sup>

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<sup>270</sup> Queensland Health, correspondence, 15 July 2021, p 12.

<sup>271</sup> Explanatory notes pp 12, 13.

<sup>272</sup> See submissions 3, 161,322, 367, 459, 539.

<sup>273</sup> Bernadette McNaught, submission 239, p 1; Petra Whitehouse, submission 441, p 3, Jackie Bratley, submission 367, p 7; Form B.

<sup>274</sup> Bernadette McNaught, submission 239, p 1

<sup>275</sup> Submission 518, p 1.

<sup>276</sup> Submission 393, p 1.

<sup>277</sup> Submission 393, p 1.

<sup>278</sup> Submission 393, pp 1-2.

<sup>279</sup> Submission 393, p 2.

<sup>280</sup> Queensland Health, correspondence, 15 July 2021, p 13.

## 4 Changes to quarantine system arrangements

### 4.1 Electronic service of quarantine directions

Under COVID-19 emergency measures inserted in the Public Health Act, an emergency officer may give a person a direction to quarantine by staying at or in a stated place for up to 14 days.<sup>281</sup> The Bill proposes to clarify the means by which a direction can be issued – and in particular, to specify that this may be by electronic means – by inserting a new section in the Public Health Act<sup>282</sup> providing that a direction may be issued:

- as provided for under the *Acts Interpretation Act 1954*, part 10 – which specifies that a document may be served by delivering it to an individual personally or by leaving it at, or sending it by post, facsimile or similar to the residence or business of the person last known to the person serving the document; or
- by sending the direction, with a person’s consent, by electronic communication to the unique electronic address<sup>283</sup> nominated by the person.

In terms of an individual’s receipt of a direction, further, the Bill provides that a quarantine direction sent by an emergency officer to a person’s unique electronic address is taken to have been received by the person on the day and at the time the direction is sent to the unique electronic address nominated by the person, unless the contrary is proved.<sup>284</sup>

The explanatory notes advise that the clarifying amendments align with the current practice for giving directions, which ‘is heavily reliant on electronic communications to facilitate rapid contact tracing in response to potential outbreaks of COVID-19 and the efficient management of quarantine systems, including the Queensland Border Declaration Pass system’.<sup>285</sup>

Additionally, to ensure ‘that there is no doubt about the effect of decisions that are made and executed electronically’,<sup>286</sup> the Bill includes a provision validating quarantine directions issued electronically before the date the commencement date of the proposed amendments.<sup>287</sup>

At the committee’s public briefing on the Bill, Queensland Health Director-General Dr John Wakefield commented on the importance of the greater certainty the amendments would provide:

... When you think about just in the last few days we have had over 4,000 people in home quarantine, unless we are very clear that a statutory decision to provide a direction to quarantine can be delivered electronically that would require then the physical presence of an officer at every point where those people are. I think it is just practicalities, and making sure that such decisions, having been executed electronically, that that is not in doubt, in terms of its validity.<sup>288</sup>

#### 4.1.1 Stakeholder views

The RANZCP Queensland Branch specifically supported the provisions to clarify that quarantine directions may be served electronically<sup>289</sup> and the QPCOU stated that it had ‘no issues’ with the amendments.<sup>290</sup>

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<sup>281</sup> Public Health Act, s 362H.

<sup>282</sup> Bill, cl 31 (proposed new s 362HA of the Public Health Act, ‘How directions may be given’).

<sup>283</sup> Clause 35 of the Bill amends schedule 2 (Dictionary) of the Public Health Act to insert a definition for ‘unique electronic address’ which includes as examples – ‘an email address, mobile phone number, or user account’.

<sup>284</sup> Bill, cl 31 (proposed new s 362HA(2) of the Public Health Act).

<sup>285</sup> Explanatory notes, p 15.

<sup>286</sup> Dr Wakefield, Director-General, Queensland Health, public briefing transcript, Brisbane, 5 July 2021, p 6.

<sup>287</sup> Bill, cl 34.

<sup>288</sup> Public briefing transcript, Brisbane, 5 July 2021, p 6.

<sup>289</sup> Submission 45, p 1.

<sup>290</sup> Submission 332, p 2.

The QHRC, however, expressed concerns that the provisions effectively reverse the onus of proof that a direction has been received, and retrospectively imposes liability for directions issued by email prior to commencement of the provisions<sup>291</sup> (see also sections 5.1.2.2 and 6.1.1 of this report for further discussion in this respect).

The QHRC suggested it would be appropriate for some further justification for these aspects of the provisions to be provided, including calling for consideration of:

- whether a further safeguard would be to require that reasonable efforts are made to contact a person by phone (or in person) as well as by email
- whether the amendment will affect any current prosecution or related proceedings, which the QHRC considered ‘would be a significant further limitation on the right to a fair trial under s 31 of the HRA’
- the potential limitation of the provisions on the right to equality for a person who is unable to read or receive electronic communication in English – for example, because of a disability or because English is not their first language.<sup>292</sup>

The issue of access was also raised by other submitters, both in regard to a person’s capacity to read a direction served by email<sup>293</sup> and their access to an electronic communication device and reliable internet access.<sup>294</sup>

#### 4.1.2 The department’s response

In response to these stakeholder comments, Queensland Health stated:

The amendments to the *Public Health Act 2005* require express consent from the recipient prior to giving a quarantine direction electronically. The recipient must also nominate an email address, mobile phone number or other unique electronic address for this purpose. There is no penalty if a person does not consent to electronic delivery. In those circumstances, the written direction would either be given to the person directly or via post.

Current practice and established policies governing the issuance of quarantine directions by emergency officers contain additional safeguards to ensure that persons receive and understand directions given by electronic means. These safeguards include:

- verbally explaining to the person (either in person or on the phone) that they are being given a direction to quarantine and the effect of the direction;
- confirming that the person understands the requirements of the direction (which may involve contacting a family member/friend if English is a second language to ensure the substance of the direction is communicated to the person in a way they understand);
- explaining that it is an offence to fail to comply with the direction without a reasonable excuse;
- asking the person to nominate the electronic address to which the direction is to be sent electronically; and
- asking the person to reply or otherwise confirm receipt once the direction is sent electronically.<sup>295</sup>

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<sup>291</sup> Submission 506, p 14.

<sup>292</sup> Submission 506, p 15.

<sup>293</sup> Elizabeth Carlsen, submission 406, p 2.

<sup>294</sup> Michael Bannister, submission 517, p 7.

<sup>295</sup> Queensland Health, correspondence dated 15 July 2021, pp 14-15.

## 4.2 Prepayment system for quarantine fees

Since 1 July 2020, under amendments implemented by temporary COVID-19 legislation,<sup>296</sup> a person who undergoes mandatory quarantine has been required to pay fees associated with the costs of hotel quarantine, such as accommodation and food costs. Part 7AA of the Public Health Act also provides for all or part of a quarantine fee to be waived and for the recovery of unpaid fees. Part 7AA was scheduled to expire on 30 September 2021.<sup>297</sup>

Queensland Health advised that since the introduction of a requirement for people to pay quarantine fees, 'a significant proportion of these fees remains unpaid'.<sup>298</sup> To increase the proportion of quarantine fees that are paid, as well as providing 'more flexibility for payment and collection arrangements', the Bill amends the Public Health Act to:

- enable the chief executive to require quarantine fees for certain persons to be paid in advance, prior to the prescribed person's arrival in Queensland.<sup>299</sup>
- make provision for third parties to assume liability for the payment of a person's fees, where currently a quarantine fee invoice may only be issued to the person required to quarantine.<sup>300</sup>

At the public briefing on the Bill, Queensland Health Director-General, Dr John Wakefield, advised that the new prepayment requirements are not intended to apply universally but rather apply 'only to specific categories, or cohorts of travellers' to be prescribed in regulation. Dr Wakefield advised that this regulation-making process:

... will allow for a staged approach that is responsive to changing public health and economic circumstance. It will also ensure that relevant stakeholders are consulted before prepayment requirements are introduced for a particular cohort.<sup>301</sup>

Further, in respect of the third party liability arrangements, Queensland Health emphasised that while the provisions would enable third parties such as employers 'to pay invoices on behalf of the persons to whom an invoice is issued', 'there is no mechanism for a third party to formally accept liability for another person's quarantine fees'.<sup>302</sup>

Dr Wakefield further explained the proposed amendments as follows:

... where we see the opportunities here is particularly in relation to groups of workers where we actually have the opportunity to know about them before they arrive.

... Particularly, for example, seasonal workers, that is an arrangement that is done through our agricultural sector so we know those cohorts come, like the Pacific Island Scheme. We also envisage, as the population becomes more vaccinated, that there will be an opportunity for us to bring back

<sup>296</sup> *Community Services Industry (Portable Long Service Leave) Act 2020*, pt 13, divs 5–6, which inserted a new ch 8 Part 7AA (Fees for quarantine during COVID-19 emergency) and associated transitional provisions (Ch 12, pt 7 into the Public Health Act; and new section 61A into the Public Health Regulation 2019, setting out daily fee amounts for accommodation (including cleaning) and meals for an adult, child, and 2 or more persons in shared accommodation).

<sup>297</sup> *Public Health Act 2005*, Part 7AA, inserted by Part 13, Division 5 of the *Community Services Industry (Portable Long Service Leave) Act 2020*.

<sup>298</sup> Queensland Health, correspondence, 1 July 2021, p 5.

<sup>299</sup> Bill, cl 43 (proposed new s 362MF of the Public Health Act).

<sup>300</sup> Queensland Health, correspondence, 1 July 2021, p 5.

<sup>301</sup> Public hearing transcript, Brisbane, 5 July 2021, p 3.

<sup>302</sup> Queensland Health, correspondence, 1 July 2021, p 5. Under proposed new s 362ME a person (a third party) may accept liability for another person's quarantine fees, if the chief executive has approved generally that a particular class of third parties may accept liability for payment of quarantine fees. The chief executive may also approve acceptance of liability for a person's quarantine fees by a specific third party. The approval can occur either before or after a person is required to quarantine and incurs liability for quarantine fees. The chief executive may give notice of approval by giving a notice to a third party, or if the approval applies to a particular class of third parties, by publishing the notice on the department's website.



international students and again making arrangements with third parties like universities and so on will enable us to, I think, assist with the economy and with moving forward, but it will allow us to more flexibly work with those groups to structure our quarantine system which will allow us to forward bill. Our objective in all of this is to make sure that the Queensland taxpayer does not foot the bill for decisions that are made by others and we can recoup the costs.<sup>303</sup>

Current arrangements for the waiver of quarantine fees which commenced on 1 July 2020 would be retained under the Bill, albeit subject to some minor changes.<sup>304</sup> As is currently the case, the chief executive could decide to waive quarantine fees only if the chief executive considers it appropriate having regard to the circumstances of the applicant or another person to whom the fee relates, such as experiencing financial hardship or being a vulnerable person.<sup>305</sup> However:

- some persons required to quarantine ('excluded persons', to be prescribed by regulation) would not be eligible to apply for a waiver of quarantine fees<sup>306</sup>
- a third party liable to pay quarantine fees under an approved prepayment arrangement also would not be eligible to apply for a waiver.<sup>307</sup>

The Bill clarifies that a notice may be given to obtain further information in relation to an application for waiver<sup>308</sup> and prescribes the timeframe for waiver applications related to a prepayment notice.<sup>309</sup> A quarantine fee prepayment notice ceases to have effect if an application for the fees to be waived is not decided, or a notice of the decision not given, within one day of the proposed travel.<sup>310</sup>

Further, the Bill includes new provisions to enable full or partial refunds to persons that have paid their quarantine fees in advance, if:

- (i) the prescribed person does not travel to Queensland within 120 days after the amount is paid under the prepayment notice;
- (ii) the prescribed person is not required to quarantine on arriving in Queensland;
- (iii) the prescribed person is required to quarantine on arriving in Queensland, but the amount of the quarantine fees for the prescribed person's quarantine is less than the amount paid under the prepayment notice.<sup>311</sup>

To support the administration of the prepayment system, the Bill provides for quarantine fee notices to be given or applications to be made through the department's online portal<sup>312</sup> or either:

- sent by email to the person's unique electronic address,<sup>313</sup> if the person consents to receiving the documents in this manner,<sup>314</sup> or
- served by delivering it to an individual personally or by leaving it at, or sending it by post, facsimile or similar to, the residence or business of the person last known to the person serving the document.<sup>315</sup>

<sup>303</sup> Public hearing transcript, Brisbane, 5 July 2021, p 6.

<sup>304</sup> Queensland Health, correspondence, 1 July 2021, p 5.

<sup>305</sup> Bill, cl 43, proposed new s 362MI(3).

<sup>306</sup> Bill, cl 43, proposed new s 362MH(1) and 362MH(5).

<sup>307</sup> Bill, cl 43, proposed new s 362MH(1).

<sup>308</sup> Bill, cl 43, proposed new s 362MI(1).

<sup>309</sup> Bill, cl 43, proposed new s 362MH(3).

<sup>310</sup> Bill, cl 43, proposed new s 362MK.

<sup>311</sup> Bill, cl 43, proposed new s 362MM(1)(b).

<sup>312</sup> Bill, cl 43, proposed new ss 362MN.

<sup>313</sup> Bill, cl 43, proposed new s 362MO. Note – clause 35 of the Bill amends schedule 2 (Dictionary) of the Public Health Act to insert a definition for 'unique electronic address' which includes as examples – 'an email address, mobile phone number, or user account'.

<sup>314</sup> Bill, cl 43, proposed new ss 362MO(2)(a).

<sup>315</sup> As provided for in the *Acts Interpretation Act 1954*, part 10 - see Bill, cl 43, proposed new 362MO(2)(b).

#### 4.2.1 Stakeholder views

The RANZCP Queensland Branch supported the establishment of a prepayment system, including the prescription of cohorts for whom fees must be paid in advance or for whom fees may be waived, and provisions for more flexible payment and collection arrangements, including refunds.<sup>316</sup>

Although persons required to undertake hotel quarantine have been required to pay a quarantine fee since 1 July 2020,<sup>317</sup> some submitters expressed their opposition to quarantine fees generally,<sup>318</sup> while others asserted that a person should not be required to pay a fee to undertake mandatory quarantine and should instead be allowed to quarantine at home,<sup>319</sup> or if absolutely required to quarantine in a government facility, to do so at the government's expense.<sup>320</sup> Some submitters were concerned about the imposition of fees infringing on rights and compounding restrictions on freedom of movement.<sup>321</sup>

Mr Michael Cope, President of the QCCL, told the committee that Australian citizens, who have a right to return to Australia, should not be required to pay quarantine fees as the requirement to quarantine in a hotel is a measure that has been implemented to protect the community.<sup>322</sup> The QCCL considered that quarantine fees should not be payable 'unless there is some good reason they should be paying, such as they are going overseas to earn an income in which case that is the price of doing business'.<sup>323</sup>

The QHRC criticised the amendments regarding the prepayment of quarantine fees for being 'unnecessarily ambiguous'.<sup>324</sup> The QHRC stated that it 'appears these amendments could be used in an arbitrary and discriminatory way',<sup>325</sup> particularly in relation to the power to prescribe by regulation cohorts of travellers who will be required to repay quarantine fees and eligibility to apply for a waiver of quarantine fees. The QHRC noted that 'no criteria is included for how such cohorts are to be determined'.<sup>326</sup> The QHRC submitted that the approach proposed by the Bill in respect of the prescription of persons excluded from applying for a waiver is 'out of step with the approach in other jurisdictions that have human rights legislation'<sup>327</sup> and that 'it appears the regulation could remove the ability to seek a waiver for all travellers'.<sup>328</sup>

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<sup>316</sup> Submission 45, p 1.

<sup>317</sup> As provided for by the *Community Services Industry (Portable Long Service Leave) Act 2020*, pt 13, dvs 5–6.

<sup>318</sup> Eg see Lisa Williams, submissions 075, p 1; Terence Pope, submission 503, p 1.

<sup>319</sup> Eg see Marie Brannigan, submission 198, p 1; Alison Verbruggen, submission 273, p 5; Michael Bannister, submission 517, p 5; Patricia Steffens, submission 518, p 1; Peter Stacey, submission 543, p 5.

<sup>320</sup> Marie Brannigan, submission 198, p 1. See also Beau Hayman (submission 485, p 1), who considered that 'free government provided quarantine would be far more amicable', and Patricia Steffens (submission 518, p 1), who submitted that quarantine 'should be paid for or subsidised by the government as the ordinary family do not have the means to pay for a two-week enclosure'.

<sup>321</sup> Eg see Daniel Popovich, submission 513, p 2; Dr Karen Popovich-Prince, submission 552, p 2. See also Debbie Spearrit, submission 528, p 8 (Ms Spearrit noted concerns about potential infringements on rights and liberties of individuals 'in particular, with regard to whether the legislation provides for the compulsory acquisition of property only with fair compensation').

<sup>322</sup> Public hearing transcript, Brisbane, 19 July 2021, p 15.

<sup>323</sup> Michael Cope, President, QCCL, public hearing transcript, Brisbane, 19 July 2021, p 14.

<sup>324</sup> Submission 506, p 16.

<sup>325</sup> Submission 506, p 16.

<sup>326</sup> Submission 506, p 16.

<sup>327</sup> Submission 506, p 18.

<sup>328</sup> Submission 506, p 18.

The QHRC suggested that ‘less-restrictive options and/or greater safeguards’ than the ‘open-ended’ regulation-making power proposed by the Bill might include:

- Providing that all persons may seek a waiver (e.g. providing that this cannot be removed via regulation) ...
- Providing for a clear review or appeal process to the decision to require payment in advance and/or not provide a waiver.
- Setting out criteria about which classes of traveller may be required to pay in advance (based on clear and reasonable evidence) ...<sup>329</sup>

#### **4.2.2 The department’s response**

In response to the issues raised by the QHRC, Queensland Health advised:

... The ability to require users to pay in advance is a fair balance of the rights of individuals who are requested or required to pre-pay their quarantine fees and the countervailing rights of the community to a properly funded and robust quarantine system to protect against the COVID-19 pandemic.

There will still be provisions enabling people to apply for a fee waiver. However, as noted by QHRC, the Bill will allow a regulation to be made that prescribes particular categories of travellers as ineligible to apply for a waiver. This is necessary to protect the integrity of the prepayment system with its limited time to consider waiver applications. It is intended that this provision will only be used in limited circumstances, such as for persons who receive an economic benefit from travelling to Queensland (e.g. people travelling for work purposes where they are sponsored or supported by an employer who will pay their fee). However, as the circumstances of easing border restrictions are not yet known, flexibility is required to respond appropriately as increased categories of travellers are permitted into Queensland.<sup>330</sup>

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<sup>329</sup> Submission 506, p 17.

<sup>330</sup> Queensland Health, correspondence dated 15 July 2021, p 15.

## 5 Compliance with the *Legislative Standards Act 1992*

### 5.1 Fundamental legislative principles

Section 4 of the LSA states that FLPs are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’.<sup>331</sup> The principles include that legislation has sufficient regard to:

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

As is to be expected given the nature of the matters with which it deals, the Bill raises a significant number of 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.

#### 5.1.1 Quarantine prepayment system provisions

As noted in 4.2 of this report, the Bill provides that the chief executive may prescribe persons or a group of persons who are required to prepay their quarantine fees,<sup>332</sup> and also provides for the chief executive to prescribe a person who is an ‘excluded person’ and therefore is unable to apply for the waiver of payment of all or part of their quarantine fees. For persons who do not fall into the ‘excluded person’ category, the Bill provides for a process by which the person can apply for a fee waiver. The chief executive must decide to either waive all or part of the quarantine fees, or refuse to waive payment of the fees.

The Bill’s provisions establishing a prepayment system for quarantine raise a number of issues in terms of the rights and liberties of individuals.

##### 5.1.1.1 *Rights and liberties of individuals – restriction of ordinary activities*

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

Requiring a relevant person to prepay their quarantine fees affects the fair treatment of an individual by differentiating their treatment from another person for whom prepayment is not required. It could also disadvantage some individuals who are subject to prepayment requirements by causing them to be deprived of their property (in the form of money) for a period that does not apply to other individuals.

The broad purpose of these provisions, as set out in the explanatory notes, is based largely on the need to ensure the sustainability of the quarantine system throughout the longevity of the pandemic:

To address these challenges [demands placed on quarantine system from a broader cohort entering Queensland], amendments to the Public Health Act are required to improve the State’s ability to recoup quarantine-related expenses and ensure that Queensland’s quarantine system remains sustainable and responsive to changing public health and economic circumstances.<sup>333</sup>

At the public briefing on the Bill, Queensland Health advised that stakeholders would be consulted before prepayment requirements were introduced for a particular cohort.<sup>334</sup> Queensland Health identified the following groups of people as being included in those who may be required to prepay: ‘international students, seasonal workers, foreign nationals with critical skills who are working in part of our economy and foreign national sponsors’.<sup>335</sup>

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<sup>331</sup> LSA, s 4(1).

<sup>332</sup> Bill, cl 43.

<sup>333</sup> Explanatory notes, p 6.

<sup>334</sup> Dr John Wakefield, Director-General, Queensland Health, public briefing transcript, Brisbane, 5 July 2021, p 3.

<sup>335</sup> Dr John Wakefield, Director-General, Queensland Health, public briefing transcript, Brisbane, 5 July 2021, p 8.

The explanatory notes provide the following justification for any impact on individual rights and liberties, noting safeguards included in the proposed legislation:

Quarantine of people entering Queensland from outside Australia and from places where there is local transmission of COVID-19 is necessary to prevent the spread of disease in the community. The prepayment requirements included in this Bill do not increase the amount of fees a person is required to pay, but only bring forward the point in time at which the person is required to pay those fees. There are also requirements for the chief executive to refund any potential payments over the amount of fees actually incurred. Safeguards are also included in the legislation, including opportunities for vulnerable people and people experiencing significant financial hardship to apply for a full or partial waiver of fees. Payment plans can also be agreed to limit the impact of the requirements on individuals.<sup>336</sup>

#### Committee comment

The committee is satisfied that the provisions are reasonable and appropriate in the circumstances. The committee notes that prepayment only brings forward a cost that must be paid (and does not establish an additional direct cost impost), and that there would be an opportunity for all but excluded persons to apply for a waiver of the fees.

#### 5.1.1.2 Rights and liberties of individuals – administrative power

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation:

- allows the delegation of administrative power only in appropriate cases and to appropriate persons<sup>337</sup>
- makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.<sup>338</sup>

The Bill provides for the prescription by regulation of persons or cohorts who will be required to pay their quarantine fees in advance and of excluded persons who are ineligible to access fee waivers under the proposed system, rather than setting these matters out in primary legislation. In relation to fee waivers in particular, the Bill empowers the chief executive to decide to waive all or part of the fees, or to refuse an application, such that access to a waiver is dependent on administrative power.

The Office of the Queensland Parliamentary Counsel (OQPC), in its *OQPC Notebook: Fundamental Legislative Principles* (FLP Notebook), emphasises that powers should be delegated only to appropriately qualified officers or employees.<sup>339</sup>

Further:

Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process.

If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.<sup>340</sup>

Committees carefully scrutinise provisions that do not sufficiently express the matters to which a decision-maker must have regard in exercising a statutory administrative power.<sup>341</sup>

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<sup>336</sup> Explanatory notes, p 19.

<sup>337</sup> LSA, s 4(3)(c).

<sup>338</sup> LSA, s 4(3)(a).

<sup>339</sup> The *Acts Interpretation Act 1954*, s 27A contains extensive provisions dealing with delegations.

<sup>340</sup> Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: The OQPC Notebook* (FLP Notebook), p 18.

<sup>341</sup> OQPC, FLP Notebook, p 15; citing Scrutiny of Legislation Committee, *Report No. 13, 49th Parliament – Annual Report, 1 July 1998 – 30 June 1999*, October 1999, p 12, para 3.10.

As previously noted, the broad purpose of these prescriptive provisions is to ensure the continued viability of the quarantine system and allow the government to recoup quarantine-related expenses.

In regard to the delegation of administrative power in respect of prepayment (in other words, the ability of the chief executive to decide who will have to prepay quarantine fees), the explanatory notes state:

The delegation of administrative powers is appropriately defined and limited. For example, the chief executive's discretion to require prepayment of quarantine fees is limited by the Act to persons who have been prescribed by regulation. The flexibility provided with this delegation of administrative power is also necessary given the frequently changing nature of border restrictions, the broadening range of cohorts permitted to enter Australia and Queensland, and the need to tailor arrangements for the particular circumstances of different cohorts.<sup>342</sup>

In respect of the chief executive's decision making power relating to the application for a waiver of fees, it can be noted:

- The chief executive must decide to either waive all or part of the quarantine fees, or refuse to waive payment of the fees.
- In making this decision, the chief executive must consider it appropriate having regard to the circumstances of the applicant or the affected person. No further detail is provided, other than two provided examples of a person:
  - experiencing financial hardship
  - being a vulnerable person.

The chief executive is also required to provide a notice of decision under section 362MJ of the Public Health Act, setting out the decision and the reasons for the decision. However, there is no provision for a right of review for this provision.

#### Committee comment

The committee is satisfied that the delegation of administrative power is appropriate in this instance, given the quantity and diverse range of people who may need to quarantine on arrival in Queensland, and the evolving nature of the response to the pandemic.

The committee notes that the explanatory notes do not address the reasons for the lack of a review provision. However, the committee expects that procedural aspects of the decision process, including the consideration of a person's circumstances and the requirement for the chief executive to provide a notice of decision setting out the reasons for the decision, will help ensure fairness for applicants. As supporting regulations are developed, the committee expects the criteria underpinning the decision-making process and the appropriate definition of this administrative power to be explored in more detail.

#### 5.1.1.3 Institution of Parliament – delegation of legislative power

The LSA provides that whether legislation has sufficient regard to the institution of Parliament depends on whether the legislation sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.<sup>343</sup>

In relation to the regulation-making powers to prescribe cohorts of persons who must pay quarantine fees in advance and 'excluded persons' ineligible to apply for a fee waiver, the explanatory notes provide the following justification:

... these are necessary to quickly and frequently make adjustments as the border eases and more travellers are permitted to enter Queensland. ... Flexibility to approve alternative quarantine arrangements and prepayment requirements for specific traveller cohorts will improve the State's

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<sup>342</sup> Explanatory notes, p 19.

<sup>343</sup> LSA, s 4(2)(b).

ability to recoup quarantine-related expenses and support Queensland's quarantine system to remain sustainable and responsive to changing public health and economic circumstances.<sup>344</sup>

Further, in relation to the prescription of fees by regulation, the explanatory notes state:

The implication of fundamental legislative principles with regard to the regulation-making power and chief executive discretion in relation to fees is justified as there is already a head of power to include fees in regulation, under section 461, and this is common practice to reflect that fees may change over time to reflect changes in costs. The fees may need to be adjusted if advice on the period of quarantine required for COVID-19 is reassessed or there is another change in the operation of the quarantine program.<sup>345</sup>

#### Committee comment

The committee notes that prescribing fees in regulation is common, and recognises that the regulatory power in this instance reflects a practical approach in what is an evolving situation in respect of the management of the quarantine system as part of the pandemic response. The committee is satisfied that the provisions are appropriate and justified in the circumstances.

### **5.1.2 Penalty provisions**

#### 5.1.2.1 Rights and liberties of individuals – proportionality and relevance of penalties

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. As the OQPC has explained:

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.<sup>346</sup>

The Bill extends the penalty provision for breaching public health directions issued by the CHO. A maximum penalty of 100 penalty units (\$13,785) or 6 months imprisonment applies if a person fails to comply with a direction, unless they have a reasonable excuse.<sup>347</sup>

In addition, the Bill extends penalty provisions for contravention of a direction of the ECQ. Under section 392ZL of the Electoral Act, a person must not, without reasonable excuse, contravene a direction of the ECQ:

- about how, where and when how-to-vote cards may be distributed or displayed at a polling booth
- prohibiting the distribution/display of how-to-vote cards and other election material at a polling booth
- prohibiting a person from canvassing for votes in or near polling booths
- permitting the display of certain political statements.

A maximum penalty of 10 penalty units applies (\$1,378.50).

Under section 392ZM of the Electoral Act, a person must not, without reasonable excuse, contravene a direction of the ECQ about the number of scrutineers each candidate may have at a polling booth

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<sup>344</sup> Explanatory notes, p 32.

<sup>345</sup> Explanatory notes, pp 31-32.

<sup>346</sup> OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

<sup>347</sup> Clause 53 proposes to amend the PH Emergency Act which in turn would extend the operation of section 362D of the Public Health Act, which provides for the enforcement of public health directions issued by the CHO.

or other place a scrutineer is entitled to be present, or prohibit a scrutineer or candidate from being present at a polling booth or other place where the person would otherwise be entitled to be present. A maximum penalty of 20 penalty units applies (\$2,757).

Section 392ZN of the Electoral Act provides that a scrutineer or candidate must comply with a direction of a returning officer, presiding officer for a polling booth or an ECQ staff member about movement at a polling booth or other place where the scrutineer or candidate is entitled to be present under the Act, unless they have a reasonable excuse. A maximum penalty of 20 penalty units applies (\$2,757).

The explanatory notes provide the following justification for the use of penalties to enforce compliance with public health directions, and cite a comparable offence in the Public Health Act:

... Comparably, section 351 of the Public Health Act, which is not impacted by the Bill, applies to the enforcement of a detention order issued by an emergency officer (medical). It carries a maximum penalty of 200 penalty units, to fail to comply with a detention order.<sup>348</sup>

The penalty provision is considered reasonable and appropriate to protect the community from the risk of transmission of COVID-19 by those who violate public health directions and, thereby, put the community at risk.<sup>349</sup>

In regard to the extension of the penalty provisions relating to contravention of an ECQ direction, 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.<sup>350</sup>

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*.<sup>351</sup>

#### Committee comment

The committee is satisfied that the penalty provisions for breaches of public health directions and for contravening ECQ directions are proportionate and relevant, and that their extension is justified and appropriate in the circumstances.

#### 5.1.2.2 Rights and liberties of individuals - penalty provisions - reversal of onus of proof

Section 4(3)(d) of the LSA provides that 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.<sup>352</sup>

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. The OQPC advises: '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'.<sup>353</sup>

A number of the penalty provisions to be extended by this Bill include a reversal of the onus of proof where a reasonable belief is held – provisions that are also known as 'reasonable excuse' provisions.

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<sup>348</sup> Explanatory notes, p 18.

<sup>349</sup> Explanatory notes, p 18.

<sup>350</sup> Explanatory notes, p 24.

<sup>351</sup> Explanatory notes, p 24.

<sup>352</sup> LSA, s 4(3)(d).

<sup>353</sup> OQPC, FLP Notebook, p 36.



The OQPC has noted of such provisions:

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.<sup>354</sup>

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.<sup>355</sup>

In this instance, the explanatory notes similarly conclude:

The reversal of the onus of proof in the offences being extended is justified ... because the establishment of a defence of having a reasonable excuse in the circumstances would involve matters which would be within the accused’s knowledge.<sup>356</sup>

#### Committee comment

The committee accepts the justification provided. It can reasonably be anticipated that matters in question would be peculiarly within the knowledge of a person charged with the offence, and would likely be difficult for a prosecuting authority to establish. On balance, the committee is satisfied that any potential breach of FLP is reasonable.

#### **5.1.3 Extended COVID-19 emergency measures – restrictions on ordinary activities**

As noted at chapter 5.1.1.1, the reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals.<sup>357</sup> An example of this is that the legislation should not unduly restrict ordinary activities.

The Bill provides for the extension of a number of provisions that enable the imposition of significant restrictions on an individual’s ordinary activities, including through:

- Public Health Act amendments authorising the CHO to issue directions that may restrict the ability of persons to leave their homes or other premises, to enter particular facilities, or to freely move about and engage in activities<sup>358</sup>
- local government related amendments which allow for council or council committee meetings to be closed to the public if the chairperson is satisfied that it is not practicable for the public to attend the meeting because of health and safety reasons associated with the public health emergency involving COVID-19<sup>359</sup>
- part 12C of the Electoral Act and part 9B of the LGEA, which contain provisions for elections affected by the COVID-19 public health emergency
- section 138 of the *Disaster Management Act 2003* (Disaster Management Act), which provides for a longer than normal period by which a declared disaster situation may be extended (90 days rather than 14 days), with that declaration enlivening a range of powers for authorised officers to perform certain actions or compel others to refrain from certain actions.

<sup>354</sup> See OQPC, FLP Notebook, p 36.

<sup>355</sup> For a recent example, see Fisheries (Sustainable Fisheries Strategy) Amendment Bill 2018, explanatory notes, p 17.

<sup>356</sup> Explanatory notes, p 24.

<sup>357</sup> LSA, s 4(2)(a).

<sup>358</sup> Section 362B was introduced in the Public Health and Other Legislation (Public Health Emergency) Amendment Bill 2020. This Bill was declared urgent and was not referred to a committee.

<sup>359</sup> City of Brisbane Regulation 2012, s 255F; Local Government Regulation 2012, s 277E.

*5.1.3.1 Public Health Act provisions - restrictions on ordinary activities*

The Bill potentially breaches an individual's right not to have their ordinary activities (including operating a business) interfered with, through its extension of the application of Public Health Act provisions:

- authorising the CHO to issue directions for people to remain in their homes or to not be able to visit other places, and thereby limiting their freedom of movement
- allowing emergency officers to detain someone for a period of up to 14 days, equally denying their right to move freely about the community.<sup>360</sup>

In relation to the limitation on people's freedom of movement, the explanatory notes state:

It is considered that the impact that these emergency powers have upon the rights and liberties of individuals is justified, given the need to protect the health of the public by managing the outbreak of COVID-19, and in particular to ensure the latest health and medical advice about isolation and quarantine of suspected or confirmed cases of COVID-19 can be implemented. The amendments have contributed to Queensland's success at containing COVID-19 by allowing rapid and tailored responses to instances of local community transmission or COVID-19.<sup>361</sup>

In respect of the detention of persons by emergency officers, the explanatory notes advise:

The powers provided to emergency officers are necessary to implement recommendations from the Commonwealth Government that all persons entering Australia, regardless of their country of origin, be required to enter quarantine for a period of 14 days upon arrival. This approach is being consistently applied across all Australian jurisdictions to ensure that people entering the country are temporarily quarantined to avoid the potential spread of COVID-19 in the community. The powers are also needed to require persons to enter quarantine who are arriving in Queensland from a place elsewhere in Australia experiencing local transmission of COVID-19.<sup>362</sup>

The explanatory notes also canvass the safeguards applying to the exercise of the detention powers:

Appropriate safeguards are in place to protect the rights of individuals. For example, under section 361 of the Public Health Act, a person may apply, through their lawyer or another nominated person, to a magistrate to order the end of the detention order made by the emergency officer.<sup>363</sup>

Committee comment

The committee is satisfied that sufficient regard has been given to an individual's rights and liberties, given the need to protect the health of the public.

*5.1.3.2 Local government meetings – restrictions on ordinary activities (curtailing public attendance at local government meetings)*

Under local government legislation currently, a chairperson may close a meeting to the public if they are satisfied that it is not practicable for the public to attend the meeting because of health and safety reasons associated with the public health emergency involving COVID-19.<sup>364</sup> The Bill would extend the application of these provisions through to the proposed new 30 April 2022 COVID-19 legislation expiry day.

Preventing individuals from attending (public) local government or committee meetings impacts the person's right to be involved in the democratic process.

<sup>360</sup> Section 362H was introduced in the Public Health and Other Legislation (Public Health Emergency) Amendment 2020. This Bill was declared urgent and was not referred to a committee.

<sup>361</sup> Explanatory notes, p 18.

<sup>362</sup> Explanatory notes, p 17.

<sup>363</sup> Explanatory notes, p 17.

<sup>364</sup> City of Brisbane Regulation 2012, s 255F; Local Government Regulation 2012, s 277E.

The explanatory notes emphasise that the measure is ‘temporary in nature’ and affords flexibility to local governments,<sup>365</sup> as well as further stating:

While the amendments may result in the restriction of 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.<sup>366</sup>

#### Committee comment

The committee is satisfied that the impact on rights from denial of entry to a council or committee meeting is justified by the need to lessen the risk of spreading COVID-19.

The committee notes that existing requirements for the publication of minutes on the council’s website are unaffected by the Bill and remain in force, helping to enable Queenslanders to engage with the activities of their local governments. Further, other provisions extended by the Bill may also enable councils to live stream their meetings, to otherwise minimise such disruptions to public participation.

The committee has considered these provisions further in chapter 6.1.1 of this report (human rights considerations).

#### 5.1.3.3 Electoral provisions – restrictions on ordinary activities (elections)

The Bill extends the application of Part 9B of the LGEA and part 12C of the Electoral Act in respect of the COVID-19 public health emergency. Notably, under party 9B, for a local government fresh election or by-election:

- The ECQ may fix a day by which a voters roll for an election must be compiled (section 200P).
- The Minister, in consultation with the ECQ, may postpone a polling day to more than 2 months after the original polling day (section 200S).
- 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 day (section 200R).
- The Minister, after consulting with the ECQ, may 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 ECQ (section 200T).
- The ECQ may fix a time and day for which an elector may apply to cast a postal vote in an election (section 200U).
- The ECQ may declare that electoral visitor voting is not available, and make alternative arrangements enabling an affected elector to vote (section 200W).
- The ECQ may declare a class of electors who may cast an electronically assisted vote in an election (section 200Y).
- The ECQ may give a direction in relation to the display or distribution of how to vote cards and other election material at a polling booth (section 200Z).
- The ECQ may give directions to scrutineers and candidates about where they may be present and the number of scrutineers each candidate may have at a polling booth or another place (section 200ZA).

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<sup>365</sup> Explanatory notes, p 24.

<sup>366</sup> Explanatory notes, p 25.

- Certain members of the ECQ's staff, a returning officer or presiding officer for a polling booth 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 areas (section 200ZB).
- 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 the returning officer may arrange for the counting of votes to be filmed (section 200ZC).

Part 12C of the Electoral Act includes a range of similar provisions in respect of state government elections.

Each of these temporary electoral provisions has the potential to affect the rights and liberties of individuals by requiring a change in their ordinary activity or imposing an additional burden on them in this respect of their participation in elections.

The explanatory notes provide the following 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 extension of the amendments is 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.<sup>367</sup>

#### Committee comment

The committee is satisfied that the provisions are justified, given their purpose of reducing health risks and their temporary nature.

The committee has considered these provisions further in chapter 6.1.1 of this report (human rights consideration). The committee notes that the amendments include provisions to support alternative voting arrangements and minimise limitations on the right to participate in public life.

#### 5.1.3.4 Disaster management powers – restriction of ordinary activities

The Bill extends the operation of section 138 of the Disaster Management Act in reference to the new COVID-19 legislation expiry day. Section 138 provides for a longer than normal period by which a declared disaster situation may be extended (90 days rather than 14 days).

When a disaster situation is declared, a number of powers are made available to authorised officers to perform certain actions or compel others to refrain from certain actions such as:

- controlling the movement of persons
- entering places
- removing or destroying animals, vegetation, vehicles and structures
- closing roads to traffic.<sup>368</sup>

The explanatory notes advise of these powers:

The powers of authorised officers are discretionary and, will only be exercised in circumstances associated with the COVID-19 disaster situation, where the powers are necessary for public safety and the protection of life or property. Authorised officers are limited to those with the necessary expertise or experience to exercise the powers, and authorisations may be limited or given on conditions specific to the circumstances of the officer or event. The power to give directions about property includes that,

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<sup>367</sup> Explanatory notes, p 23.

<sup>368</sup> Section 138 of the Disaster Management Act was introduced by the Justice and Other Legislation (COVID-19 Emergency Response) Amendment Bill 2020 (later enacted as the Amendment Act). The Bill was declared urgent and was not referred to a committee.

if the property is residential or business premises, directions may only be given with the written approval of the relevant district disaster coordinator (section 78 of the Disaster Management Act).<sup>369</sup>

Committee comment

The committee is satisfied the provisions are justified, given the emergent situation and the potential need for authorised officers to act quickly to protect the health and wellbeing of the community by managing the potential spread of COVID-19.

*5.1.3.5 Body corporate and community management schemes – restrictions on ordinary activities*

The Bill's extension of the COVID-19 legislation expiry day affects provisions across a suite of body corporate and community management regulations.<sup>370</sup> As discussed in section 3.3.3 of this report, the provisions, which will be extended through to the proposed new 30 April 2022 expiry day, enable the committee for the body corporate scheme 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. The decisions stop having effect on the earlier of the following:

- the day the COVID-19 public health direction stops having effect
- the COVID-19 legislation expiry day.

An individual's rights and liberties may be affected by being directed to do certain things or by not being able to perform their ordinary activities without interference.

The explanatory notes set out the FLP issue and justification as follows:

The provisions may also depart from the fundamental legislative principles that legislation have sufficient regard to the rights and liberties of individuals, as they temporarily allow body corporate committees to make decisions to change the rights, privileges or obligations of lot owners if the change is in relation to access to, or the use of, common property or body corporate assets, if necessary to ensure compliance with a public health direction.<sup>371</sup>

... these provisions are designed to support the public health response to the COVID-19 emergency to ensure bodies corporate are able to manage the common property and body corporate assets in a way that complies with relevant public health directions and reduces the threat to public health during the COVID-19 emergency period. Accordingly, it is considered that these temporary measures are justified to protect the health, safety and welfare of persons affected by the COVID-19 emergency in the community titles sector.<sup>372</sup>

Committee comment

The committee is satisfied that the impact on rights and liberties is justified, given the temporary nature of these provisions and their purpose of facilitating compliance with a public health direction.

**5.1.4 Extended COVID-19 emergency powers – delegation to authorised officers (exercise of administrative powers)**

As previously noted (see section 5.1.1.2 of this report), the LSA provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the

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<sup>369</sup> Explanatory notes, p 25.

<sup>370</sup> Eg see s 45A of the Body Corporate and Community Management (Accommodation Module) Regulation 2020, s 17A of the Body Corporate and Community Management (Commercial Module) Regulation 2020, s 17A of the Body Corporate and Community Engagement (Small Schemes module) Regulation 2020 and s 53A of the Body Corporate and Community Management (Standard Module) Regulation 2020, all extended until the end of the proposed new COVID-19 legislation expiry day.

<sup>371</sup> Explanatory notes, p 29.

<sup>372</sup> Explanatory notes, p 29.

legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.<sup>373</sup>

A number of the COVID-19 emergency measures extended by the Bill raise issues around the exercise of administrative power and whether the exercise of that power is subject to appropriate review. These issues are canvassed below.

5.1.4.1 Public Health Act amendments – exercise of administrative powers (restrictions on movement; detention powers)

The Bill's extended support for provisions of the Public Health Act authorising the CHO to issue directions that may restrict freedom of movement, and allowing emergency officers to detain a person for a period of up to 14 days,<sup>374</sup> involve a delegation of administrative power to authorised officers.

The vesting of broad and extensive powers in the CHO and emergency officers could be considered to represent an FLP breach if the powers are not defined sufficiently and are not open to review.

In relation to the use of these administrative powers, the explanatory notes state:

While they are broad, the emergency powers are clearly defined and subject to limits, including that the person giving the direction or order must reasonably believe that it is necessary to assist in containing or responding to the spread of COVID-19. Similarly, directions issued by both the Chief Health Officer and emergency officers must be revoked if the Chief Health Officer or emergency officer is satisfied the direction is no longer necessary.<sup>375</sup>

Committee comment

In its February 2021 report on the PH Emergency Extension Bill, in addressing the same issue, the Health and Environment Committee stated:

The committee considers that the vesting of these broad and extensive powers in the Chief Health Officer and other officers is justified given the need to protect the health of the public and respond to the threat of COVID-19.<sup>376</sup>

The committee concurs with the Health and Environment Committee.

5.1.4.2 Disaster management provisions – exercise of administrative powers (powers of authorised officers)

As previously noted (see report section 5.1.3.4), the Bill extends the operation of s 138 of the Disaster Management Act, which provides for a longer than normal period by which a declared disaster situation may be extended (90 days rather than 14 days). When a disaster situation is declared, powers become available to authorised officers to perform certain actions or compel others to refrain from certain actions, such as controlling the movement of persons, removing or destroying animals, vegetation, vehicles and structures, closing roads to traffic and entering places.<sup>377</sup>

The extension of these powers to authorised officers raises the issue of whether these powers are appropriately defined and also whether they have been appropriately delegated. Powers should be delegated only to appropriately qualified officers or employees.<sup>378</sup> The appropriateness of a

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<sup>373</sup> LSA, s 4(3)(a).

<sup>374</sup> Public Health Act, ss 362B, 362H (inserted by the PH Emergency Act).

<sup>375</sup> Explanatory notes, p 18.

<sup>376</sup> Queensland Parliament, Health and Environment Committee, Report No. 4, 57th Parliament, *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020*, February 2021, p 37.

<sup>377</sup> Section 138 of the Disaster Management Act inserted by the Amendment Act.

<sup>378</sup> The *Acts Interpretation Act 1954*, s 27A contains extensive provisions dealing with delegations.

limitation on delegation depends on all the circumstances including the nature of the power, its consequences and whether its use appears to require particular expertise or experience.<sup>379</sup>

The explanatory notes set out the background and scope of the powers as follows:

The powers of authorised officers are discretionary and, will only be exercised in the circumstances associated with the COVID-19 disaster situation, where the powers are necessary for public safety and the protection of life or property. Authorised officers are limited to those with the necessary expertise or experience to exercise the powers, and authorisations may be limited or given on conditions specific to the circumstances of the officer or event. The power to give directions about property includes that, if the property is residential or business premises, directions may only be given with the written approval of the relevant district disaster coordinator (section 78 of the Disaster Management Act).<sup>380</sup>

#### Committee comment

Noting the justification provided, and the extraordinary and unpredictable nature of the circumstances of the COVID-19 pandemic, the committee is satisfied that the delegation of administrative power afforded by the provisions is justified and appropriate.

#### **5.1.5 Extended COVID-19 emergency powers – delegation of legislative power**

As previously noted (see section 5.1.1.3 of this report), section 4(2)(b) of the LSA, which relates to the institution of Parliament, provides that 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.<sup>381</sup>

This question is concerned with the level at which delegated legislative power is used:

For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation.<sup>382</sup>

Additionally, a bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.<sup>383</sup>

The Bill extends provisions which support the issuing of public health directions and broad regulatory powers in respect of electoral arrangements which raise potential FLP issues in respect of the delegation of legislative power.

##### 5.1.5.1 Public Health Act amendments – delegation of legislative power

As previously noted, the Bill extends the operation of provisions of the Public Health Act which give power to the CHO to make public health directions relating to the COVID-19 emergency, and power to emergency officers to detain a person for up to 14 days.<sup>384</sup>

The explanatory notes provide some background to the use of public health directions:

The content of the directions that may be issued under these provisions are technical and detailed in nature and are subject to frequent change due to the rapidly changing COVID-19 pandemic, so are more appropriately prescribed by a public health direction than being included in the Public Health Act.<sup>385</sup>

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<sup>379</sup> OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 33.

<sup>380</sup> Explanatory notes, p 25.

<sup>381</sup> LSA, s 4(4)(a).

<sup>382</sup> OQPC, FLP Notebook, p 154.

<sup>383</sup> See LSA, s 4(4)(b).

<sup>384</sup> Explanatory notes, p 17.

<sup>385</sup> Explanatory notes, p 30.

The explanatory notes also offer this justification for this legislative approach:

The delegation of powers to the Chief Health Officer is considered appropriate to allow for a rapid response to implement measures to limit, and respond to, the spread of COVID-19 in Queensland. The delegation of powers in this way allows for recommendations, such as those made by Australian Health Protection Principal Committee which comprises several experts in infection control and communicable diseases, to be implemented in a timely manner to reduce the risk of an uncontrolled outbreak of COVID-19 in Queensland.

The delegation of powers to the Chief Health Officer is consistent with the approach taken in other jurisdictions across Australia, such as Victoria and the Australian Capital Territory. Other States, such as Western Australia and South Australia provide their powers to other senior public servants, such as the Commissioner of Police.

The Chief Health Officer is a statutory appointment and accountable in the existing government structures. The Chief Health Officer reports to the Director-General of Queensland Health and the Minister for Health. Therefore, the decision-maker is still within the existing structures of the Queensland Government ...

... Emergency officers are appointed by the chief executive (Director-General of Queensland Health or their delegate) and must be public service officers or employees, health service employees, persons employed by a local government, State Emergency Service members or other persons prescribed by regulation, such as police officers. ...<sup>386</sup>

Further:

The delegation of administrative powers is appropriately limited and is necessary to ensure swift and targeted responses to the rapidly changing risks are possible.<sup>387</sup>

#### Committee comment

The committee considers that the delegation of power to the CHO and emergency officers has sufficient regard to the institution of Parliament, given the extraordinary nature of the public health emergency and the need to respond quickly to control the spread of COVID-19.

#### 5.1.5.2 Electoral provisions – delegation of legislative power

As previously noted, the bill extends temporary amendments to electoral legislation<sup>388</sup> which contain broad regulation-making powers regarding state and local government elections (and by-elections) held in Queensland that are affected by the COVID-19 public health emergency.<sup>389</sup>

The amendments also enable:

- the ECQ to vary the cut-off date for voters rolls and nominations
- the Minister, in consultation with 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 may make an electronically assisted vote
- the ECQ to issue directions about the display and distribution of how-to-vote cards

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<sup>386</sup> Explanatory notes, p 31.

<sup>387</sup> Explanatory notes, p 31.

<sup>388</sup> See specifically: *City of Brisbane Act 2020*, chapter 7, part 5B; *Local Government Act 2009*, chapter 7, part 5B; *Electoral Act*, part 12C; *LGEA*, part 9B, which all expire on the COVID-19 legislation expiry day. These amendments were introduced by the ER Further Extension Act, with the exception of part 12C of the *Electoral Act*, which was introduced by the ER Extension Act.

<sup>389</sup> Explanatory notes, p 35.



- 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 at which they are entitled to be present.

The explanatory notes acknowledge that the extension of such broad regulation-making powers is potentially inconsistent with the FLP that legislation has sufficient regard to the institution of parliament, but argue:

... 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.<sup>390</sup>

The explanatory notes also acknowledge that regulations introduced under these provisions could be inconsistent with the authorising act and current legislation regarding elections.<sup>391</sup> However, the explanatory notes state:

... the scope of these powers is limited to their respective purposes and any regulations made will be temporary. In addition, once approved by the Governor in Council, the regulations must be tabled in the Legislative Assembly and may be the subject of a disallowance motion.<sup>392</sup>

The amendments allow certain legislative requirements and timelines to be varied by the ECQ, the returning officer or the Minister, without further legislative amendment or regulation being made.<sup>393</sup> With respect to this, the explanatory notes state:

These 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 (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.<sup>394</sup>

#### Committee comment

In its report on the ER Further Extension Bill, which introduced the majority of these amendments, the committee considered that the regulation-making powers were appropriate in the circumstances, noting that regulations could be engaged with more quickly than primary legislation to respond to the evolving health situation.<sup>395</sup>

The committee remains of the opinion that any breach of FLP is justified in the circumstances, having regard to the continued need for flexibility in election arrangements during the ongoing COVID-19 emergency.

#### **5.1.6 Extended COVID-19 emergency measures – powers of entry**

FLPs prescribe that legislation should confer power to enter premises, and search for or seize documents or other property, only with the occupier's consent or under a warrant issued by a judge

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<sup>390</sup> Explanatory notes, p 35.

<sup>391</sup> Explanatory notes, p 35.

<sup>392</sup> Explanatory notes, p 35.

<sup>393</sup> Explanatory notes, p 35.

<sup>394</sup> Explanatory notes, p 36.

<sup>395</sup> Parliament of Queensland, Economics and Governance Committee, Report No. 6, 57th Parliament, *COVID-19 Emergency Response and Other Legislation Amendment Bill 2021*, April 2021, p 37.

or other judicial officer.<sup>396</sup> This reflects a long established rule of common law that protects the property of citizens.<sup>397</sup>

These FLP ‘safeguards’ are particularly important when powers of inspectors and similar officials are prescribed in legislation because these powers are very likely to interfere directly with the rights and liberties of individuals.<sup>398</sup>

As noted in section 5.1.4.2 of this report, when a disaster situation is declared, powers become available to authorised officers to undertake certain actions. This may include entering premises, opening containers and taking into a place equipment, persons or materials required to exercise a power.<sup>399</sup>

The explanatory notes set out the scope of these powers:

The powers of authorised officers are discretionary and, will only be exercised in the circumstances associated with the COVID-19 disaster situation, where the powers are necessary for public safety and the protection of life or property. Authorised officers are limited to those with the necessary expertise or experience to exercise the powers, and authorisations may be limited or given on conditions specific to the circumstances of the officer or event. The power to give directions about property includes that, if the property is residential or business premises, directions may only be given with the written approval of the relevant district disaster coordinator (section 78 of the Disaster Management Act).<sup>400</sup>

Further, in justification of the provisions, the explanatory notes state:

While the exercise of these disaster powers has the potential to impact on fundamental legislative principles, any breach is justified, given the emergent situation and the need to protect the health and wellbeing of the community by managing the potential spread of COVID-19.<sup>401</sup>

#### Committee comment

The committee is satisfied that the exercise of administrative powers in the above situations is justified by the extraordinary circumstances of the COVID-19 public health emergency.

#### **5.1.7 Immunity provisions**

The Bill provides for the extended operation (through to the new COVID-19 legislation expiry day of 30 April 2022) of the temporary COVID-19 provision in section 547I of the Environmental Protection Act which empowers the Environment Minister to make a declaration exempting compliance with certain conditions of an approval.<sup>402</sup>

Section 4(3)(h) of the LSA states that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not confer immunity from proceeding or prosecution without adequate justification.<sup>403</sup>

A person who commits a wrong when acting without authority should not be granted immunity. Generally, a provision attempting to protect an entity from liability should not extend to liability for dishonesty or negligence. The OQPC’s FLP Notebook advises that the entity ‘should remain liable for damage caused by the dishonesty or negligence of itself, its officers and employees’, with the

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<sup>396</sup> LSA, s 4(3)(e).

<sup>397</sup> OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 44.

<sup>398</sup> OQPC, FLP Notebook, p 45.

<sup>399</sup> See *Disaster Management Act 2003* (Disaster Management Act), s 77.

<sup>400</sup> Explanatory notes, p 25.

<sup>401</sup> Explanatory notes, p 25.

<sup>402</sup> *Environmental Protection Act 1994* (Environmental Protection Act), s 547I.

<sup>403</sup> LSA, s 4(3)(h).

preferred provision providing immunity only ‘for actions done honestly and without negligence’.<sup>404</sup> Further, if liability is removed from a person, it is usually shifted to the State.<sup>405</sup>

The explanatory notes acknowledge how section 547I impacts on the rights and liberties of individuals:

Exempting a person, or class of persons, from complying with a condition of an approval through a declaration engages section 4(3)(h) of the Legislative Standards Act, as the person will be granted a form of immunity from prosecution for the duration of the declaration. A declaration does not explicitly provide a person with immunity from a proceeding or prosecution generally, rather it stops or pauses a particular condition of an approval from applying for a short duration in order to respond to the impacts of the COVID-19 emergency.<sup>406</sup>

The explanatory notes advise of the provision:

All other conditions of the approval must continue to be complied with and penalties are provided in the Environmental Protection Act for non-compliance. Further, where environmental harm is caused beyond the scope of the approval, the general offence provisions of the Environmental Protection Act continue to apply.<sup>407</sup>

Further, the explanatory notes to the Justice and Other Legislation (COVID-19 Emergency Response) Amendment Bill 2020 (enacted as the Amendment Act), which first established section 547I, offered the following further explanation by way of justification:

Exempting compliance with particular conditions of an approval in the short-term is considered necessary to ensure that the COVID-19 emergency measures currently in place are complied with, without breaching conditions of an approval. For example, a condition of an approval may require the approval holder to fly into a remote community to undertake groundwater monitoring, however, to prevent the spread of the virus this condition may be waived until it is safe to comply with. In this regard, the declaration is not considered to breach the fundamental legislative principles.<sup>408</sup>

#### Committee comment

The committee is satisfied that the extension of this provision, which may be seen to be granting immunity through the exempting of a person from certain conditions of an approval, is justified, given the need to comply with COVID-19 emergency measures.

#### **5.1.8 Takeaway liquor authority provisions**

As noted in chapter 3.3.1 of this report, the Bill extends the operation of part 10A of the Liquor Act through to the new COVID-19 legislation expiry date of 30 April 2022, enabling the Commissioner to continue to issue a TLA to licensees or permittees to sell takeaway liquor in a specified amount (and also to revoke or amend a licence in certain circumstances).

The provisions raise potential FLP issues in relation to both the rights and liberties of individuals and (consistency with natural justice) and the institution of Parliament (delegated legislative power – scrutiny of the assembly).

##### *5.1.8.1 Rights and liberties of individuals – consistency with natural justice*

Section 4(3)(b) of the LSA states that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice.<sup>409</sup>

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<sup>404</sup> OQPC, FLP Notebook, p 64.

<sup>405</sup> OQPC, FLP Notebook, p 64.

<sup>406</sup> Explanatory notes, p 27.

<sup>407</sup> Justice and Other Legislation (COVID-19 Emergency Response) Amendment Bill 2020, explanatory notes, p 12.

<sup>408</sup> Explanatory notes, p 27.

<sup>409</sup> LSA, s 4(3)(b).

These principles have been developed by the common law and include the following:

- Nothing should be done to a person that will deprive them of a right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision-maker.
- The decision maker must be unbiased.
- Procedural fairness should be afforded to the person, including fair procedures that are appropriate and adapted to the circumstances of the particular case.<sup>410</sup>

Under the provisions as extended, the Commissioner may or must suspend, amend or revoke a takeaway liquor authority issued in respect of an individual licensee or permittee, with implications for that person's right to natural justice.<sup>411</sup>

The explanatory notes give this justification for the power to suspend, amend or revoke a licence:

The ability to immediately suspend a TLA will allow the Commissioner to take immediate short-term action against a licensee or permittee who contravenes a TLA, or operates a TLA, to prevent this harm and ensure public safety. It is also important to note that a TLA is an extraordinary, time-limited concession that provides authority well beyond the strict regulations that ordinarily apply to takeaway liquor sales. It is therefore appropriate that serious action be taken to address non-compliance (e.g. suspension), without ordinary natural justice processes applying. Further, amendment or revocation of a TLA will not impact on a licensee or permittee's ordinary licence provisions. Prior to revocation or amendment of the TLA on the grounds of contravention, licensees and permittees will be provided with a period of seven days to show cause as to why the Commissioner should not take further action to amend or revoke a TLA. This provides licensees and permittees with a level of procedural fairness and ensures a proportionate response will be taken to address the specific causes of non-compliance or harm.<sup>412</sup>

#### Committee comment

The committee is satisfied that the requirements of procedural fairness and natural justice are met, given that the licensee has an opportunity to respond to the show cause notice.

#### 5.1.8.2 Institution of Parliament – subject to the scrutiny of the Legislative Assembly

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.<sup>413</sup>

As acknowledged in the explanatory notes, part 10A of the Liquor Act provides the Commissioner with broad discretionary powers to provide specific concessions to certain licensees and permittees that are not contained in the Liquor Act, without any direct oversight by Parliament or right of administrative review.<sup>414</sup>

The explanatory notes provide the following justification for this potential FLP breach, based on the need to support business during the COVID-19 emergency:

... the potential breaches are justified on the grounds of public interest. The COVID-19 emergency is an unprecedented situation, and it is intended that businesses affected by emergency closures be supported by allowing them to provide liquor services to the community in a different capacity. Given the temporary nature and the limited duration of the measures, requiring further Parliamentary scrutiny over such determinations would be impractical in these extraordinary circumstances and making such determinations reviewable is not considered an appropriate imposition on the Queensland Civil and

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<sup>410</sup> OQPC, FLP Notebook, p 25.

<sup>411</sup> Liquor Act, ss 235F, 235G.

<sup>412</sup> Explanatory notes, p 28.

<sup>413</sup> LSA, s 4(4)(b).

<sup>414</sup> Explanatory notes, p 34.

Administrative Tribunal's resources. The provisions specified in a TLA are of benefit to licensees and do not impose any burden.<sup>415</sup>

Whilst the TLAs are not subordinate legislation (and there is therefore no requirement to table explanatory notes or a human rights certificate with an authority<sup>416</sup>), the usual tabling and disallowance provisions of the *Statutory Instruments Act 1992* do apply.<sup>417</sup>

#### Committee comment

The committee is satisfied that there is a sufficient level of parliamentary oversight and scrutiny given that the tabling and disallowance provisions of the *Statutory Instruments Act 1992* apply to TLAs which enables the Legislative Assembly to act to disallow any of them. The committee notes that TLAs benefit licensees during the COVID-19 emergency.

#### **5.1.9 Extended COVID-19 emergency measures – amendment of an Act only by another Act**

The Bill provides for the extension of a number of COVID-19 emergency measures which provide for variations or changes that may have the effect of overriding the provisions of an Act, including in relation to gaming tax notices, environmental declarations and manufactured homes related provisions.

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill authorises the amendment of an Act by another Act.<sup>418</sup> A clause in an Act, which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action is defined as a 'Henry VIII clause'.

Generally, the greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.

##### 5.1.9.1 Gaming tax notices

The Bill extends the operation of temporary provision in Part 11A of the Gaming Machine Act 'providing that the Minister may make a gaming tax notice to defer or waive payment of a gaming tax payable under the Gaming Machine Act, Casino Control Act, Keno Act or Lotteries Act'.<sup>419</sup>

The explanatory notes state that under the amendments, a gambling tax notice issued by the Minister (with the approval of the Treasurer) is subordinate legislation that has effect despite a provision of the enabling Act.<sup>420</sup>

The explanatory notes provide the following justification:

The amendment, and its departure from the fundamental legislative principles, is considered to be justified in view of the potentially urgent need to assist licenced businesses in the recovery from COVID-19, the beneficial nature of the provision, and the time-limited nature of the amendments.<sup>421</sup>

#### Committee comment

The committee considers the potential breach of FLP to be reasonably justified in the circumstances, noting the intent of these provisions is to assist businesses adversely affected by the COVID-19 pandemic and given the temporary nature of their operation.

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<sup>415</sup> Explanatory notes, pp 34-35.

<sup>416</sup> Liquor Act, s 235I(4).

<sup>417</sup> Liquor Act, s 235I.

<sup>418</sup> LSA, s 4(4)(c).

<sup>419</sup> See explanatory notes, p 13. See Part 11A, *Gaming Machine Act 1991*, the *Gaming Tax Notice (No.2) 2020*, s 57A of the *Casino Control Act 1982*, s 116A of the *Keno Act 1996* and s 99A of the *Lotteries Act 1997*.

<sup>420</sup> Explanatory notes, p 33.

<sup>421</sup> Explanatory notes, p 33.

### 5.1.9.2 Environmental declarations

AS noted at chapter 5.1.7, the Bill extends section 547I of the Environmental Protection Act, which provides that the Environment Minister may make a declaration exempting compliance with stated conditions of approval.

The explanatory notes acknowledge that this amendment allows the Minister to override the operation of the Act.<sup>422</sup>

The explanatory notes provide the following background and justification:

The Environmental Protection Act already provides a power for the Administering Authority to amend the conditions of an environmental authority. However, given the number of parties potentially affected by the COVID-19 emergency, it is not considered practical to amend each individual environmental authority or other approval that may be affected. Instead, the amendment will allow the Environment Minister to make a declaration exempting compliance with certain conditions, which is considered justified in this circumstance.<sup>423</sup>

Additionally, the explanatory notes highlight the following safeguards in the legislation:

Safeguards are in place to ensure that the power to make the abovementioned declaration cannot be delegated by the Minister and that any declared exemptions are temporary. In addition, section 5 of the Environmental Protection Act requires a person (upon whom a power or function is conferred) to perform the function or exercise the power in a way that best achieves the object of the Act (i.e. to achieve ecologically sustainable development).<sup>424</sup>

### Committee comment

The committee considers that the impact on the institution of Parliament is justified, given the temporary nature of the provisions and the need for flexibility while navigating the COVID-19 pandemic.

### 5.1.9.3 Manufactured homes provisions

The Bill extends the operation of section 146A of the Manufactured Homes Act, which provides a general regulation-making power to modify or suspend particular processes under the Act for COVID-19 response measures. It also means that any regulations made under this section, including the Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020 (Manufactured Homes Regulation), continue to remain in force until 30 April 2022.<sup>425</sup>

The Manufactured Homes Regulation modifies the operation of the Manufactured Homes Act to:

- enable meetings of manufactured home owners to be conducted using audio or audio-visual links
- create a modified process for increasing or reducing site rent during the COVID-19 emergency period (otherwise than in accordance with the market review process set out in the Manufactured Homes Act).<sup>426</sup>

More generally, any regulation made under section 146A can be inconsistent with the Manufactured Homes Act or another Act or law (except the HRA) to the extent necessary to achieve a purpose of the regulation.<sup>427</sup>

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<sup>422</sup> Explanatory notes, p 34.

<sup>423</sup> Explanatory notes, p 34.

<sup>424</sup> Explanatory notes, p 34.

<sup>425</sup> Manufactured Homes Act, s 146A(8). Section 146A was introduced by the Amendment Act.

<sup>426</sup> Explanatory notes, p 9.

<sup>427</sup> Manufactured Homes Act, s 146A(7).

The extension of the regulation-making power contained in section 146A is potentially inconsistent with the FLP that legislation has sufficient regard to the institution of Parliament, in particular because regulations made under that section may be inconsistent with the primary legislation.

The explanatory notes state:

This regulation-making power is justified by the need to ensure fairness for manufactured home owners during the COVID-19 emergency. In particular, this will enable Government to address issues raised by industry groups and manufactured home owners about rigid processes applying to increases in site rent mandated in the Manufactured Homes (Residential Parks) Act and difficulties in applying these during the COVID-19 emergency. In this regard, the processes around 'market reviews' of site rent are a concern for both groups.<sup>428</sup>

The explanatory notes further provide:

Inconsistency with fundamental legislative principles is mitigated by the time-limited nature of the amendments and the requirement for a direct link to an exceptional or emergency circumstance balancing community and individual interests related to health and the COVID-19 emergency. Further, the regulation will be subject to disallowance by the Legislative Assembly under section 50 of the *Statutory Instruments Act 1992*.<sup>429</sup>

Committee comment

The committee notes the justification provided. The committee is satisfied that any breach of FLPs is justified in the circumstances.

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<sup>428</sup> Explanatory notes, p 36.

<sup>429</sup> Explanatory notes, p 37.

## 6 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.<sup>430</sup>

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.<sup>431</sup>

The HRA protects fundamental human rights drawn from international human rights law.<sup>432</sup> 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.

### 6.1 Human rights compatibility

#### *Committee comment*

The committee notes that this Bill is put before the Parliament with the aim of protecting the health and safety of Queenslanders by supporting the ongoing health response to COVID-19, as well as facilitating the continued functioning of businesses and institutions disrupted by the pandemic and its effects.

The HRA expressly recognises rights implicated by a public health emergency. The HRA states, in section 16, that: ‘Every person has the right to life and has the right not to be arbitrarily deprived of life’. The QHRC, in examining the scope of this right, has noted:

This right includes an obligation on the states to take steps to protect the lives of individuals. Examples include positive measures to address threats to life.<sup>433</sup>

Also central to the health response is the human right to health services, recognised in section 37 of the HRA.<sup>434</sup>

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 sections 16 and 37, other rights of Queenslanders may be adversely impacted.

The QHRC 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.<sup>435</sup>

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 significant limitations on rights,

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<sup>430</sup> HRA, s 39.

<sup>431</sup> HRA, s 8.

<sup>432</sup> 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.

<sup>433</sup> QHRC, *Fact sheet: Right to life – Section 16 of the Human Rights Act 2019*, July 2019, p 1, [https://www.qhrc.qld.gov.au/\\_\\_data/assets/pdf\\_file/0004/19885/QHRC\\_factsheet\\_HRA\\_s16.pdf](https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0004/19885/QHRC_factsheet_HRA_s16.pdf).

<sup>434</sup> Section 37 of the HRA provides that ‘every person has the right to access health services without discrimination’ and that a person ‘must not be refused emergency medical treatment that is immediately necessary to save the person’s life or to prevent serious impairment to the person’.

<sup>435</sup> QHRC, *Fact sheet: Right to life – Section 16 of the Human Rights Act 2019*, July 2019, p 1, [https://www.qhrc.qld.gov.au/\\_\\_data/assets/pdf\\_file/0004/19885/QHRC\\_factsheet\\_HRA\\_s16.pdf](https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0004/19885/QHRC_factsheet_HRA_s16.pdf).



the committee is satisfied that these limitations are reasonable and justifiable, in accordance with s 13 of the HRA. Relevant to the committee's arrival at this conclusion was a consideration of the precautionary principle, which has implications for the balancing of the risks and severity of possible limitations with those that may arise if they are not engaged, together with the various incorporated safeguards and other rights promoting benefits which may reduce and offset adverse effects.

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 outlined below.

### **6.1.1 Human rights considerations**

The Bill's provisions present a number of limitations on human rights, the most significant of which are associated with the continued authorisation of the CHO and emergency officers to restrict the movement of any person or group of persons to limit or respond to the spread of COVID-19, including by requiring persons to isolate or quarantine themselves, requiring persons to stay at or in a stated place (or not at or in a stated place), limiting contact between groups of persons, and requiring businesses and undertakings to open, close or limit access to their facilities. To a lesser extent, these potential limitations on the right to freedom of movement (recognised in section 18 of the HRA) may also serve to limit a range of other rights including:

- the right to equality before law (section 15), which may be enlivened by the power of the CHO to issue public health directions that may have disproportionate impacts on different persons (including, for example, with heightened impacts on persons in aged care settings)
- the right to freedom of thought, conscience, religion and belief (section 20), including in respect of a person's freedom to seek, receive and impart information and ideas of all kinds, and ability to publicly demonstrate and practise their religion or beliefs, which may be reduced by limitations on movement and engagement with other persons
- the right to peaceful assembly and freedom of association (section 22) and the right to take part in public life (section 23), both of which may be temporarily limited in a similar fashion
- the right to property (section 24), including limitations on the way in which a person may access or use their property during a period of isolation or restricted movement, or in respect of a business property subject to imposed operating constraints
- the right to privacy and reputation (section 25), which is broadly construed and includes a specific right against interference with a person's physical integrity as well as a person's personal information
- the cultural rights of Aboriginal and Torres Strait Islander persons (section 28) – directions to prohibit gatherings of people, require self-isolation, or to otherwise restrict the movement of groups and individuals may limit the ability of Aboriginal peoples and Torres Strait Islander peoples to engage with community and their traditionally owned or otherwise occupied lands and waters
- the right to education (section 36), as affected by potential temporary restrictions on individuals attending schools or other educational institutions subject to a direction to self-isolate or a broader measure to contain or arrest the spread of COVID-19 (certain activities, such as school assemblies or performances may also be temporarily restricted, 'however such restrictions would be without discrimination'<sup>436</sup>).

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<sup>436</sup> Statement of compatibility, p 16.

In the statement of compatibility, the Minister advised that these limitations 'are unavoidable and have been mitigated to the greatest extent possible'.<sup>437</sup> In respect of a direction to self-isolate, for example, the statement highlights that:

... persons may only be directed to self-isolate if an emergency officer reasonably believes that self-isolation is necessary to contain the spread of COVID-19 within the community. The period of self-isolation will not exceed 14 days, unless a further lawful direction is issued, and the direction must be revoked immediately if at any time the officer is satisfied that the direction is no longer required. In addition, directions may include conditions to minimise interference with persons' freedom of movement and other human rights, such as by providing that persons who are under self-isolation may leave their home or other accommodation to obtain medical care or supplies or to engage in activities that do not involve close contact with other persons.<sup>438</sup>

Further, the Minister notes that any limitations imposed under such powers are not arbitrary in nature, but rather are imposed in direct proportion to identified health risks and the legitimate aim of protecting the health and safety of the community.<sup>439</sup>

Various other key limitations associated with the extension of COVID-19 emergency measures and the Bill's further quarantine related amendments include the following:

- **Disclosure of confidential information** – The extension of provisions authorising disclosure of confidential information by the CHO to enable the delegation of responsibilities in respect of contact tracing, within the context of broader contact tracing arrangements and the use of QR codes, raises issues in respect of the right to privacy and reputation protected in section 24 of the HRA<sup>440</sup> (see also report section 3.2.2). The statement of compatibility notes that the Public Health Act contains specific protections for privacy, including requirements that information disclosed under these provisions must not directly or indirectly identify the person to whom the confidential information relates.<sup>441</sup> Further, in relation to the potential limitation on the right to privacy in respect of the CHO's disclosure of information to officers with delegated contact tracing responsibilities, the statement advises that the continuation of the amendments reflects the practicalities of the administrative burden of the health response and:

...is consistent with a free and democratic society based on human dignity, equality and freedom because it facilitates the disclosure of the information in the public interest where the chief executive or Chief Health Officer need to focus on leading the State's response to the COVID-19 emergency.<sup>442</sup>

- **Electoral provisions** – In addition to the impacts of the Public Health Act amendments on the right to take part in public life, this right is also enlivened by the extended provision for temporary variations in electoral arrangements to support COVID-safe elections. In relation to the electoral amendments in particular, the statement of compatibility notes that provisions which enable the alteration of periods for updating the electoral roll, the receipt of candidate nominations and for casting a vote (including by adjourning or postponing a poll) may make it more challenging for certain voters to exercise their right to vote and to be elected in periodic state and local government elections.<sup>443</sup> This may also be the case in respect of provisions which may be engaged to limit certain methods of voting (eg by allowing the ECQ to declare

<sup>437</sup> Statement of compatibility, p 19.

<sup>438</sup> Statement of compatibility, p 19.

<sup>439</sup> Eg see statement of compatibility, pp 14, 15, 16, 32, 50, 62.

<sup>440</sup> The statement of compatibility also notes that the right to privacy is broadly construed and includes a right against interference with a person's physical integrity, which may be affected by the public health direction powers. See statement of compatibility, p 12.

<sup>441</sup> Public Health Act, ss 81(3) and 109(3).

<sup>442</sup> Statement of compatibility, p 20.

<sup>443</sup> Statement of compatibility, p 31.

that electoral visitor voting is not available for a by-election or fresh election). Further, issues are also raised by provisions enabling the imposition of limitations on the movement and expression of persons at polling places (eg including by limiting the number of scrutineers present and imposing restrictions on the display or distribution of electoral materials). The statement emphasises of these limitations, however, that:

- the provisions for flexibility around periods and timeframes for electoral processes are intended to account for delays that may be caused by COVID-19 and to allow for alternative arrangements to be made (eg by facilitating the increased use of postal voting, postal ballots and electronically assisted voting to reduce the need for persons to attend to vote at a polling booth)<sup>444</sup>
  - provisions enabling the ECQ to decline to offer electoral visitor voting are in order to reduce person-to-person contact and the potential for issuing officers to spread the virus as they travel between different residences (the statement also notes that ‘alternative arrangements are required to be made to enable electors affected by a relevant declaration or direction to vote’)<sup>445</sup>
  - provisions enabling the ECQ to give directions about the number of scrutineers who may be present and about the movement of those scrutineers and of candidates at a polling booth, or in relation to the display or distribution of how-to-vote cards and electoral materials, are required ‘to reduce person-to-person contact and contagion risks...’, including ‘the risk of super-spreading events’.<sup>446</sup>
- **Local government meeting provisions** – The Bill’s continued provision for local government and committee meetings to be closed to the public if the chairperson of the meeting is satisfied it is not practicable for the public to attend the meeting because of health and safety reasons associated with COVID-19, limits the right to take part in public life and the right to freedom of expression to the extent that these meetings would not be open to the public to observe or listen to discussions and decisions that would usually be conducted in the open. The statement of compatibility notes that the amendments to local government legislation also include provision for meetings to be held ‘via audio or audio-visual link with real-time viewing requirements to enable interested members of the public to listen to meetings’. However:
    - ... local governments vary in technical capacity and particularly smaller remote and regional councils may not have the technology or reliability of internet access to support the live streaming of meetings.<sup>447</sup>The restrictions, the statement notes, enable local governments to continue to hold meetings while still limiting gatherings of people in enclosed spaces as required to protect the right to life of councillors, committee members and the public.<sup>448</sup> Further, existing requirements for councils and their committees to take minutes and make them available for inspection on the local government’s website (and at its public office) ‘allow the public to remain informed about the discussions and decisions made in restricted access meetings’.<sup>449</sup>
- **Quarantine system arrangements** – the extended provision for the issuing of isolation and quarantine directions and the new quarantine fee prepayment system engage a number of human rights, including the right to liberty and security of person (section 29), the right to humane treatment when deprived of liberty (section 30), the right to equality before the

<sup>444</sup> Statement of compatibility, p 33.

<sup>445</sup> Statement of compatibility, pp 31, 34.

<sup>446</sup> Statement of compatibility, p 34.

<sup>447</sup> Statement of compatibility, p 37.

<sup>448</sup> Statement of compatibility, p 37.

<sup>449</sup> Statement of compatibility, p 37.

law (section 15), the right to privacy and reputation (section 25), and the right to a fair hearing (section 31). The statement of compatibility notes that the Bill continues to provide powers for an emergency officer (medical) to detain a person under a detention order for 14 days where they reasonably believe it is necessary to assist in containing or responding to the spread of COVID-19.<sup>450</sup> The nature of the treatment of individuals while detained is also unavoidably characterised by the restriction of rights in this setting, and as noted at section 3.2.1 of this report, the extent to which quarantine arrangements are consistent with the right protected in section 30 has been publicly questioned to some extent. The statement of compatibility emphasises of these limitations that they are not ‘arbitrary... or otherwise disproportionate to the legitimate aim that is sought’.<sup>451</sup>

The continuing detention powers are clearly defined and subject to limits, including that the person giving the direction or order must reasonably believe that it is necessary to assist in containing or responding to the spread of COVID-19. In addition, a direction to self-isolate by an emergency officer and a detention order by an emergency officer (medical) can only detain a person for 14 days. The ability to detain a person for this period aligns with publicly available information from the Australian Health Protection Principal Committee that most people who are infected with COVID-19 will develop symptoms within 14 days of infection. This time period is therefore a reasonable and proportionate response to the risk of COVID-19 spreading unknowingly through the community.<sup>452</sup>

Further, the statement outlines a range of procedural protections associated with the engagement of the provisions, including advising:

Section 354 of the Public Health Act requires the emergency officer (medical) to request that the detained person be subject to a medical examination. This section establishes protections for the detained person by requiring the emergency officer (medical) to:

- explain the examination in a way the detained person is likely to readily understand;
- tell the detained person they may refuse the examination; and
- give the detained person the opportunity to choose the doctor to perform the examination.

The Bill therefore promotes the protection from torture and cruel, inhuman and degrading treatment by providing the necessary requirements to ensure that a person cannot be medically examined without their full, free and informed consent.<sup>453</sup>

In terms of the new quarantine prepayment system, the provisions potentially limit the human right to property to the extent that the proposed policy will require payment of monies; and the provision for the prescription of some classes of people who will be required to prepay their quarantine fees in advance and that may be excluded from applying for a fee waiver has implications for the right to equality before law (as the law may thus apply differently to different people entering the state). In respect of the latter limitation, the statement of compatibility notes that it is difficult to assess the human rights implications that may arise from these amendments because:

... the human rights implications will not crystallise until:

- a regulation has been made prescribing cohorts of travellers who are required to pay quarantine fees in advance of their arrival in Queensland; or

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<sup>450</sup> Statement of compatibility, p 9.

<sup>451</sup> Statement of compatibility, p 15.

<sup>452</sup> Statement of compatibility, p 15.

<sup>453</sup> Statement of compatibility, p 9. Note: the statement also cites other protections engaged to safeguard other rights, including the right to access health services and education while in detention.

- the chief executive determines the amount that a person must prepay, the manner in which they must prepay the required amount, and/or the date and time by which the prepayment must be received.<sup>454</sup>

In terms of the Bill's confirmation of the ability to issue quarantine notices electronically, potential limitations arise in relation to the privacy of the person's information (as the Bill authorises the use of a person's personal information for the purpose of giving a document), and in respect of the right to a fair hearing, as the Bill reverses the onus of proof which is recognised as an important element of criminal proceedings (which presumes innocence and places the onus of proving the offence on the prosecution). The Bill engages this right by providing that, unless the contrary is proved, a document given electronically is deemed to have been received by the person at the time the direction is sent to the person's nominated email address. Additionally, there may be human rights implications if, for example, the person does not receive an invoice and is unable to make a timely application for a waiver of quarantine fees.<sup>455</sup>

In acknowledging these potential limitations, the statement of compatibility emphasised that the Bill contains several protections for those affected, including noting that:

- persons from prescribed traveller cohorts would have access to full or partial refunds of prepaid quarantine fees if their travel arrangements change and they do not arrive in Australia or are required to quarantine for a shorter period than is necessary; and the Bill also provides for fee waivers (unless the person is in an ineligible cohort)
- in terms of the use of a person's personal information to give a document electronically, the amendments are clear that a direction can only be provided to a person electronically if the person gives their express consent and nominates a unique email address
- the Bill includes safeguards to ensure the process for invoicing and collecting quarantine fees is not unduly restrictive—for example, a person must pay within 30 days of being given the invoice, or a longer period agreed by the chief executive and the person (the statement notes that this 'provides flexibility to ensure a person is not disadvantaged due to issues in receiving an invoice or other document'<sup>456</sup>)
- Failure to pay quarantine fees is not a criminal offence and there are penalties for a person who does not pay by the due date. The collection of quarantine fees, including consequences for non-payment, is managed through existing administrative process.<sup>457</sup>

Further, the statement of compatibility explains of the broader purpose and reasonableness of the prepayment system:

In cases where government services are provided, it is standard practice for cost recovery to apply in appropriate cases. In this instance, it is considered a fee should be charged to ensure that costs are born primarily by those receiving the benefits of the services provided rather than by the community as a whole. This will ensure that the costs of quarantine are equitably distributed and will encourage persons to carefully consider how and when they will travel to Queensland.

The requirement for specific cohorts to prepay quarantine fees will provide more flexibility for payment and collection arrangements and increase the proportion of quarantine fees that are paid. This ensures that sufficient resources are available to the State to guarantee the quality and sustainability of Queensland's quarantine system and ultimately, its management of the significant public health risk caused by the COVID-19 emergency.

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<sup>454</sup> Statement of compatibility, p 59.

<sup>455</sup> Statement of compatibility, p 61.

<sup>456</sup> Statement of compatibility, p 61.

<sup>457</sup> Statement of compatibility, pp 61-62.

The fee is not being imposed arbitrarily... as it is directly related and proportionate to the legitimate aim of ensuring that the costs of mandatory quarantine are distributed fairly and are payable primarily by those who receive the benefits of the government services provided.

There may be instances where charging a fee could be considered unjust because it would impose a hardship on certain classes of individuals. To mitigate this concern, the amendment to provide for a waiver from the payment of fees will also continue to provide for all or part of the fee to be waived in certain circumstances. As discussed further below, the chief executive will have the discretion to waive all or part of a fee for persons who are vulnerable or facing financial hardship. The hardship scheme will be applied in a way that is consistent, reasonable and proportionate.<sup>458</sup>

- **Bodies corporate and manufactured homes amendments:** The Bill potentially limits property rights (section 24) by continuing amendments to permit a body corporate committee to make decisions to change the rights, privileges or obligations of lot owners about access to, or the use of common property or body corporate assets. The limitation is intended to enable body corporate committees to change access arrangements 'if the committee considers the change is reasonably necessary to ensure compliance with relevant public health directions' imposed in the interest of protecting rights to life and health services.<sup>459</sup>

Property rights are also engaged by continuation of financial relief measures under:

- amendments to the Manufactured Homes Act which provide a regulation-making power that may temporarily impose limits on a park owner's ability to derive profit from their property through the payment of site rent (specifically, in terms of the extent or timing for receiving the payment)
- amendments to the *Body Corporate and Community Management Act 1997* and *Building Units and Group Titles Act 1980*, which allow for extensions to the due date for payment of proprietor contributions and prevent bodies corporate from charging penalty interest on outstanding contributions in the period from commencement until the expiry of the amendments.

In relation to the manufactured homes sector, the statement of compatibility advises that the limitation is:

... intended to strike a balance between the right of park owners to derive a profit from their property with the rights of park residents to use and enjoy their home without the imposition of unfair or unreasonable site rent increase during the COVID-19 emergency, noting that many residents are vulnerable and low-income.<sup>460</sup>

Further, in respect of the body corporate relief measures, the statement advises that the Bill:

... promotes the right to property by providing bodies corporate with increased flexibility to accommodate individual lot owners who may be experiencing difficulty paying their normal body corporate contributions due to, for example, reduced income arising from COVID-19.<sup>461</sup>

- **Disaster management provisions:** The Bill extends amendments to the Disaster Management Act which increase the period by which a regulation may extend the COVID-19 disaster situation from 14 to 90 days, as well as providing an exemption from liability for any damage or loss caused by the exercise or purported exercise of powers by disaster officers under the Act. This has implications for the right to property, which does not provide an explicit right to compensation for the deprivation of property, but may encompass situations such as this in which an existing right to compensation is being removed—in this case, with retrospective

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<sup>458</sup> Statement of compatibility, p 62.

<sup>459</sup> Statement of compatibility, p 28.

<sup>460</sup> Statement of compatibility, p 51.

<sup>461</sup> Statement of compatibility, p 10.

effect.<sup>462</sup> The statement of compatibility advises that the purpose of the amendments and limitation on the right to property is ‘to avoid liability for compensation payments where relevant officers cause loss of damage to property’, which ‘will serve to mitigate the economic impacts of the COVID-19 emergency on the Queensland Government, and will also support the Government’s ability to provide economic stimulus packages to uphold fundamental entitlements and services for Queenslanders’.<sup>463</sup>

International human rights law indicates that economic considerations alone are insufficient to justify a limit on human rights. However, ‘financial considerations wrapped up with other public policy considerations could qualify as sufficiently important objectives [to justify a limitation on human rights]’<sup>464</sup> and could be justified where measures to reduce expenditure were undertaken to ‘promote other values of a free and democratic society’.<sup>465</sup> In this instance, the statement notes:

There is the potential for a significant proportion of the population to be affected by the exercise of powers under the declared disaster situation. In this environment, uncapped and unpredictable compensation claims for damage or loss suffered may place further economic pressure on the State and diminish the Government’s ability to provide stimulus measures. ...

...

No less restrictive and reasonably available ways of achieving the purpose have been identified. The COVID-19 emergency has had, and continues to have, economic impacts on Queensland and relevant officers need to be able to exercise the relevant powers during the declared disaster without placing the Government at risk of unknown and unpredictable compensation claims.

The amendment is limited to the exercise of powers for the purposes of the declared disaster, and various protections contained in the Disaster Management Act ensure that the relevant powers are exercised appropriately. For example, these powers may only be exercised by authorised officers in certain circumstances, such as where they are necessary for public safety and the protection of life or property. Authorised officers are limited to those with the necessary expertise or experience to exercise the powers, and authorisations may be limited or given on conditions specific to the particular circumstances of the officer or event.

Operational practice also ensures that powers are exercised appropriately. In regard to emergency and disaster situations, any assessment of expertise or experience would take into account the training framework that applies to both paid and volunteer officers. Emergency and disaster response practices include limiting potential damage where possible in the context of operational requirements and the safety of individuals (including employees, volunteers and the community).<sup>466</sup>

While the committee accepts this explanation, it notes that Victoria appears to have adopted a more intermediate position in respect of similar amendments contained in section 204 of the *Public Health and Wellbeing Act 2008* (Vic). Rather than wholly exempting liability for the state, that section of the Victorian Act limits compensation to cases in which there are ‘insufficient grounds’ for interference with property rights—an approach that warrants consideration. Additionally, it may be relevant to differentiate here between the property of natural persons (who are the holders of human rights) and the property of corporate entities.

In addition to these various COVID-19 emergency measures, the regulation-making powers and modification framework under the ER Act have the potential to limit most, if not all, of the human rights protected by the HRA depending on the nature of the secondary instruments that may be

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<sup>462</sup> Statement of compatibility, p 42.

<sup>463</sup> Statement of compatibility, p 42.

<sup>464</sup> *Newfoundland (Treasury Board) v NAPE* [2004] 3 SCR 381, 411 [69] (Binnie J, for the Court).

<sup>465</sup> *Newfoundland (Treasury Board) v NAPE* [2004] 3 SCR 381, 411 [75] (Binnie J, for the Court), citing *Egan v Canada* [1995] 2 SCR 513.

<sup>466</sup> Statement of compatibility, p 43.

enacted or exercised under the empowering provisions.<sup>467</sup> The committee notes that the human rights that are relevant to each of those secondary instruments that the Bill would be extending are set out in the human rights certificates accompanying the regulations, and which are the subject of scrutiny by the parliamentary committee with portfolio responsibility for the subordinate legislation.

### 6.1.2 Precautionary principle

As noted above, one of the positive obligations imposed on the state under the right to life is to take appropriate steps and adopt positive measures to protect life. The United Nations Human Rights Committee (UNHRC) has said that this extends to taking appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity, including measures relating to the environment.<sup>468</sup> Relevant to the design and implementation of such measures in the face of a public health emergency are the spectre of scientific uncertainty and the consequent importance of a precautionary approach, as has been recognised in the *Palmer v Western Australia* litigation (which involved a challenge to that state's COVID-19 related border restrictions). Rangiah J expressly considered this principle in the following passages from the judgment that provided the factual basis for the High Court's consideration of Mr Palmer's challenge to the constitutional validity of Western Australia's border restrictions:

[73] In his evidence, Dr Robertson referred to the 'precautionary principle' and the need to take a precautionary approach. The application of these concepts in managing public health risks was explained by Associate Professor Lokuge in her report of 26 June 2020. She considers the probability of importation of COVID-19 into Western Australia from a State where community transmission cannot be known or quantified from reported data. It is her opinion that such uncertainty mandates the application of risk management principles including the 'precautionary principle'.<sup>469</sup> Associate Professor Lokuge quotes from a paper entitled, 'The Precautionary Principle: Protecting Public Health, the Environment and the Future of our Children', published by the World Health Organisation:

'Public health is inherently about identifying and avoiding risks to the health of populations as well as in identifying and implementing positive interventions to improve population health. However, traditional public health interventions have generally focused on removing hazards that have already been identified. In contrast, the precautionary principle states that action should be taken to prevent harm 'even if some cause and effect relationships are not fully established scientifically'. The precautionary principle therefore seeks to shift health and environmental policy from a strategy of 'reaction' to a strategy of "precaution".'<sup>470</sup>

[74] In her oral evidence, Associate Professor Lokuge explained that the precautionary principle indicates that action should be taken based upon an understanding of what might occur, because if authorities wait for clear evidence of its occurrence, it may be too late.<sup>471</sup> She said that in the context of a pandemic disease of high mortality, which is highly infectious and of rapid spread, the principle requires, from a public health perspective, implementation of all available and effective mitigation measures.<sup>472</sup> In the joint experts' report, Associate Professor Lokuge states that this is exactly the situation that risk management approaches and the precautionary principle were developed to address — substantive uncertainty where important harms are plausible.<sup>473</sup>

[75] In her oral evidence, Associate Professor Lokuge indicated that the precautionary principle is an accepted principle of management of infectious diseases, saying that in all the outbreaks she has worked on, particularly those involving high risk pathogens, it is the guidance that she and her

<sup>467</sup> As acknowledged in the statement of compatibility – see p 26.

<sup>468</sup> United Nations Human Rights Committee, *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, paragraph 26, p 6, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf).

<sup>469</sup> Expert Report of Associate Professor Lokuge, Court Book Tab 35, p 467 at [3.2.8]. [Footnote in original.]

<sup>470</sup> Expert Report of Associate Professor Lokuge, Court Book Tab 35, p 467 at [3.2.8]. [Footnote in original.]

<sup>471</sup> Transcript 28 July 2020, p 187 ll 14-23. [Footnote in original.]

<sup>472</sup> Transcript 28 July 2020, p 189 ll 6-19. [Footnote in original.]

<sup>473</sup> Joint Experts' Report, Court Book Tab 43, p 700 at [1.2]. [Footnote in original.]



colleagues have used.<sup>474</sup> She considers that Western Australia has been applying that principle in its management of the pandemic.<sup>475</sup>

[76] I accept the evidence of Associate Professor Lokuge that the precautionary principle is an accepted principle of management of a pandemic which involves the potential for grave public health risks.<sup>476</sup>

Kiefel CJ and Keane J in their joint judgment in *Palmer v Western Australia* in the High Court observed in relation to Rangiah J's findings that:

[79] His Honour did not suggest that a low risk of an infected person entering Western Australia was acceptable from a public health perspective. His Honour considered that once a person infected with COVID-19 enters the community there is a real risk of community transmission and that it may become uncontrollable. Because of the uncertainties about the level of risk and the severe, or even catastrophic, outcomes which might result from community transmission, a precautionary approach should be adopted.

[80] These findings leave little room for debate about effective alternatives. ...<sup>477</sup>

The committee notes that the arrival in Australia of the highly transmissible Delta variant, in combination with relatively low vaccination rates (including younger members of the community not yet having been given access to vaccines), provide additional justifications for adopting a precautionary approach in relation to measures taken in respect of the COVID-19 pandemic.

The statement of compatibility makes a compelling case in this regard:

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.

Failure to impose these measures may result in Queensland's health infrastructure becoming overwhelmed, with the result that decisions will need to be made as to who receives lifesaving treatment and otherwise preventable deaths occurring. This is not an abstract threat; there are several countries which have been unable to mount an effective public health response that are now experiencing deaths at a higher rate than in countries that have implemented stronger containment and social distancing measures.

Although the continuation of the amendments made to the Public Health Act to support the Queensland Government's health response to COVID-19 potentially limits many rights, in many instances the limitations are minor in nature and frequently consistent with internal limitations in the Human Rights Act. It should also be noted that many Queenslanders are already taking voluntary precautions to limit their potential exposure to COVID-19 and avoid spreading this disease to family members, friends and the broader community. The fact that many individuals are already undertaking these measures voluntarily suggests they are unlikely to impose an unjustified burden on human rights.

... [A] number of safeguards exist in the amendments to the Public Health Act to ensure that any limitations on human rights are no more onerous than is required to slow the spread of COVID-19. Importantly, the continuation of the amendments to the Public Health Act will only apply for a further 7 months, until 30 April 2022 and the powers of public health officials will return to the status quo. The additional powers are also only available to address the current COVID-19 pandemic.<sup>478</sup>

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<sup>474</sup> Transcript 28 July 2020, p 187 ll 25-29. [Footnote in original.]

<sup>475</sup> Transcript 28 July 2020, p 191 ll 9-17. [Footnote in original.]

<sup>476</sup> *Palmer v State of Western Australia (No 4)* [2020] FCA 1221, [73]-[76], per Rangiah J.

<sup>477</sup> *Palmer v Western Australia* (2021) 95 ALJR 229, [79]-[80].

<sup>478</sup> Statement of compatibility, p 19.

## 6.2 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.<sup>479</sup> The committee is required to consider the tabled statement of compatibility and report to the Legislative Assembly about the statement.<sup>480</sup>

### *Committee comment*

A statement of compatibility was tabled with the Bill on its introduction.

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.

However, the committee wishes to note that it would welcome the Minister's consideration of and comment on the more limited restriction on property rights associated with Victoria's approach to the statutory exclusion from liability for disaster officers during the COVID-19 disaster period, as compared to the approach proposed for continuation in Queensland under the Disaster Management Act.

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<sup>479</sup> HRA, s 38.

<sup>480</sup> HRA, s 39.

**Appendix A – Submitters**

<b>Sub #</b>	<b>Submitter</b>	<b>Sub #</b>	<b>Submitter</b>
001	Denis Auberson	035	Rhonda Muller
002	Jack Sommers	036	Natascha Seben
003	Robyn Booth	037	Natalie Sunderland-Gilbert
004	Tim Packer	038	Margaret Comino
005	Amy Kyson	039	Suzi Hill
006	Jason Sheehy	040	Jan-Marie Brooke
007	Natarsha Tyson	041	Bruce Nicolson
008	Tyler Scott	042	Joelle Cope
009	Tahlia Filip	043	Renae Callanan
010	Nathan Binns	044	Narelle Chenery
011	Dale Schultz	045	The Royal Australian and New Zealand College of Psychiatrists Queensland Branch
012	Noel Gilbert	046	Martin Carroll
013	Judy McKay	047	Mattia Micco Iraci
014	David and Barbara Briddock	048	Sian Togyer
015	Martin Hoyle	049	Leanne James
016	Maija Boothby	050	Hayley McDonald
017	Emma Parish	051	Natalie Gibson
018	Lorelle Golden	052	Christopher Pidd
019	Jason Daldy	053	PA Hanson
020	Nathan Burns	054	Jill Whalley
021	Andrea Newland	055	Rachel Wiley
022	Terrence Carroll	056	Brett Wilson
023	Elliot Bonser	057	Jim Callow
024	Amanda Morton	058	Rebecca Onley
025	Jonathan Myers	059	Rebecca Anthony
026	Kim Edwards	060	Lisa Charles
027	Associate Professor David Neville	061	Amanda Gore
028	Noel Graham	062	Petra Hatu
029	Kathleen Sibley	063	CONFIDENTIAL
030	George Mejak	064	Cameron Parry
031	Damian Vella	065	Michael Deskins
032	Deb Keighley	066	Ross Pitman
033	Australian Lawyers Alliance	067	Dejna Bushell
034	John Porter		

<b>Sub #</b>	<b>Submitter</b>	<b>Sub #</b>	<b>Submitter</b>
068	Tim Cragg	103	Peter Littler
069	Samantha Hall	104	Mieko Tuckey
070	Sue Innes	105	Michael Ernst
071	Suhail Mahadevan	106	Maureen Blair
072	Leanne Daniell	107	Darren Buckley
073	Ben Davis	108	Kellee Myers
074	Bruce Stacey	109	Tereza Pepping
075	Lisa Williams	110	Jyrki Lehtonen
076	Edith Cragg	111	Yumi Schaefer
077	Matt Newman	112	Melissa Tunchon
078	Karen Bailey	113	Mark Smith
079	NAME WITHHELD	114	Nicola Parkinson
080	Mina Hunt	115	Grant Wood
081	John Murphy	116	Leanne Collett
082	Lesley Mitchell	117	Katrina Nyenhof
083	David Jorgensen	118	Louise Jack
084	Lisa Dirie	119	Elly Prendergast
085	Dawn Simm	120	Logan Hurford
086	Andrew Smith	121	Melanie Bell
087	Sharon Durley	122	Tenneille Williams
088	Colin Ivory	123	Howard Bell
089	Deborah Keslake	124	Joseph Prisk
090	Scott Huston	125	Emilie Matyja
091	Adele Lorigan	126	Leanne Giblin
092	Anne Victorsen	127	Yasmin Turner
093	Delma Dick	128	Steve Legg
094	Cheryl Slapp	129	Jacqueline Savage
095	CONFIDENTIAL	130	Suzanne Bassette
096	Albert Green	131	Katheryn Webster
097	Crime and Corruption Commission	132	Emma Davis
098	Julie Marano	133	John Fitzgerald
099	Fay Muirhead	134	Kathie Brooke
100	Chris Hood	135	Leanne Sippel
101	Deborah Baker	136	Karen Buckingham
102	Christine Morris	137	Rana Smithlee

<b>Sub #</b>	<b>Submitter</b>	<b>Sub #</b>	<b>Submitter</b>
138	Jordan Marks	173	Diesel Taylor
139	Inga Kamps	174	Adam Bugg
140	Beverley Bradford	175	Jennifer Wake
141	Yvette Bracefield	176	Sarah Hansen
142	Aaron Shearer	177	Paul Booker
143	Ross W	178	Lyn Deasy
144	Cassandra Browne	179	Stephen Harding
145	Jennifer Machado	180	Nicola Economou
146	Jaimee Prasad	181	Nicole Whitehead
147	Tamara Feldhahn	182	Melissa O'Riley
148	Ryan Daffurn	183	Nathan Kime
149	Maree Raper	184	Jason Wilson
150	Donna Lambert	185	Sabine Harth
151	Isabelle Davis	186	Fiona Edmunds
152	Rachel Vilt	187	James Kyle
153	Heather O'Toole	188	Sherrie Yeomans
154	Sophie Robinson	189	Patricia Sellies
155	Nerida Weaver	190	Bronwynne Bandiera
156	Rachel Jones	191	Dave and Debbie Stubberfield
157	Jean Summers	192	Gemma Campbell
158	Mary Gellatly	193	Cheryl Hausmann
159	Brian Benham	194	Jake Dilli
160	Rita Byrne	195	Glen Keighley
161	Teena Dixon	196	Michelle Dickinson
162	Dr Alistair Frame	197	Dr William Gosling
163	Leigh Davidson	198	Marie Brannigan
164	Jacqueline Nakovics	199	Dean Janetzki
165	Terri-Anne Murray	200	Hope Brookes
166	Kate Pettett	201	Dylan Swepson
167	Julia Charters	202	Greg Morris
168	Michael Curry	203	John Blair
169	Kathy Williams	204	Carla Miller
170	Sarah Crowhurst	205	Chantelle McCullough
171	Brenden House	206	Gemma Russell
172	Catherine Elek	207	Katerina Taylor

<b>Sub #</b>	<b>Submitter</b>	<b>Sub #</b>	<b>Submitter</b>
208	Judith Khan	243	Peta McLean
209	Vivienne Everett	244	Zac Kirby
210	Elissa and Nathan Helberg	245	Joyce Bucholz
211	Dave St Henry	246	Sam Redman
212	Jasmine Collins	247	Ben Limmer
213	Tracey Callanan	248	Jacinta Richmond
214	Gina Palmer	249	Victoria Rothschild
215	Evan Munns	250	Michelle Agius
216	Niels and Margaret Pleysier	251	Angela De Vito-Thorpe
217	Michael Byrne	252	Karen Colley
218	Stephanie Ambrose	253	Sharon King
219	Danielle Rodgers	254	Roma Flood-Leembruggen
220	Andrea Montgomerie-Williams	255	CONFIDENTIAL
221	Karen Garner	256	Lesleigh Jackson
222	Debra Fretus	257	Indi Coe
223	Shari Ware	258	Paul Kaye
224	Denise Georges	259	Damien Bird
225	Michelle Loadman	260	Maryann Kelly
226	Sharon Vallance	261	Sheeba Taylor
227	Pat Flaherty	262	Linda McUtchen
228	Samantha Black	263	Cara Bucholz
229	Benjamin Spratt	264	Andrew Olive
230	Mark Postles	265	Christian Marchegiani
231	Kate Campbell	266	Catherine Ormsby
232	Louise Reiss-James	267	Jared McGinty
233	Kassandra Brudenell	268	Cheri Baumann
234	David Ferrini	269	Sonja Hardy
235	Helena Craggs	270	Katrina Scuderi
236	Willem Roozendaal	271	Michaela Oliver
237	Tyrin Batty	272	Amanda Wall
238	Susan Kroening	273	Alison Verbruggen
239	Bernadette Macnaught	274	Jason Yaxley
240	James Barr	275	Cody Charlesworth
241	Mervyn Murray	276	Dearne Paradies
242	Robyn Worthy	277	Michele Aney

<b>Sub #</b>	<b>Submitter</b>	<b>Sub #</b>	<b>Submitter</b>
278	Allan Benton	313	Marisa Bell
279	Nicole Hughes	314	Ksenia Novakovich
280	Lica Bienholz	315	Dianne Carcary
281	Dylan Wilson	316	Wendy Manzo
282	Dianne Wallace	317	Tim Matchett
283	Grace Field	318	Amanda Neil
284	Erica Warner	319	Brad Nielsen
285	Dennis Monroe	320	Carra James
286	Jo'Anne Gray	321	Matthew Halse
287	Raymond Paradies	322	Paul Neary
288	Clair Little	323	John Straw
289	Sophie Laforest	324	Sarah Keetley
290	Simon Fooks	325	Leonie Bell
291	Pat Sibley	326	Rob Avery
292	Will Outridge	327	Joanne French
293	Haley Bush	328	John Best
294	Xolo Ze Perreira	329	Judith Buckley
295	Kylie Paterson	330	Sarah and Trevor Russell
296	Mary-Joy Payten	331	Naomi Thomas
297	Peter Campbell	332	The Queensland Police Commissioned Officers' Union
298	Sue Reed		
299	Simon Giles	333	Ben Hamilton
300	David Deane	334	Denis Anderson
301	Gabrielle Evans	335	Fiona Stenton
302	Jessica Cagney	336	Shalisa Sutton
303	Werner Schmidlin	337	Glen Petersen
304	Jeremy Morris	338	Kristen Powell
305	Gary Campkin	339	Mark Vegar
306	Jenelle Leat	340	Wendy Philips
307	Vanessa Thomas	341	Doug Smith
308	Rae Lloyd-Jones	342	Anthony Kingdom
309	Marcia-Malouf Evans	343	Louisa Pearce
310	Christopher Guy	344	Christine Follett
311	Debbie Cohen	345	Dr Kevin Farrell
312	Sophie Rose	346	Alison Kingdom

<b>Sub #</b>	<b>Submitter</b>	<b>Sub #</b>	<b>Submitter</b>
347	Tracey Cole	382	Scott Butler
348	Leonie Orton	383	Strata Community Association Queensland
349	Rick Nelson	384	Liliana Williamson
350	Rodney Follett	385	Todd Hansen
351	Cathy Whiting	386	Courtney Dwyer
352	Susan Fry	387	Peter James
353	Lisa Grady	388	Suzanne Gray
354	Chad and Cassandra Cartwright	389	Evan and Robyn Munns
355	Kristy Curita	390	Sally Berry
356	Melinda and Christopher Borg	391	Queensland Council for Civil Liberties
357	Graham Staier	392	Latez Jones
358	Alina Davis	393	Electoral Commission Queensland
359	Lisa Collins	394	Jo-anne Collins
360	Rebecca Askew	395	Leonie Shanahan
361	Tahnee Stevens	396	Jenny Abel
362	Jennifer Hamilton	397	Australian Logistics Council
363	Aidan Holliday	398	Sally Morgan
364	Rebecca Birtles	399	Hellen Schleijsper
365	Tina Thompson	400	Susan Garry
366	Pamela McDowell	401	Sonia Girelli
367	Jackie Bratley	402	Brian Williams
368	Adriana Busstra	403	Nicole McCloskey
369	David Gisbrook	404	Jo Christmas
370	Rohan Bartlett	405	Antonio Reyes
371	Leilana Apelu	406	Elizabeth Carlsen
372	Ainsley Shepherd	407	Ian Billman
373	Meleigh Mackenzie	408	Anna Russell
374	Annette Kusters	409	Rebecca Sferco
375	Jay Penava	410	Renee Ferguson
376	Andrea Josephs	411	Patricia Newton
377	Mark Cooper	412	Charlotte White
378	Gerard McKeering	413	Armanda Martin
379	Tiffney French	414	Lisa Fox
380	Natalie Gardiner	415	Abby Skye
381	Brett Fforde	416	John Buchanan



<b>Sub #</b>	<b>Submitter</b>	<b>Sub #</b>	<b>Submitter</b>
417	Valerie Hill	452	Amy Ossola
418	Helene Minto	453	Travis James
419	Rebecca Smith	454	Fiona Redfern
420	Lyn Stewart	455	Queensland Nurses and Midwives' Union
421	Allan Cox	456	Danielle Carrinton
422	Valerie and Steve Osburn	457	Kaitlyn Hughes
423	Sam Starshine	458	Margaret Shand
424	Megan Knight	459	Riga Walsh
425	Christina Van Vuuren	460	Elizabeth Ishii
426	Tia Mallinick	461	Amelia Willis
427	Paul O'Donnell	462	Andrew McCracken
428	Linda Chaplin	463	Kathryn Geiss
429	Chris Glennie	464	Jennifer Zamora
430	Sakura Morris	465	Deidre Daniels
431	Shelley Darlington	466	Mirjam Hasler
432	Helen Wilson	467	Andrea Felix
433	Michele Hayres	468	Batia and Michelle Grinblat
434	Sharon Saunders	469	Brenda Kelly
435	Denise Lloyd-Kelly	470	Megan Bradshaw
436	Jose Cabrera	471	Danielle Tooley
437	Steve Ramsay	472	Brenda Grimes
438	Daniel Kaergaard	473	Colin Underwood
439	Nikki Civitarese	474	Elizabeth Kowron
440	Jane Welsh	475	Nicole Osmak
441	Petra Whitehouse	476	Jaquin Faulkner
442	Norm DeWitte	477	Neil Johnston
443	Harmony Barclay	478	Queensland Law Society
444	Carolyn McPherson	479	NAME WITHHELD
445	Ian Colley	480	Queensland Hotels Association
446	Tomine Reyes	481	Patricia Wegener
447	Beryl Hastie	482	Emma Priest
448	Tarryn Daniells	483	Lynda Lange
449	Philip Osmak	484	Christine Walton
450	Erica Wallis	485	Beau Hayman
451	Terri Groth	486	Jena Frylink

<b>Sub #</b>	<b>Submitter</b>	<b>Sub #</b>	<b>Submitter</b>
487	Sarah Keetley	521	Anthony Parker
488	Greg Thistleton	522	Tarnia Evans
489	Katherine Spadaro	523	Allona Lahn
490	Eden Rutherford	524	Lynden Thomas
491	Wayne and Marian Dyer	525	Bianca Sparreboom
492	Richard Davies	526	Lyn Mangan
493	CONFIDENTIAL	527	Kim and Anton Mayer
494	Kelly and Mike Frylink	528	Debra Spearritt
495	Sarah Manning	529	Julie McDonald OAM
496	Daniel Lowe	530	Alison Probst
497	Sarah Williams	531	Doris Liedmann
498	John Tyler	532	Mandy Spooner
499	Fiona Perl	533	Kingaroy Chamber of Commerce and Industry Inc.
500	Mary-Jane Szilagyi	534	Hugh Dickson
501	Philippa McKendry	535	Bronwyn Walker
502	Claudia Schmeink	536	Barry Glasson
503	Terence Pope	537	Dr Cornelia Turni
504	David Latham	538	Garry Duffy
505	Sue O'Donnell	539	Janina Rozycki
506	Queensland Human Rights Commission	540	Kylie Gates
507	Peita Rollings	541	Shaya Bugallo
508	Alana Phillips	542	Veronica Davidson
509	Gail Tumes	543	Peter Stacey
510	Kylie Drury, Jeffery and Tricia Agar, Simon and Bridget Knight and Trent and Kaye Minnett	544	Maria Caranese
511	Liz Walker	545	Tracey Cabrera
512	Joanne Douglas	546	Kate Cherry
513	Daniel Popovich	547	Meagan Shearer
514	Mark Batt	548	Peta Zafir
515	Charles Skele	549	Brendan Short
516	Sharon Anyos	550	Dr Angela Carter
517	Michael Bannister	551	Kellie Rossiter
518	Patricia Steffens	552	Dr Karen Prince-Popovich
519	Tom Cochrane	553	Deborah Crawford
520	Rachel Adams	554	Jan and Philip Morris

**Sub #    Submitter**

555    Adriana Marsh  
556    Linda Kowron  
557    Form A  
558    Form B  
559    Form C  
560    Form D  
561    Form E  
562    Form F  
563    Form G  
564    Form H  
565    Form I  
566    Form J  
567    Form K  
568    Form L  
569    Form M  
570    Form N  
571    Form O  
572    Form P  
573    Form Q  
574    Form R  
575    Form S  
576    Form T  
577    Form U  
578    Form V  
579    Form W  
580    Form X  
581    Form Y  
582    Form Z  
583    Form AA  
584    Form AB  
585    Form AC  
586    Form AD  
587    Form AE  
588    Isabella Ranieri

**FORM SUBMITTERS**

<b>FORM A (submission 557)</b>	<b>FORM B (continued)</b>	Estelle Logan
Nathan Sampson	Janne van der Walt	Klaudia Blomfield
Jake Sampson	Joshua Hills	Elizabeth Rourke
Chelsea Sampson	Neville Pearson	Joanne Emerson
Melinda Sampson	Caleb Pungatara	Tanya Adams
	Judith Field	Tracey Ollett
<b>FORM B (submission 558)</b>	Tracey Burns	Nerida Weaver
Katrina Sharp	Liana Brennan	Caroline de Lore
Linda Grdovic	Jeremy Broad	Paul Tucker
Lee Tate	Kristen Russett	Carol Hynes
Shane Thomsen	Amanda McGill	Sandi van der Ster
Sabine Hazlett	Ami Hemmila	Jillian Head and Anthony McFadden
Liesl Tziolis	Vicki Bouwer	Leanne Shervey
Holly Clark	Helen Harris	Danielle Rodgers
Margaret Chapman	Jane Seidl	Jane Wilkinson
Michael Arnup	Anthea Eylward	Kirsten and Cedric Herbaut
Elsie Pedrosa	Karen Broad	Sharolyn Grant
Christine Keen	Jillianne Rixon	Joel Leach
Kristyn Snerling	Scott Searle	Linda Jane McKenzie
Christina Galinovic	Paige Haines	Tomas Bavor
Olivia Slater	Maria Creager	Anonymous
Cath Cheshire	Hannah Weir	Joanne Parker
Penny Sherwood	Juliette West	Karyn Astras
Luisa Prosser	Claude Wagner	Mick Madden
Glen Bulled	Derek Wagner	Pankaj Arora
Lay-Ah-Nay Johnstone	Linda Wagner	Jackie Travia
Soeren Iversen	Robert Brennan	Ángela van Zyl
Guy Johnstone	Margo Gauthier	Patricia Newton
Sharmaine Gulley	Philip Higson	Christie Fischer
Andrea Mircev	Rodney Higgins	Lolita Valerga
Karen Dickson	Mary Davis	
Louise Maree	Vicki Pungatara	<b>FORM C (submission 559)</b>
Sarah Black	Yana Haseya	Stuart White
Lindi O'Hehir	Crystal Morris	Georgia Purser
Lyn Burkitt	Roman Revyakin	Sharndra Chapman

<b>FORM D (submission 560)</b>	<b>FORM F (continued)</b>	<b>FORM G (continued)</b>
Murrilyn Moller	Alissa Patrick	Darren Malcolm
Alison Green	Janet Gaspar	Ivana Lavickova
Tania Keppels	Pauline Ashford	
Ian Moller	Rohan Abey	<b>FORM H (submission 564)</b>
	Sharon Whiteman	Cheryl Jennifer Mirtschin
<b>FORM E (submission 561)</b>	Susan Jalil	Marlene Mirtschin
Luciane Sperling	Shannon Ichikawa	Neville Mirtschin
Katherine Flynn	Diana Hunter	Victoria Mirtschin
Penny White	Tianna Nezar	Carol Mirtschin
Commander Martin Jolley	Tracey Ollett	Neville Brian Mirtschin
	Nicole Mackenzie	Lawrence Mirtschin
<b>FORM F (submission 562)</b>	Karin Schuett	Andrew Mirtschin
Leanne Collett		
Rhonda Brown	<b>FORM G (submission 563)</b>	<b>FORM I (submission 565)</b>
Mariska van der Veen	Amy Dominey	Elizabeth Joanne Miller
Eugenie Schwartz	Maria Anello	Melissa Samusamu
Gordon Wilson	Elke Ryan	Rebecca Ringuet
Rebecca Poppett	Michael McLeod	Lisa Henderson
Adam Poppett	Alana Paton	
Johan Tijssen	Brock Mathie	<b>FORM J (submission 566)</b>
Megan Johnson	Lex Mathie	Kirstyn Marriott
Dace Ose-Abey	Emily McLean	Erin Maree Shepherd
Kellie Vora	Haley Thorn	Melissa Grainey
Lauren Ambrose Owen	Renee Maisch	Leo Freeman
Sarah Davies	Sandra Duncan	Felicity Lanning
Stewart Gould	Jenna McBain	Greg Lane
Jodie Rennex	Natasha Evdokimov	Sarah Dew
Jan Postma	Guillaume Thuret	Jennifer Gale
Brian Wilder	Karnnika Porter	Kristine Barrett
Prabha Demasson	Naomi Wells	
Vicki McClifty	Jennifer Morgan	
Richard Breeds	Aimee Chamoun	
Rex van Heythuysen	Christie Walker	
Angelique Bowler	Marly Bryon	
Dr Sheelin Coates	Tammy Rice	

**FORM K (submission 567)**

Steve Pasfield  
Saskia Geraghty  
Charles Geraghty  
Fiona Grochala  
Maïke Geraghty

**FORM P (submission 572)**

Heike Northey  
Darcy Harris  
Richard George Harmer  
Rhonda Cattell-Gnany  
Peter Bruce Harmer

**FORM T (submission 576)**

Susan Safi  
Jillian Head and Anthony McFadden  
Kahli Toy  
Jack Hagan  
Katherine Thompson  
Belinda Green

**FORM L (submission 568)**

Holly Walton  
Emma Burmister  
Leana Fogwell  
Jade Fogwell

**FORM Q (submission 573)**

Amanda L Holland  
Andrea Holland  
Sarah Lee Andros  
Simone Milasas  
Sarah Ann Watt

Michael Madden  
Felix Gaborit

**FORM U (submission 577)**

Sarah Brett  
Ashley Brett  
Siobhan Lowe

**FORM M (submission 569)**

Debbie Reisinger  
Nicholas Ernest  
Clive White  
Susan Guidace  
Leisa Aldous

Heidi Harris

**FORM R (submission 574)**

Ayman Koko  
Serena Martinetti  
Erin Schneider  
Carole Newton  
Emma Wyeth  
Rae Lloyd-Jones  
Rebecca Ringuet  
Cassie Quinnell  
Trudy Olive

**FORM V (submission 578)**

Kara Newman  
Krystie Khan  
Wanda Morris  
Maite Kervella  
K. Carruthers  
Jenny Bell  
Denise Roberts  
Nancy Odorico  
Gregory Barry North  
Larrisa Sherlock  
Philomena Bueckers  
Michael Bueckers  
Lee Tate  
Leonie Vallance  
Kerry Anne Kennedy

**FORM N (submission 570)**

Howard O'Meara  
Timothy James Leeming  
Cynthia Anne O'Meara

Kim Wiseman

**FORM O (submission 571)**

Kathryn Louise Stewart  
Andreja Skubic  
Maruska Zupanc  
Glenn Hawkins  
Kerry Cook  
Edna Hills

Rado Trenciansky  
Tomara Way  
Melanie Newbery  
Eva Ronning

**FORM S (submission 575)**

Claire Rosina  
Geoffrey Houston  
Jeff Rosina

Terry Bruton  
Norman Barrett  
Rochelle Jones  
Daniel Jones  
Phillip Hohl

<b>FORM V (continued)</b>	<b>FORM Y (submission 581)</b>	<b>FORM AC (submission 585)</b>
Jeffrey Evans	Keira Lloyd	Sonia L Neville
Belinda Evans	Sara Hocking	Valeria Lissie Woodley
Tracy Field	Tarsha Nicolo	Pablo D Doglio
Justen Ridley	Kylie Honeysett	Connor Skele
Cherree Simpson	Graeme Nichols	Victoria Fitzpatrick
Natasha Ridley		Marty Skele
	<b>FORM Z (submission 582)</b>	Ann Ferguson
<b>FORM W (submission 579)</b>	Helen Connell	Sheri Skele
James Bertram	Sophie Hutchison	Ray Williams
Jessica Bertram	Michelle Williams	Sarah Keetley
Leanne Jolly		Taryn Hayes
Nicolla Jolly	<b>FORM AA (submission 583)</b>	Chris Dyer
	Daniel Torbey	Julie Skele
<b>FORM X (submission 580)</b>	Damian Grasso	
Kathleen Salter	Lee Stanley	<b>FORM AD (submission 586)</b>
Erin Johnston	Rebecca Stanley	Shane Thomsen
Joost Molyneaux	Monica Moore	Katrina Phillips
Dianne Taliani		Beverley Chance
David Bridgman	<b>FORM AB (submission 584)</b>	
Dan Chambers	Gary Asplin	<b>FORM AE (submission 587)</b>
Mark Barone	Carol Nyenhof-Asplin	Catherine Guthmann
Bruce Jones	Jason Nyenhof	Jag Guthmann-Chester
Edel Slama	Trina Nyenhof	Darren Guthmann
Bev Livingstone	Jessica Rayner	Jetaya Guthmann-Chester
Lynette Thomas	Robyn Munns	
Sandra Fisher	Andrea Fagnoli	
Leo van den Bergh	Gian Fagnoli	
Terry Stokes	Amanda Woodley	
Tracey Watson	Barry Marsden	
Ede Harcsa	Pascal Fagnoli	
Patricia Ferguson	Alexis Christenson	

## **Appendix B – Officials at public departmental briefing**

### **Queensland Health**

- Dr John Wakefield, Director-General
- Dr Jeannette Young, Chief Health Officer
- Ms Kirsten Law, Director, Legislative Policy
- Mr Karson Mahler, Manager, Legislative Policy



## Appendix C – Witnesses at public hearing

### Australian Lawyers Alliance

- Ms Sarah Grace, President of the Queensland Chapter

### Queensland Law Society

- Ms Elizabeth Shearer, President (*via videoconference*)
- Mr Matthew Dunn, General Manager – Advocacy, Guidance and Governance
- Ms Angela Cornford-Scott – Chair, QLS Succession Law Committee (*via videoconference*)

### Queensland Human Rights Commission

- Mr Scott McDougall, Human Rights Commissioner
- Mr Sean Costello, Principal Lawyer (*via videoconference*)

### Queensland Council for Civil Liberties

- Mr Michael Cope, President

**Appendix D – COVID-19 measures extended by the Bill** *(by administering department)*

**Department of Children, Youth Justice and Multicultural Affairs**

<p><b><i>Youth Justice Act 1992</i></b> Section 264A</p>	<p>Extends an amendment allowing the chief executive to:</p> <ul style="list-style-type: none"> <li>• appoint temporary non-public service employees as detention centre employees if reasonably necessary for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres; and</li> <li>• delegate powers to those employees as appropriate.</li> </ul>
<p><i>Youth Justice (COVID-19 Emergency Response) Regulation 2020</i></p>	<p>Extends amendments to the requirements for restorative justice conference agreements made during the COVID-19 emergency period by specifying that:</p> <ul style="list-style-type: none"> <li>• the requirement for conference participants to sign a conference agreement will be taken to have been complied with if the convenor of the conference notes on the agreement that the person has agreed to the agreement; and</li> <li>• the requirement for each person who signed the agreement to immediately be given a copy of it will be taken to have been complied with if the copy is given promptly after the conference.</li> </ul>

**Department of Education**

<p><i>Education Legislation (COVID-19 Emergency Response) Regulation 2020</i></p>	<p>Continues measures to:</p> <ul style="list-style-type: none"> <li>• enable attendance at meetings conducted as part of investigations under the <i>Education (Queensland College of Teachers) Act 2005</i> to be held via communication technology (such as online meeting platforms) and allow a thing required at a meeting to be produced online or via post where necessary, rather than in person;</li> <li>• clarify that Parents and Citizens' Associations can conduct meetings via communication technology; and</li> <li>• enable the chief executive and the Non-State Schools Accreditation Board to extend timeframes for when things must be done and when things expire.</li> </ul>
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**Department of Communities, Housing and Digital Economy**

<p><b><i>Manufactured Homes (Residential Parks) Act 2003</i></b> Section 146A</p>	<p>Extends a temporary regulation-making power for:</p> <ul style="list-style-type: none"> <li>• modifying or suspending the processes for increasing or reducing site rent; and</li> <li>• modifying the processes for disputing a proposed increase in site rent.</li> </ul>
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<p><i>Manufactured Homes ((Residential Parks) (COVID ER) Regulation 2020</i></p>	<p>Continues to allow meetings of manufactured home owners to be carried out by audio or audio-visual link.</p> <p>Continues the following changes to the process for undertaking market reviews of site rent:</p> <ul style="list-style-type: none"> <li>• providing enhanced dispute resolution rights to manufactured home owners who had a market review between 24 March and 24 May 2020;</li> <li>• imposing a limited moratorium which suspends market reviews in the period between 25 May 2020 and 31 December 2020 unless conditions for site rent increase continuation are met;</li> <li>• allowing a CPI increase to occur where a market review of site rent has been suspended; and</li> <li>• allowing for suspended market reviews to be undertaken in 2021.</li> </ul>
<p><i>Residential Tenancies and Rooming Accommodation (COVID-19 ER) Regulation 2020</i></p>	<p>Continues measures to:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• prevent renters who suffered excessive hardship because of COVID-19 from being listed in a tenancy database for COVID-19 rent arrears;</li> <li>• 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; and</li> <li>• allow further short-term tenancy statement extensions for moveable dwelling agreements if necessary to manage COVID-19 restrictions.</li> </ul>

#### Department of Environment and Science

<p><b><i>Environmental Protection Act 1994</i></b> 49T Chapter 11A</p>	<p>Extends amendments providing that, where reasonable to respond to the impacts of the COVID-19 emergency:</p> <ul style="list-style-type: none"> <li>• the Minister may make a declaration waiving compliance of certain conditions of an environmental approval; and</li> <li>• the administering authority may issue temporary environmental authorities.</li> </ul> <p>These amendments will be extended until 30 June 2022 to allow a two-month transition period following the expiry of other COVID-19 measures on 30 April 2022.</p>
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**Queensland Fire and Emergency Services**

<p><b>Disaster Management Act 2003</b> Part 12A</p>	<p>Extends measures to:</p> <ul style="list-style-type: none"> <li>• increase the period by which the declaration of the disaster situation in regard to the COVID-19 emergency can be extended, from 14 to 90 days; and</li> <li>• set aside the entitlement to compensation for loss or damage suffered as a result of the exercise of powers under the Disaster Management Act related to the COVID-19 emergency.</li> </ul>
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**Department of Justice and Attorney-General**

<p><b>Liquor Act 1992</b> Part 10A</p>	<p>Extends the power for the Commissioner for Liquor and Gaming to issue a Takeaway Liquor Authority to:</p> <ul style="list-style-type: none"> <li>• operators of licensed venues whose ordinary operations have been disrupted due to the public health directions; or</li> <li>• 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;</li> <li>• 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.</li> </ul>
<p><b>Gaming Machine Act 1991</b> Part 11A</p> <p><i>Gaming Tax Notice 2020 and Gaming Tax Notice (No.2) 2020</i></p> <p><b>Casino Control Act 1982</b> Section 57A</p> <p><b>Keno Act 1996</b> Section 116A</p> <p><b>Lotteries Act 1997</b> Section 99A</p>	<p>Extends amendments to the Gaming Machine Act providing that the Minister may make a gaming tax notice to defer or waive payment of a <i>gaming tax</i> payable under the Gaming Machine Act, Casino Control Act, Keno Act or Lotteries Act. The Minister may make a notice only:</p> <ul style="list-style-type: none"> <li>• if satisfied it is necessary to alleviate the financial burden caused by the COVID-19 emergency on gaming operators; and</li> <li>• with the approval of the Treasurer.</li> </ul> <p>The amendments to the Casino Control Act, Keno Act and Lotteries Act extended in this Bill refer back to Part 11A of the Gaming Machine Act.</p>
<p><b>Building Units and Group Titles Act 1980</b> Part 6A and Part 7, Division 3</p>	<p>Extends amendments that permit body corporate committees to postpone the due date for proprietor contributions for either:</p> <ul style="list-style-type: none"> <li>• a particular proprietor if the committee is reasonably satisfied the proprietor is suffering financial hardship because of the COVID-19 emergency; or</li> <li>• all proprietors regardless of whether all of the proprietors are suffering financial hardship because of the COVID-19 emergency.</li> </ul>

<p><i>Justice Legislation (COVID-19 Emergency Response—Community Titles Schemes and Other Matters) Regulation 2020</i></p>	<p>Continues the following measures:</p> <ul style="list-style-type: none"> <li>• modifications to the <i>Collections Act 1966</i> to enable the chief executive to extend the deadline for annual financial reporting;</li> <li>• modifications to 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; and</li> <li>• amendments to regulations under the <i>Body Corporate and Community Management Act</i> and <i>Building Units and Group Titles Act</i> to increase flexibility for certain fees related to dispute resolution to be waived.</li> </ul>
<p><i>Body Corporate and Community Management (Accommodation Module) Regulation 2020</i></p> <p><i>Body Corporate and Community Management (Commercial Module) Regulation 2020</i></p> <p><i>Body Corporate and Community Management (Small Schemes Module) Regulation 2020</i></p> <p><i>Body Corporate and Community Management (Standard Module) Regulation 2020</i></p>	<p>Continues the ability of body corporate committees to change rights, privileges or obligations of lot owners in relation to access to and 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.</p>
<p><i>Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020</i></p>	<p>Continues to implement National Cabinet's decision to impose good faith leasing principles set out in the National Cabinet Mandatory Code of Conduct for commercial leases during COVID-19 by:</p> <ul style="list-style-type: none"> <li>• providing certain protections to a retail lessee under an 'affected lease';</li> <li>• preventing a lessor from taking particular actions, such as eviction or termination of the lease; and</li> <li>• allowing parties to a dispute about an affected lease or a small business tenancy dispute to have the dispute mediated through the Office of the Queensland Small Business Commissioner.</li> </ul>
<p><i>Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020</i></p>	<p>Provides continued flexibility for the Magistrates Court to allow:</p> <ul style="list-style-type: none"> <li>• domestic and family violence proceedings to be conducted by audio or audio-visual link;</li> <li>• 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; and</li> <li>• private applications for domestic violence orders and variations to domestic violence orders to be filed electronically.</li> </ul>

<p><i>Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020</i></p>	<p>Continues to allow modified requirements or arrangements for the making, signing and witnessing of affidavits and statutory declarations, advance health directives, general powers of attorney, deeds and particular mortgages. The Bill will also extend exceptions to the requirement for persons to be physically present when witnessing documents by permitting, in prescribed circumstances:</p> <ul style="list-style-type: none"> <li>• witnessing of various documents to occur over audio-visual link; and</li> <li>• electronic transmission of signed versions of the document between parties.</li> </ul>
<p><i>Justice Legislation (COVID-19 Emergency Response—Proceedings and Other Matters) Regulation 2020</i></p>	<p>Continues modifications relating to:</p> <ul style="list-style-type: none"> <li>• the presentation of indictments and entering of a discontinuance (<i>nolle prosequi</i>);</li> <li>• the availability of video-recorded evidence;</li> <li>• the issuing of CCC notices and the use of audio and audio-visual links for CCC hearings;</li> <li>• appearances in response to a Notice to Appear; and</li> <li>• the place of settlement in relation to contracts for the sale of land.</li> </ul>

#### **Department of State Development, Infrastructure, Local Government and Planning**

<p><b><i>Electoral Act 1992</i></b> Part 12C</p>	<p>Extends amendments that allow the Government and the ECQ to intervene to mitigate the spread of COVID-19 in the community in the lead up to, and during, any future by-election.</p> <p>Measures that can continue be taken under this extension include:</p> <ul style="list-style-type: none"> <li>• 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 Electoral Act;</li> <li>• 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;</li> <li>• 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; and</li> <li>• providing the ECQ with the ability to issue directions in relation to the display/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.</li> </ul>
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<p><b>Local Government Electoral Act 2011</b> Part 9B</p>	<p>Extends amendments that facilitate holding of a local government by-election or fresh election in a way that minimises serious risks to the health and safety of persons caused by the COVID-19 emergency. The amendments align, where appropriate, with the temporary provisions in the Electoral Act which facilitate the holding of State by-elections during the COVID-19 emergency.</p> <p>The measures ensure the Government and the ECQ can intervene, as necessary, to mitigate the spread of COVID-19 in the community in the lead up to, and during, any future by-elections or fresh elections, including by:</p> <ul style="list-style-type: none"> <li>• allowing a different time/day for compiling voters' rolls, calling for the nomination of candidates and applying for postal votes;</li> <li>• enabling a returning officer to adjourn a poll to a day not more than 2 months after the original polling day;</li> <li>• enabling the Minister, in consultation with the ECQ, to postpone a poll for more than 2 months after the original polling day;</li> <li>• enabling the Minister to direct that a poll be conducted by postal ballot;</li> <li>• allowing the ECQ to declare that a stated class of electors may cast a postal vote without application;</li> <li>• providing the ECQ with greater flexibility around electronically assisted voting and electoral visitor voting; and</li> <li>• providing the ECQ with the ability to issue directions in relation to the display/distribution of how-to-vote cards or other election material at polling booths, the movement of scrutineers/candidates at particular places and scrutineer numbers, with an offence applying to persons who contravene such directions.</li> </ul>
<p><b>City of Brisbane Act 2010</b> Chapter 7, Part 5B</p> <p><b>Local Government Act 2009</b> Chapter 7, Part 5B</p>	<p>Continues to provide flexibility in filling the vacant office of a councillor, if required, to account for a delay in holding a by-election or fresh election because of the COVID-19 emergency by:</p> <ul style="list-style-type: none"> <li>• enabling the Minister to give a direction to a local government about whether or not a vacant office must be filled and to extend the statutory period within which the local government must fill the vacant office, if satisfied it is in the public interest to give the direction; and</li> <li>• providing that a regulation may make provision about a matter regarding local government elections affected by the COVID-19 emergency, if the <i>City of Brisbane Act 2010</i> or the <i>Local Government Act 2009</i> does not make provision or sufficient provision about the matter.</li> </ul>

<p><i>City of Brisbane Regulation 2012</i> Chapter 8, Part 2A</p> <p><i>Local Government Regulation 2012</i> Chapter 8, Part 2, Division 4</p>	<p>Provides continued flexibility, where required, for local government and committee meetings to be held in a way that minimises serious risks to the health and safety of persons caused by the COVID-19 emergency. In particular, the extension will continue to allow:</p> <ul style="list-style-type: none"> <li>• local government and committee meetings to be held by audio or audio-visual link;</li> <li>• people to participate in meetings by audio or audio-visual link; and</li> <li>• meetings to be closed to the public for health and safety reasons associated with COVID-19.</li> </ul> <p>Also extends amendments that require real-time public viewing or listening of meetings where audio or audio-visual link is used. No regular meeting requirements under the regulations are disapplied by the amendments.</p>
<p><i>Local Government (COVID-19 ER) Regulation 2020</i></p>	<p>Continues amendments to provisions in the <i>Local Government Act 2009</i> about the investigation of councillor conduct and whether an offence has been committed against a 'conduct provision' of the Act. The extension will continue to allow an investigator from the Office of the Independent Assessor to require a person to answer questions by:</p> <ul style="list-style-type: none"> <li>• attending via audio or audio-visual link; or</li> <li>• providing answers to the questions by email or other electronic means.</li> </ul>
<p><i>Economic Development (COVID-19 Emergency Response) Regulation 2020</i></p>	<p>Continues the following measures:</p> <ul style="list-style-type: none"> <li>• modified requirements under the <i>Economic Development Act 2012</i> to provide alternative ways to notify the public of Priority Development Area development applications and amendment applications; and</li> <li>• modified requirements for public access to registers by allowing for documents to be inspected and purchased at an agreed time and place, in addition to access during office hours on business days and electronic access via the department's website.</li> </ul>
<p><i>Planning (COVID-19 ER) Regulation 2020</i></p>	<p>Continues to grant relief from the statutory requirements under the <i>Planning Act 2016</i> by allowing planning authorities to give a person a copy of a document, rather than keeping the document physically available for inspection to ensure planning and development assessment documents and information remains publicly accessible, despite any health and safety restrictions in place.</p>



**Department of Seniors, Disability Services and ATSI Partnerships**

<p><i>Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020</i></p>	<p>Facilitates the continued operation of the Family Responsibilities Commission and the Family Responsibilities Board during the COVID-19 emergency by:</p> <ul style="list-style-type: none"> <li>• allowing conferences to be conducted and lawfully binding decisions made by the Family Responsibilities Commissioner (or Deputy Commissioner) and one Local Commissioner for the relevant community; and</li> <li>• enabling the Family Responsibilities Board to meet using communication technology, removing the requirement for the Family Responsibilities Board to meet in person at least once a year.</li> </ul>
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**Queensland Corrective Services**

<p><b><i>Corrective Services Act 2006</i></b> Part 15A</p>	<p>Continues measures to assist Queensland's adult correctional environment to continue to operate safely and effectively in the COVID-19 emergency by:</p> <ul style="list-style-type: none"> <li>• expanding the chief executive's power to declare an emergency in relation to a prison under section 268 of the Act to cover all corrective services facilities, including the Helana Jones Centre and work camps; and</li> <li>• extend the duration of acting appointments for prescribed Parole Board Queensland positions under section 228 of the Act from 3 months to one year.</li> </ul>
<p><i>Corrective Services (COVID-19 Emergency Response) Regulation 2020</i></p>	<p>Allows the following measures to continue:</p> <ul style="list-style-type: none"> <li>• extending the length of time a declaration of emergency can be made under section 268 of the <i>Corrective Services Act 2006</i>, from three days to 90 days;</li> <li>• additional entry procedures for corrective services facilities when a declaration of emergency under section 268 is in force;</li> <li>• clarifications on the ability for offenders subject to relevant orders and managed in the community to be supervised by Queensland Corrective Services officers remotely; and</li> <li>• amendments to the Parole Board Queensland meeting quorum requirements under section 234 of the <i>Corrective Services Act</i>, clarifying 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 five members.</li> </ul>

**Queensland Health**

<p><b><i>Public Health Act 2005</i></b> Chapter 8, Parts 7A, 7AA, 7B</p>	<p>Extends amendments to the Public Health Act to:</p> <ul style="list-style-type: none"> <li>• increase powers for emergency officers and the CHO to limit, or respond to, the spread of COVID-19 in Queensland, including by issuing directions to require physical distancing, restrict movement and gatherings, require persons to quarantine or self-isolate and implement other containment measures;</li> <li>• authorise the sharing of confidential information for contact tracing;</li> <li>• encourage compliance with quarantine requirements, border restrictions and other public health directions by providing appropriate penalties for contraventions;</li> <li>• increase the period for which a regulation may extend a declared public health emergency from seven to 90 days; and</li> <li>• enable fees to be charged for costs associated with the mandatory quarantine of persons in government-provided accommodation.</li> </ul>
<p><b><i>Mental Health Act 2016</i></b> Sections 800H, 800I, 800K-P</p>	<p>Extends amendments to the Mental Health Act allowing the chief psychiatrist to approve absences from an authorised mental health service if satisfied the absence is necessary to comply with a detention order, quarantine notice or public health direction under the Public Health Act, and does not result in unacceptable risks to the person's safety and welfare, and the safety of the community. Other minor amendments were made to recognise any such approved leave for other purposes.</p>

**Appendix E – COVID-19 measures not extended by the Bill** *(by administering department)*

**Department of Resources**

<i>Explosives Legislation (COVID-19 Emergency Response) Regulation 2020</i>	Provides short-term relief and flexibility for certain licence-holders and the resource exploration industry. These measures will expire on 30 September 2021.
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**Queensland Corrective Services**

<b>Corrective Services Act 2006</b> Section 351D	Modifies section 272 of the Act to remove doubt that the chief executive may direct corrective service officers to perform duties under the Act at the corrective services facility administered by an engaged service provider. This measure will expire on assent of the Bill.
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**Queensland Health**

<b>Mental Health Act 2016</b> Section 800J	Allows a declaration of a mental health service to be made on the Queensland Health website instead of in the government gazette.
<i>Health Legislation (COVID-19 Emergency Response) Regulation 2020</i>	Extends time periods for applying for and deciding matters related to licences under the <i>Food Act 2006</i> and <i>Pest Management Act 2001</i> .

## Statement of Reservation

### NON-GOVERNMENT STATEMENT OF RESERVATION

The LNP Members of the EGC supported passing this legislation in the interest of giving the Government the necessary powers to deal with any upcoming emergency situation caused by a further Covid-19 outbreak in Queensland. However, the non-government members of the EGC did so with strong concerns and reservations about the implications of the ad hoc lockdowns of the Queensland public and the crippling effect these ad hoc lockdowns have on the small and family business communities of Queensland.

In particular, as the tourism sector is suffering exponentially by the closure of borders, it is imperative that any further closures of State borders and community lockdowns be based on substantial and verifiable outbreak threats rather than the current random advice provided through political narrative. A strategy needs to be developed and announced to the wider Queensland community that identifies risk exposure and quantifies the measures necessary to address different levels of risk exposure. The Queensland community is constantly confused by the use of these extraordinary powers on some sectors of the community while other sectors, particularly sport and entertainment and construction workers enjoy greater freedom and flexibility.

18 months into the pandemic, other countries such as Britain, which the Director General of Health alluded to in his explanations to the committee, are coming out of lockdown conditions because of the greater take-up of vaccinations in that country. It is our understanding that AstraZeneca has been widely used in Britain, yet our Chief Health Officer has recommended only a small range of age groups are to avail themselves of AstraZeneca. There is confusion and reluctance to take up AstraZeneca vaccine because of warnings about blood clots and the Pfizer vaccine has been limited in its distribution to Australia because of other countries more desperate need for that vaccine because of their high death rates due to Covid-19. Our death rate is relatively low thanks to the Federal Government shutting our international borders quickly as did New Zealand. However, the economic pain is biting severely in communities all over Queensland and these extended powers need to be exercised with more caution and more adherence to a government strategy clearly outlined to the Queensland community as to when, where and why these lockdowns and other remedial actions need to be put in place.

The Non-government members of the EGC feel the opportunity was lost in the legislation to identify fiscal support packages for small and family businesses and industry that would have added to the range of measures required to sustain the Queensland economy on the occasion of further outbreaks of Covid-19 requiring stringent remedial action as allowed by these extraordinary, legislated powers. Other states have expended more direct financial support for business and industry than Queensland in their Covid-19 responses and this legislation extension and expansion would have provided the ideal opportunity for Queensland to catch up to the other States on economic support.

Politics has no place in pandemics and a clear and defined pathway to deal with what we all recognise is a serious public health crisis is essential to take this great State forward.

Unfortunately, with the limited State Government support for small and family businesses, many of these businesses won't be there to take this great State forward much longer.



**Ray Stevens**  
Deputy Chair of Economics and  
Governance Committee  
State Member for Mermaid Beach



**Michael Crandon**  
Member for Coomera



**Dan Purdie**  
Member for Ninderry