

# Public Health and Other Legislation (Public Health Emergency) Amendment Bill 2020

## Statement of Compatibility

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Steven Miles MP, Minister for Health and Minister for Ambulance Services make this statement of compatibility with respect to the Public Health and Other Legislation (Public Health Emergency) Amendment Bill 2020.

In my opinion, the Public Health and Other Legislation (Public Health Emergency) Amendment Bill 2020 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

### Overview of the Bill

In December 2019 and January 2020, a new coronavirus emerged in Wuhan City, in the Hubei Province of China, now known as COVID-19. On 29 January 2020, the Minister for Health and Minister for Ambulance Services declared a public health emergency under section 319 of the *Public Health Act 2005* due to the outbreak of COVID-19 in China, its pandemic potential due to cases spreading to other countries and the public health implications within Queensland resulting from recently arrived travellers from the epicentre of the outbreak (COVID-19 emergency). The COVID-19 emergency was declared for all of Queensland. A copy of the public health emergency order was published in the Queensland Government Gazette on 31 January 2020. The COVID-19 emergency has been extended by regulation until 19 May 2020 and may need to be further extended.

On 11 March 2020, the Director-General of the World Health Organization (WHO) declared COVID-19 a global pandemic. As of 18 March 2020, there were approximately 197,000 confirmed cases of COVID-19 globally. In Australia, as of 18 March 2020, there were 414 confirmed cases of COVID-19 and five confirmed deaths, with 94 confirmed cases in Queensland.

An effective public health response to the COVID-19 emergency will require more than exclusively containment-based strategies such as screening and contact tracing. The response will need to focus on slowing and delaying community transmission rates through social distancing measures and restrictions on public gatherings. The WHO has stated the number of cases is expected to increase further and has urged countries to continue to implement a containment strategy while accelerating their efforts to control the disease. In particular, the WHO considers that social distancing and quarantine measures need to be implemented in a timely and thorough manner.

On 13 March 2020, the Commonwealth Government endorsed social distancing measures as set out by the Australian Health Protection Principal Committee. The Commonwealth Government also announced that:

- non-essential public gatherings of more than 500 people should not occur from 16 March 2020; and
- effective as at 11.59pm on 15 March 2020, all persons entering Australia, regardless of their country of origin, will be required to self-isolate for 14 days on arrival;
- effective as at 11.59pm Sunday 15 March 2020 a 30-day ban on docking of international cruise ships will be implemented.

On 15 March 2020, the National Cabinet, comprising the Prime Minister, State Premiers and Territory Chief Ministers, asked all States and Territories to ensure they had appropriate legislative provisions in place to implement, monitor and enforce social distancing measures. Social distancing measures may need to be adjusted over time if COVID-19 continues to spread in the community.

On 18 March 2020, the Prime Minister advised of further restrictions, including advice to not travel overseas at this time, restrictions on non-essential indoor gatherings of more than 100 people, and restrictions on entry into aged care facilities.

COVID-19 represents a significant risk to the health and wellbeing of many Queenslanders. It also has the potential to cause adverse economic and social consequences. The Bill amends various Acts to ensure there is clear legal authority to make the interventions necessary to mitigate the spread of COVID-19 in the community and to provide increased flexibility to manage disruptions caused by the disease and social distancing measures.

The Bill will:

- amend the Public Health Act to:
  - strengthen powers of the Chief Health Officer and emergency officers appointed under the Act for the COVID-19 emergency to implement social distancing measures, including regulating mass gatherings, isolating or quarantining people suspected or known to have been exposed to COVID-19 and protecting vulnerable populations such as the elderly;
  - provide that the compensation provisions that apply to declared public health emergencies do not apply to the COVID-19 emergency; and
- amend the *State Penalties Enforcement Regulation 2014* so that penalty infringement notices (PINs) can be issued for the offences of failing to comply with a direction made by the Chief Health Officer or an emergency officer in relation to the COVID-19 emergency.

The Bill will also amend:

- the *Planning Act 2016* and *Economic Development Act 2012* to ensure important services may continue to be provided to the community;
- the *City of Brisbane Act 2010*, *Local Government Act 2009*, *Local Government (Dissolution of Ipswich City Council) Act 2018*, *Local Government Electoral Act 2011* and

*Local Government Regulation 2012* to provide flexibility, if required, for the election date for the 2020 quadrennial local government election and statutory processes for the conduct of the election, to help minimise serious risks to the health and safety of persons caused by the COVID-19 pandemic;

- the *Electoral Act 1992* to provide flexibility, if required, to facilitate the holding of State by-elections in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 pandemic;
- the *Constitution of Queensland 2001* to allow meetings of Executive Council to be held via technology, such as teleconferencing or videoconferencing.

### **Amendments to the *Public Health Act 2005***

#### *Isolation, quarantine and detention powers*

The scale of the COVID-19 pandemic is unprecedented. The provisions of the Public Health Act that deal with declared public health emergencies have not been used in a pandemic situation of this scale before.

Based on the latest health and medical advice from Queensland and Australian experts, Queensland Health has identified provisions of the Public Health Act that should be strengthened to ensure appropriate responses to the COVID-19 pandemic can be undertaken within a robust legal framework. It is necessary to strengthen powers of the Chief Health Officer of Queensland Health (CHO) and emergency officers appointed under the Act to implement social distancing measures, including regulating mass gatherings, isolating or quarantining people suspected or known to have been exposed to COVID-19 and protecting vulnerable populations such as the elderly.

The Bill amends the Public Health Act to enable the CHO to issue directions that are reasonably necessary to assist in containing or responding to the spread of COVID-19. The directions may restrict the movement of any person or group of persons within the public health emergency area for COVID-19; require persons to stay at or in, or not to stay at or in, a stated place; restrict contact between groups of persons within the COVID-19 public health emergency area; and provide other directions that are necessary to protect public health. Failure to comply is an offence punishable by up to 100 penalty units. Directions must be published and persons likely to be affected must be notified as soon as practicable.

The amendments to the Public Health Act also provide a power for the CHO to publish notices directed to owners or operators of businesses or undertakings recommending that they open, close or limit access to facilities or undertakings for a stated period. A business will not commit an offence under the Public Health Act, or another Act, if it opens in compliance with the recommendation in a published notice. Relatedly, the Bill amends the *Trading (Allowable Hours) Act 1990* to provide that persons who, consistent with a recommendation given by the CHO, provide access to facilities outside of legally authorised trading hours do not commit an offence under that Act.

In addition to these powers provided to the CHO, the Bill provides similar but more targeted powers to emergency officers appointed under the Public Health Act. The Public Health Act enables an emergency officer (medical) to detain a person for up to 96 hours while they receive medical treatment, after which the officer or the chief executive may apply to a Magistrate to extend the detention order. The number of persons appointed as emergency officers (medical) is limited, as they must be a doctor. During the COVID-19 emergency, it is important that frontline staff such as doctors focus on treating patients.

To ensure a robust and enforceable framework, it is proposed emergency officers (general) and emergency officers (medical) will be able to issue written directions to a person to isolate or quarantine themselves for a period of up to 14 days, if the emergency officer reasonably believes the direction is necessary to assist in containing, or responding to, the spread of COVID-19 within the community. It is proposed emergency officers (medical) be able to order the detention of a person for up to 14 days, rather than 96 hours. Additionally, emergency officers will be able to issue written directions to owners and operators of businesses and undertakings to open, close or limit access to facilities. If necessary, emergency officers may use necessary and reasonable force to enforce compliance with directions issued under the new isolation, quarantine and detention powers.

These amendments will ensure that emergency officers across Queensland can respond swiftly and effectively to local public health needs, including by taking immediate action to isolate persons and restrict access to places to minimise the spread of COVID-19 to other members of the community. The emergency powers conferred by the Bill are subject to a number of significant safeguards, including a 12-month sunset provision. These safeguards are discussed below in the consideration of whether limitations on human rights are reasonable and demonstrably justifiable as required by section 13 of the Human Rights Act.

#### *Entitlement to compensation*

Chapter 8, part 9 of the Public Health Act establishes an obligation to compensate persons who suffer loss or damage because of an exercise or purported exercise of powers in connection with a declared public emergency. This would include compensation for losses or damages stemming from the ordered cessation of public events as well as orders for individuals to self-isolate. These provisions are uncapped and only limited to the common law principles of causation, foreseeability and whether the damage is proportional. In the current COVID-19 pandemic, aggregate claims could conceivably exceed hundreds of millions of dollars in damages incurred by individuals and businesses alike.

The Bill will amend the Public Health Act to limit the compensation scheme by making it clear that it does not apply to losses or damages sustained due to powers exercised under the declared public health emergency for COVID-19.

#### *Enforcement through the State Penalties Enforcement Regulation*

Part 12 of the Bill amends the State Penalties Enforcement Regulation to make certain offences under the Public Health Act offences for which a penalty infringement notice (PIN) may be

issued under the *State Penalties Enforcement Act 1999*. The relevant offences relate to a failure to comply with a direction of the CHO or an emergency officer to do something reasonably necessary to respond to a public health emergency or to assist in containing or responding to the spread of COVID-19. PIN offences are an alternative to prosecution through the court system. A person who is issued a PIN for an offence may discharge their liability by payment of a financial penalty. There is no requirement for the offence to be prosecuted through the court system, although a person may elect to go to court to challenge the offence or the penalty imposed by the PIN.

***Amendments to the City of Brisbane Act 2010, the Local Government Act 2009, the Local Government (Dissolution of Ipswich City Council) Act 2018, the Local Government Electoral Act 2011, and the Local Government Regulation 2012***

The Bill amends the *City of Brisbane Act 2010*, the *Local Government Act 2009*, the *Local Government (Dissolution of Ipswich City Council) Act 2018*, the *Local Government Electoral Act 2011* and the *Local Government Regulation 2012* to provide flexibility, if required, in terms of the election date for the 2020 quadrennial local government election and the statutory processes surrounding the conduct of the elections. The relevant amendments will:

- allow for the suspension or termination of the 2020 quadrennial local government election, if needed, and confirm the respective caretaker arrangements that apply during a period of suspension;
- allow the timeframes for the receipt of postal vote applications to be extended for certain electors;
- allow flexibility in deciding if a poll is to be conducted by postal ballot;
- ensure there are no barriers to appropriately qualified persons being issuing officers;
- provide more flexible timeframes for taking, or resuming, an adjourned poll;
- allow the declaration of another class of electors who may cast an electronically assisted vote and for alternative voting arrangements to be made for visitor electors who cannot be visited by an issuing officer due to health and safety concerns;
- allow the electoral commission to give a direction about how, where and when how-to-vote cards may be distributed/displayed at a polling booth, prohibiting the distribution/display of how-to-vote cards or other election material at a polling booth, prohibiting a person from canvassing for votes in or near polling booths and permitting the display of political statements inside, or within 6 metres of the entrance to, a polling booth;
- allow the making of regulations under the *City of Brisbane Act 2010* or the *Local Government Act 2009*, if necessary, about matters not provided for or not sufficiently provided for in these Acts as a result of the 2020 quadrennial local government election not being held in March 2020;
- allow the making of regulations under the *Local Government Electoral Act 2011*, if necessary, about matters not provided for or not sufficiently provided for in the Act to allow or facilitate the holding of the 2020 quadrennial local government election;
- provide flexibility in the filling of councillor vacancies that may arise if the election is not held in March 2020; and
- allow for the continuation of the Ipswich City Council and Logan City Council interim administrations if the election is significantly delayed.

### **Amendments to the *Constitution of Queensland 2001***

In preparation for responding to COVID-19, the Bill amends section 50 of the *Constitution of Queensland 2001* to enable meetings of the Executive Council to take place through technological means when members are not physically present. The objective of the amendments is to ensure meetings of the Executive Council may be held using any technology allowing reasonably contemporaneous and continuous communication between members. This will support the use of technology such as teleconferencing and video conferencing in times of emergent need.

### **Amendments to the *Economic Development Act 2012***

The Bill makes amendments to the planning framework under the Economic Development Act to provide more flexibility to respond to the declared COVID-19 emergency. The amendments are closely related to the amendments to the Planning Act discussed below.

The objective of the amendments to the Economic Development Act are twofold. First, the amendments allow for situations where a land use may need to operate under altered circumstances to provide an essential good or service within a Priority Development Area (PDA). These altered circumstances may require a land use to exceed or transgress parameters identified in conditions of a PDA development approval. To allow for this situation, the owner or operator of a land use may apply for a Temporary Use Licence (TUL) for alterations to the operating parameters of the land use, as identified in the PDA development approval.

Second, the planning framework under the Economic Development Act includes statutory timeframes for activities such as the creation of planning instruments (e.g. interim land use plans and development schemes) and development assessment processes. In order to provide certainty, efficiency and transparency to land use planning and development assessment in PDAs, amendments to the Economic Development Act are necessary to enable discretionary extensions of statutory timeframes by the Minister for Economic Development Queensland.

To achieve these objectives, the Bill amends a range of provisions within the Economic Development Act, including:

- introducing the concept of an ‘applicable event’, which would draw upon the meaning of ‘event’ in the *Disaster Management Act 2003* as defined in the Planning Act. For example, an applicable event may be notified for the public health emergency of COVID-19;
- introducing the concept of ‘declared uses’, which, during the applicable event period, are uses that may function beyond the parameters of PDA development conditions in PDA development approvals, such as extended operating hours or reduced restrictions on movement of goods;
- introducing a new, temporary TUL framework during an applicable event. The TUL would authorise an entity to carry out a use in accordance with the licence, notwithstanding the conditions of the original development approval or any other constraint or requirement under the Economic Development Act on the use. The TUL would be eligible for uses that are:
  - not a declared use; or

- uses seeking to amend operating conditions other than operating hours or goods movement restrictions; and
- providing for the Minister for Economic Development Queensland to extend or suspend statutory timeframes in the Economic Development Act, or any statutory instrument under the Economic Development Act, where an applicable event has been notified, for example, the public health emergency of COVID-19.

### **Amendments to the *Electoral Act 1992***

The Bill amends the *Electoral Act 1992* to provide flexibility, if required, in relation to State by-elections held before the next general election, to help minimise serious risks to health and safety of persons caused by the public health emergency involving COVID-19. The relevant amendments will:

- allow the Governor or Speaker, as the case requires, to postpone polling day for a by-election or substitute later days for days stated in the writ;
- allow the day for taking or resuming an adjourned poll to be fixed by the Electoral Commission of Queensland to the earliest Saturday on which the Commission is satisfied the poll may practicably and safely be taken or resumed, rather than being limited to no later than 34 days after polling day;
- allow the time and day by which an elector may request a postal vote to be fixed to a later time and day by the Electoral Commission of Queensland, rather than by 7pm on 12 days before polling day;
- allow requests for elector visitor voting in a by-election to be refused and met by the making of alternative arrangements, to the extent practicable, for voting;
- allow the Electoral Commission of Queensland to declare additional classes of electors who may make an electronically assisted vote;
- allow the Electoral Commission of Queensland to give a direction about the distribution or display of how-to-vote cards and election material at a polling booth, or prohibiting a person from canvassing for votes in or near a polling booth-, with an offence applying to persons who contravene such a direction; and
- allow for a regulation to make provision about a matter necessary to facilitate the holding of a by-election in a way that helps minimise serious risks to the health and safety.

### **Amendments to the *Planning Act 2016***

The Bill makes a number of amendments to the planning framework under the Planning Act to allow facilities and other places to be used for public health purposes. In particular, in light of the current COVID-19 public health emergency, there may be unexpected circumstances where a proponent may need to extend their operating rights in order to, for example, provide essential goods and services to communities.

The amendments introduce a concept of a ‘declared use’, which during the applicable event period, is a class of uses that are currently operating lawfully that may extend operating hours to operate for up to 24 hours/day and 7 days/week. For other uses, proponents with a lawful existing use may apply for a temporary use licence (TUL) to extend their operating rights.

The planning framework includes a number of statutory timeframes, such as for plan-making and development assessment. In order to provide certainty, efficiency and transparency to the land use planning and development system, where an applicable event has been notified, the Bill gives the Planning Minister the discretion to affect any of the statutory timeframes to restore council, industry and community certainty.

Specifically, the Bill amends the Planning Act to:

- introduce the concept of an ‘applicable event’, which would draw upon the meaning of ‘event’ in the Disaster Management Act. For example, an applicable event may be notified for the public health emergency of COVID-19
- introduce the concept of a ‘declared use’, which during the applicable event period, is a class of uses that are currently operating lawfully that may extend operating hours to operate 24 hours / 7 days / week
- introduce a new TUL framework during an applicable event. The TUL would authorise an entity to carry out a use in accordance with the licence, notwithstanding the conditions of the original development approval or any other constraint or requirement under the Planning Act on the use. The TUL would be eligible for uses other than a declared use or seeking to amend operating conditions other than operating hours. The TUL would be temporary, for the duration of the of the applicable event
- provide for the Planning Minister to affect the statutory timeframes in the Planning Act, the Planning Regulation 2017 or any statutory instrument under the Planning Act, where an applicable event has been notified, for example, the public health emergency of COVID-19.

## Human Rights Issues

### **Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)**

In my opinion, the human rights that are relevant to the Bill are:

- Recognition and equality before the law (section 15)
- Right to life (section 16)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Freedom of expression (section 21)
- Peaceful assembly and freedom of association (section 22)
- Taking part in public life (section 23)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Protection of families (section 26(1))
- Protection of children (section 26(2))
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to liberty and security of person (section 29)
- Right to humane treatment when deprived of liberty (section 30)
- Fair hearing (section 31)

- Rights in criminal proceedings (section 32)
- Right to education (section 36)
- Right to health services (section 37)

### **Amendments to the *Public Health Act 2005***

#### *Right to life*

The parts of the Bill that are relevant to this right are:

- The amendments in Part 11 that authorise the CHO and emergency officers to issue public health directions that are reasonably necessary to assist in containing or responding to the spread of COVID-19 within the community.
- Part 12, which amends the State Penalties Enforcement Regulation to make offences under the Public Health Act for a failure to comply with a direction of the CHO or an emergency officer offences for which a PIN may be issued under the State Penalties Enforcement Act.

The right to life imposes substantive and procedural obligations on the State to take appropriate steps and adopt positive measures to protect life. The protective obligation extends to requiring authorities to put in place measures that would protect an individual whose life is put at risk by another's criminal activity.

The Bill promotes the right to life by granting the CHO and emergency officers power to issue directions to contain the spread of COVID-19, which is known to be fatal in some cases. The Bill also imposes further protective measures by putting measures in place to enforce compliance with the directions of emergency officers. The right to life is not limited by the Bill.

#### *Freedom of movement; Right to privacy*

The parts of the Bill that are relevant to these rights are:

- The amendments in Part 11 that authorise the CHO and emergency officers to issue directions that are reasonably necessary to assist in containing or responding to the spread of COVID-19 within the community.

#### *Freedom of thought, conscience, religion and belief; freedom of expression; peaceful assembly and freedom of association*

The parts of the Bill that are relevant to these rights are:

- The amendments in Part 11 that authorise the CHO and emergency officers to issue directions that are reasonably necessary to assist in containing or responding to the spread of COVID-19 within the community.

#### *Taking part in public life*

The parts of the Bill that are relevant to this right are:

- The amendments in Part 11 that authorise the CHO and emergency officers to issue directions that are reasonably necessary to assist in containing or responding to the spread of COVID-19 within the community.

#### *Property rights*

The parts of the Bill that are relevant to this right are:

- Part 12, which amends the State Penalties Enforcement Regulation to make offences under the Public Health Act for a failure to comply with a direction of the CHO or an emergency officer offences for which a PIN may be issued under the State Penalties Enforcement Act.

The right is not engaged by the amendment in part 11 of the Bill that removes the entitlement to compensation for losses or damages incurred because of an exercise of a power under part 6 or 7 of the Public Health Act in relation to the COVID-19 emergency. As the scope of this right does not include a right to compensation if a person is deprived of their property, the amendment in Part 11 does not limit this right.

#### *Right to liberty and security of person*

The parts of the Bill that are relevant to this right are:

- The amendments in Part 11 that authorise the CHO and emergency officers to issue public health directions that are reasonably necessary to assist in containing or responding to the spread of COVID-19 within the community.
- Part 12, which amends the State Penalties Enforcement Regulation to make offences under the Public Health Act for a failure to comply with a direction of the CHO or an emergency officer offences for which a PIN may be issued under the State Penalties Enforcement Act.

#### *Fair hearing*

The parts of the Bill that are relevant to this right are:

- Part 12, which amends the State Penalties Enforcement Regulation to make offences under the Public Health Act for a failure to comply with a direction of the CHO or an emergency officer offences for which a PIN may be issued under the State Penalties Enforcement Act.

#### *Rights in criminal proceedings*

The parts of the Bill that are relevant to this right are:

- Part 12, which amends the State Penalties Enforcement Regulation to make offences under the Public Health Act for a failure to comply with a direction of the CHO or an emergency officer offences for which a PIN may be issued under the State Penalties Enforcement Act.

### *Right to education*

The parts of the Bill that are relevant to this right are:

- The amendments in Part 11 that authorise the CHO and emergency officers to issue public health directions that are reasonably necessary to assist in containing or responding to the spread of COVID-19 within the community.

### ***Amendments to the City of Brisbane Act 2010, the Local Government Act 2009, the Local Government (Dissolution of Ipswich City Council) Act 2018, the Local Government Electoral Act 2011, and the Local Government Regulation 2012***

### *Recognition and equality before the law*

The parts of the Bill that are relevant to this right are:

- The amendments which allow, in respect of the quadrennial election for 2020, suspension of a notice of election, terminating an election, extended timeframes for applying for postal votes and making of additional arrangements for electoral visitor and electronically assisted voting, where these measures are considered necessary to minimise serious risks to the health and safety of persons caused by the public health emergency involving COVID-19.

### *Freedom of expression*

The parts of the Bill that are relevant to this right are:

- The amendments which allow, in respect of in respect of the quadrennial election for 2020, the Electoral Commission of Queensland to give a direction about the distribution and display of how-to-vote cards or election material, or the prohibition of distribution of how-to-vote cards or election material, with an offence for contravening such a direction.

### *Taking part in public life*

The parts of the Bill that are relevant to this right are:

- The amendments which allow, in respect of the quadrennial election for 2020, that the Minister may give a direction to Brisbane City Council or a local government to either fill or not fill a vacancy of a councillor (including the mayor) if the election is not held on March 2020;
- The amendment which allows, in respect of the quadrennial election for 2020, the Electoral Commission of Queensland to give a direction about the distribution and display of how-to-vote cards or election material, or the prohibition of distribution of how-to-vote cards or election material, with an offence for contravening such a direction;
- The amendments which allow, in respect of the quadrennial election for 2020, extended timeframes for applying for postal votes and the making of additional arrangements for electoral visitor and electronically assisted voting, where these measures are considered

necessary to minimise serious risks to the health and safety of persons caused by the public health emergency involving COVID-19.

#### *Right to privacy and reputation*

The parts of the Bill that are relevant to this right are:

- The amendments which allow, in respect of in respect of the quadrennial election for 2020, extended timeframes for applying for postal votes and the making of additional arrangements for electoral visitor and electronically assisted voting, where these measures are considered necessary to minimise serious risks to the health and safety of persons caused by the public health emergency involving COVID-19.

#### **Amendments to the *Economic Development Act 2012***

##### *Recognition and equality before the law*

The parts of the Bill that are relevant to this right are:

- The amendments in Part 4 that allow for the extension or suspension on statutory timeframes in the Economic Development Act in times of emergency
- The amendments in Part 4 that allow for certain land uses to exceed or transgress parameters identified in conditions of a PDA development approval

##### *Freedom of expression*

The parts of the Bill that are relevant to this right are:

- The amendments in Part 4 introducing a new, temporary TUL framework

##### *Property rights*

The parts of the Bill that are relevant to this right are:

- The amendments in Part 4 that make changes to the planning framework, including the introduction of the TUL framework and the declaration of uses

Section 24 of the *Human Rights Act* provides that all persons have the right to own property alone or in association with others and a person must not be arbitrarily deprived of the person's property.

The Bill amends the planning framework under the Economic Development Act, which may affect people's rights to develop land and property during an applicable event (new section 171D). This includes TUL provisions (new sections 171E to 171K) and the declaration of uses (new section 171L).

The purpose of the Bill's provisions may impact people's right to property during an applicable event by broadening development rights for certain uses and amending, by extension or suspension, statutory timeframes under the Economic Development Act.

The emergency powers proposed by the Bill, while relevant to property rights, will not alter the ability of any individual to buy, own, or access property that they currently have a lawful right to access within a PDA.

#### *Privacy and reputation*

The parts of the Bill that are relevant to this right are:

- The amendments in Part 4 that make changes to the planning framework, including the introduction of the TUL framework and the declaration of uses.

#### *Right to education and right to health services*

The parts of the Bill that are relevant to this right are:

- The amendments in Part 4 that make changes to the planning framework, including the introduction of the TUL framework and the declaration of uses.

Sections 36 and 37 of the Human Rights Act provides that every person has the right to access education services and health services without discrimination.

The Bill provides for extended access to essential goods and services during applicable events (new section 171D) through a TUL (new sections 171E to 171K) or through declaration of uses (new section 171L). Many uses such as supermarkets, pharmacies and community facilities are often located in retail, commercial or mixed land use centres where conditions of a PDA development approval can limit operations. This includes delivery times and opening hours. These operating limits may need to be expanded or temporarily suspended to support the community through this unprecedented time.

The human rights of access to education and health services are not limited by the Bill; rather it seeks to ensure essential education and health services have the ability to alter or exceed their standard operating requirements in times of emergency.

### **Amendments to the *Electoral Act 1992***

#### *Recognition and equality before the law*

The parts of this Bill that are relevant to this right are:

- Part 5, to the extent that it allows, in respect of State by-elections held before the next general election, the Electoral Commission of Queensland to give a direction about the distribution or display of how-to-vote cards or other election material at a polling booth, or the canvassing for votes in or near a polling booth, with an offence applying to persons who contravene such a direction.

#### *Freedom of expression*

The parts of this Bill that are relevant to this right are:

- Part 5, to the extent that it allows, in respect of State by-elections held before the next general election, the Electoral Commission of Queensland to give a direction about the distribution or display of how-to-vote cards, or the prohibition of the distribution or display of how-to-vote cards or other election material, at a polling booth, with an offence applying to persons who contravene such a direction.

#### *Taking part in public life*

The parts of this Bill that are relevant to this right are:

- Part 5, to the extent that it allows, in respect of State by-elections held before the next general election, the Electoral Commission of Queensland to give a direction about the distribution or display of how-to-vote cards or other election material at a polling booth, or the canvassing for votes in or near a polling booth, with an offence applying to persons who contravene such a direction; and
- Part 5, to the extent that it allows, in respect of State by-elections held before the next general election, the postponement of polling day or substitution of later days for days stated in a writ, extended timeframes for applying for postal votes and the making of additional arrangements for electoral visitor and electronically assisted voting, where these measures are considered necessary to avoid risks to health and safety.

#### *Right to privacy and reputation*

The parts of this Bill that are relevant to this right are:

- Part 5, to the extent that it allows, in respect of State by-elections held before the next general election, extended timeframes for applying for postal votes and the making of additional arrangements for electoral visitor and electronically assisted voting, where these measures are considered necessary to avoid risks to health and safety.

### **Amendments to the *Planning Act 2016***

#### *Recognition and equality before the law*

The parts of this Bill that are relevant to this right are:

- The amendments in part 10 that allow certain uses to extend or exceed existing operating rights within conditions of approval, either as a declared use or by applying for a TUL.

#### *Right to freedom of expression*

The parts of this Bill that are relevant to this right are:

- The amendments in part 10 introducing a new TUL framework during an applicable event, such as the declared COVID-19 public health emergency.

### *Property rights*

The parts of this Bill that are relevant to this right are:

- The amendments in part 10 making changes to the planning framework enabling the broadening of development rights for certain uses and amending statutory timeframes.

Section 24 of the Human Rights Act provides that all persons have the right to own property alone or in association with others and a person must not be arbitrarily deprived of the person's property.

The Bill amends the planning framework under the Planning Act, which will affect people's rights to develop land and property during an applicable event.

The Bill may impact people's right to property during an applicable event by broadening development rights for certain uses and amending, by extension or suspension, statutory timeframes under the Planning Act.

The Bill does not restrict the right to own property or develop land. A person is not deprived of any legal or proprietary interests or ability to use or develop land in accordance with the planning framework under the Bill.

### *Right to health services*

The parts of this Bill that are relevant to this right are:

- The amendments in part 10 that provide for access to essential goods and services are not hindered during an applicable event.

Section 37 of the Human Rights Act provides that every person has the right to access health services without discrimination.

The Bill ensures that access to essential goods and services is not hindered during an applicable event. Many uses, such as supermarkets or pharmacies for example, have conditions limiting hours of operation and other operational requirements which may need to be suspended temporarily to support the community through this unprecedented time.

The human right of access to health services is not limited by the Bill; rather it is supported by the allowance uses such as health services to exceed their standard operating requirements.

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For the reasons outlined below, I am of the view that the Bill is compatible with each of these human rights.

**If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)**

***Amendments to the Public Health Act 2005***

***Isolation, quarantine and detention powers***

(a) the nature of the right

*Freedom of movement; Right to privacy*

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. The right means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place. The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers, like requiring permission before entering a public park or participating in a public demonstration in a public place. The right may be engaged where a public entity actively curtails a person's freedom of movement.

The Bill limits the right to freedom of movement by authorising the CHO and emergency officers to restrict the movement of any person or group of persons within the public health emergency area for COVID-19; require persons to isolate or quarantine themselves for periods of up to 14 days; require persons to stay at or in, or not to stay at or in, a stated place; restrict contact between groups of persons within the COVID-19 public health emergency area; and provide other directions that are necessary to protect public health. Freedom of movement may also be restricted by the provisions of the Bill that allow emergency officers to require owners and operators of businesses and undertakings to open, close or limit access to their facilities.

It could be argued that, in addition to restricting freedom of movement, these provisions also engage the right to privacy, which is broadly construed and includes a specific right against interference with a person's physical integrity. However, the right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. This internal limitation applies here because the Bill only authorises restrictions on movement pursuant to a lawful direction predicated on a reasonable belief that the restriction is necessary to assist in containing or responding to the spread of COVID-19 within the community. The Bill is therefore compatible with the right to privacy.

*Freedom of thought, conscience, religion and belief; Freedom of expression; Peaceful assembly and freedom of association; Cultural rights – generally; Cultural rights – Aboriginal peoples and Torres Strait Islander peoples*

The Bill authorises the CHO and emergency officers to issue directions that may restrict the ability of persons to leave their homes or other premises, to enter particular facilities, or to freely move about and engage in activities within the public health emergency area for COVID-19. The Bill also authorises directions to owners and operators of businesses and undertakings to open, close or limit access to their facilities for stated purposes. These restrictions engage rights relevant to engaging and gathering with others in the community.

The right to freedom of thought, conscience, religion and belief includes the freedom to demonstrate the person's religion or belief 'either individually or as part of a community, in public or in private' (section 20(1)(b) of the Human Rights Act). The right to *hold* a belief is so important that it is considered to be an absolute right, however limits on how a person *manifests* their belief can be justified. A direction to self-isolate or to otherwise restrict a person's or group's movements, limits the ability of people to publicly demonstrate and practice their religion or beliefs.

The right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds. It protects almost all kinds of expression, as long as it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. While the concept of freedom of expression is broad, the way people can exercise it can be limited. Restricting people's movements and contacts with others limits the ways in which people can express their opinions and ideas.

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals. It protects both participants and organisers of peaceful assemblies. Restricting people's movements and banning large gatherings of people limits the ability of people to peacefully assemble.

Cultural rights protect the rights of all people with particular cultural, religion, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in community. It promotes the right to practise and maintain shared traditions and activities, and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. Limiting large gatherings and restricting the movement of groups and individuals limits people's ability to engage with others who share their cultural background.

In addition to the general cultural rights, the Human Rights Act recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people. They have the right to enjoy, maintain, control, protect and develop their culture, language and kinship ties with other members of their community. The right also protects Aboriginal peoples and Torres Strait Islander peoples right to maintain and strengthen their distinct spiritual relationship with the land, territories, waters, coastal seas and other resources, and to conserve and protect the environment. Directions to prohibit large gatherings, to self-

isolate, 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.

#### *Taking part in public life*

Every person in Queensland has the right to take part in public life. This includes the right to participate in the conduct of public affairs and the right to vote and be elected at periodic State and local government elections. Being part of community consultations with government, attending local council meetings, participating in public debate, and taking part in referendums or other electoral processes are important aspects of taking part in public life. The right to take part in public life does not mean the right to access public space through the use of public transport.

People subject to directions to self-isolate or otherwise restrict their movements, or who are affected by restrictions placed on access to particular facilities, will be temporarily limited in the ways in which they can take part in public life.

#### *Right to protection of families*

Queensland recognises families as the fundamental unit of society entitled to protection. This right encompasses more than non-interference; it is a guarantee of institutional protection of the family by society and the state. ‘Family’ is interpreted broadly, extending to different cultural understandings of family. Internal limitations of lawfulness and arbitrariness apply to the right of the family.

Physical separation of families could occur under the amendments in the Bill if, for example, a person is ordered to self-isolate or a facility such as an aged care facility is directed to restrict access to visitors. This limitation would be temporary and would not restrict other means of communication and engagement among family members, for example through phone calls, video conferencing or social media.

The limitation on the right to protection of families would also not be arbitrary, as the actions would be taken in an effort to protect the health and safety of family members and the wider community.

#### *Right to protection of children*

Every child has the right, without discrimination, to the protection that is in their best interests as a child. The right recognises that special measures to protect children are necessary given their vulnerability due to age. The best interests of the child should be taken into account in all actions affecting a child, aimed at ensuring both the full and effective enjoyment of all of the child’s human rights and the holistic development of the child. Best interests depends on the individual circumstances of the child.

The exercise of powers under the amendments in this Bill have the potential to impact children through, for example, temporarily restricting their movement, restricting the movement of family or other contacts, or restricting their access to certain facilities or events. Also, directions

may not take into account the child's views or give their views due weight, which does not respect their capacity to influence the determination of their best interests. However, there are other aspects of the child's best interests which weigh in favour of the amendments, such as their right to life and their health and wellbeing.

*Right to liberty and security of person*

Every person in Queensland has the right to liberty and security and must not be subjected to arbitrary arrest or detention or deprived of their liberty except on grounds, and in accordance with procedures, established by law. The concept of detention includes not only detention in a prison, but all forms of detention, including for the purposes of medical treatment.

The Bill authorises the CHO and emergency officers to issue directions that may restrict the ability of persons to leave their homes or other premises. The Bill also extends the time that an emergency officer (medical) can detain a person under a detention order to 14 days. A direction to self-isolate at home or at another premises, or to otherwise restrict a person's movements, may limit the right to liberty and security because preventing people from leaving their homes or other premises constitutes detention.

This right is subject to a number of internal limitations and qualifications. Relevantly, the detention must not be arbitrary in the sense that it must not be capricious, unpredictable or unjust or otherwise disproportionate to the legitimate aim that is sought. The detention powers in the Bill 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 people is also a proportionate response to the risk of COVID-19 spreading unchecked through the community. Accordingly, the ability to detain people under the Bill is not arbitrary.

The right to liberty and security also incorporates a number of procedural elements including that a person who is detained must be informed at the time of detention of the reason for detention and that a detained person is able to apply to a court for a declaration or order regarding the lawfulness of the person's detention. These procedural aspects of the right are limited by the Bill. The Bill provides for people to be given notice of the direction or order for detention and it is expected that the reason for the detention will be clear in the notice. However, the Bill does not make provision for persons subject to a direction or a detention order to appeal the direction or order. This limitation is necessary and justified because of the high number of people who are expected to be subject to these orders and directions. Allowing people to appeal could impose a significant burden on the courts and divert resources required to address the public health emergency. Any direction to self-isolate made by an emergency officer or detention order by an emergency officer (medical) is limited in time to 14 days, which means even without an appeal right the detention is for a defined period of time and will not continue indefinitely. Directions of the CHO are not time limited, however the directions must be revoked once the direction is no longer necessary to assist in containing or responding to the spread of COVID-19 in the community.

*Right to humane treatment when deprived of liberty*

The Human Rights Act states that everyone must be treated with respect when deprived of liberty. The use of force to enforce self-isolation or other directions could potentially implicate this right. However, as these directions constitute lawful orders, and as the Bill only allows the use of force that is both necessary and reasonable to enforce compliance, the ability to use force in these circumstances is appropriate and does not limit the right to human treatment when deprived of liberty.

*Right to education*

The right of every child to access primary and secondary education appropriate to their needs is protected in Queensland. The right to education also says that every person has the right to have access, based on their abilities, to equally accessible further vocational education and training. The right to education is intended to be interpreted in line with the Education (General Provisions) Act 2006 and to provide rights in relation to aspects of Queensland's responsibilities for education service delivery. Internationally, this right has been interpreted as requiring that education be accessible to all people without discrimination.

Individuals may be temporarily restricted from attending schools or other educational institutions if they are subject to a direction to self-isolate in order to assist the containment of or arrest the spread of COVID-19 to the broader community. Certain educational activities, such as school assemblies or performances may also be temporarily restricted, however such restrictions would be without discrimination.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Protecting the health and safety of the public is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom. The purpose of the limitations on human rights to be imposed by the Bill, if enacted, is to protect the Queensland public from serious risks to health and safety, including the potential for widespread loss of life that could occur if public health officials are unable to coordinate an effective public health response to the COVID-19 pandemic.

Based on the best available evidence and the experience of public health officials and populations in other countries, it is increasingly likely that COVID-19 will not remain contained in Queensland and, unless extraordinary measures are taken, will spread rapidly throughout the community. This presents a clear and present danger to the health and wellbeing of Queenslanders, particularly vulnerable persons including the elderly and immunocompromised. It also has the potential to cause severe adverse economic and social consequences.

Against these indications, there is a need for clear legislative authority to make the health-related interventions necessary to prevent COVID-19 spread in the community, and to mitigate

potential adverse economic and social consequences associated with the disruption that will inevitably follow.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation of human rights is necessary to ensure that public health officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19 and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life-sustaining treatment.

The limitations are incidental to the grant of emergency powers to the CHO and emergency officers appointed under the Public Health Act to implement social distancing measures, including regulating mass gatherings, isolating or quarantining people suspected or known to have been exposed to COVID-19 and protecting vulnerable populations such as the elderly. These powers are necessary to give effect to the recommendations of public health experts, including the WHO and the Australian Health Protection Principal Committee, which comprises all State and Territory Chief Health Officers and the Australian Chief Medical Officer. These and other public health agencies have urged countries to implement social distancing measures to slow the COVID-19 pandemic. If these measures are not implemented and an outbreak of COVID-19 occurs in Queensland, demand for emergency and life-sustaining treatment could quickly exceed capacity and overwhelm the State's public health infrastructure. In addition to loss of life and serious adverse health impacts, this could potentially cause widespread economic disruption, social panic and civil unrest, further jeopardising the safety and wellbeing of the community.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

The purpose of the Bill cannot be achieved through any reasonably available and less restrictive means. Queensland has already implemented voluntary measures, including encouraging people who have been exposed to COVID-19 to self-isolate and urging members of the public to avoid crowds and large gatherings. Extensive campaigns by the Queensland and Commonwealth Governments are in place to educate members of the public about the risks of COVID-19 and how to minimise their potential exposure to infection. Despite these efforts, rates of infection are quickly and steadily rising, with 94 confirmed cases in Queensland as of 17 March 2020. Experience abroad underscores that voluntary containment measures are inadequate to arrest the spread of COVID-19 and that governments must proactively pursue more prescriptive approaches to respond effectively to this unprecedented public health emergency.

The Bill includes a number of safeguards to ensure that any potential interference with human rights is minimal and no greater than necessary to respond to the COVID-19 pandemic. These include:

- The emergency powers conferred by the Bill will sunset after 12 months.
- The powers are conferred for the COVID-19 public health emergency declared by the Minister on 29 January 2020 and may only be used to assist in containing or responding to the spread of COVID-19 within the community.
- The powers may only be exercised by, as applicable, the CHO and emergency officers appointed under the Public Health Act.
- Before issuing a direction, the CHO or emergency officer must have a reasonable belief that the direction is necessary to assist in containing or responding to the spread of COVID-19 within the community.
- If at any time the CHO or a emergency officer is satisfied that a direction is no longer necessary to contain the spread of COVID-19 within the community, the direction must be revoked.
- Directions to self-isolate or quarantine must be time-limited and may not apply for more than 14 days unless a further lawful direction is made.
- Directions must state the period during which they apply and that non-compliance with the direction is an offence.
- A person who fails to comply with a direction does not commit an offence if they have a reasonable excuse for not complying.
- Directions may include conditions to minimise adverse impacts on human rights and other interests. For example, a person who is required to self-isolate may be permitted to leave their home to obtain medical supplies or to engage in activities that do not involve close contact with other persons.

The most significant human rights limitations resulting from the Bill relate to the right to freedom of movement, particularly for persons who are subject to a self-isolation direction. To a lesser extent, restrictions on movement will also limit rights to freedom of thought, conscience, religion and belief; freedom of expression; peaceful assembly and freedom of association; and cultural rights. These limitations are unavoidable and have been mitigated to the greatest extent possible. As noted above, the Bill provides 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.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

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. These measures are being enacted in accordance with the advice of the WHO, the Australian Health Protection Principal Committee and other public health agencies, which have urged countries to implement social distancing measures to slow the COVID-19 pandemic. 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 a number of 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 taken stronger containment and social distancing measures.

Although the Bill potentially limits a large number of 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, including self-isolation, to limit their potential exposure to COVID-19 and avoid spreading this disease to family members, friends and the broader community. That many individuals are already undertaking these measures voluntarily suggests they are unlikely to impose an unjustified burden on human rights.

As described in detail above, the Bill also imposes a number of safeguards to ensure that any limitations on human rights are no more onerous than is required to slow the spread of COVID-19. Importantly, the provisions of the Bill will expire after a year 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. On balance, any limitations on human rights are reasonable and justified to ensure the preservation of life and protection of the community from the worse impacts of a pandemic.

### ***Enforcement through the State Penalties Enforcement Regulation***

- (a) the nature of the right

#### *Property rights*

A person's right to own property is protected in Queensland and a person must not be arbitrarily deprived of their property. The right to property is subject to an internal limitation because the deprivation of property must not be arbitrary in the sense that it must not be capricious, unpredictable or unjust or otherwise disproportionate to the legitimate aim that is sought.

Part 12 of the Bill may limit this right because, if a person fails to pay the penalty imposed in a PIN and does not successfully challenge the offence or penalty in court, enforcement action

may be taken against the person which may include issuing a warrant for the sale and seizure of the person's property under the State Penalties Enforcement Act.

Any deprivation of property arising from a PIN is not arbitrary as it is governed by the provisions of the State Penalties Enforcement Act. The State Penalty Enforcement Act contains detailed provisions on when enforcement action may be taken. There is scope for enforcement action to be appealed to the courts and for an individual's circumstances to be taken into account and alternate means of satisfying the debt agreed through the work and development order provisions. Accordingly, issuing a PIN will not lead to the deprivation of property on an arbitrary basis and is unlikely to limit a person's right not to be arbitrarily deprived of their property.

#### *Right to liberty and security of person*

Every person in Queensland has the right to liberty and security and must not be subjected to arbitrary arrest or detention or deprived of their liberty except on grounds, and in accordance with procedures, established by law. This right is subject to a number of internal limitations and qualifications. Relevantly, the arrest or detention must not be arbitrary in the sense that it must not be capricious, unpredictable or unjust or otherwise disproportionate to the legitimate aim that is sought.

Part 12 of the Bill may limit this right because, if a person fails to pay the penalty imposed in the PIN and does not successfully challenge the offence or penalty in court, a warrant for that person's arrest and detention may be issued under the State Penalties Enforcement Act.

Any arrest or detention arising from issuing a PIN is not arbitrary as it is governed by the provisions of the State Penalties Enforcement Act. The State Penalty Enforcement Act contains detailed provisions on when enforcement action, including issuing a warrant for arrest and detention, may be taken. There is scope for enforcement action to be appealed to the courts and for an individual's circumstances to be taken into account and alternate means of satisfying the debt agreed through the work and development order provisions. Arrest and detention is also a last resort for addressing unpaid fines as the SPER Charter, in section 9 of the State Penalties Enforcement Act, includes reducing the use of imprisonment for fine default by encouraging the use of other enforcement mechanisms. Accordingly, issuing a PIN will not lead to arrest or detention on an arbitrary basis and is unlikely to limit a person's right to liberty and security of person.

#### *Fair hearing*

In Queensland a person charged with a criminal offence has the right to have the charge decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This right affirms the right of all individuals to procedural fairness and protects natural justice.

Part 12 of the Bill may limit this right because a person issued with a PIN is issued a penalty for committing an offence without having a court or tribunal decide the charge. However, a person may choose to challenge the offence or penalty imposed in a PIN in court where they will receive the benefit of a fair hearing. As such, any limitation on this right is minor in nature.

*Rights in criminal proceedings*

The rights of people charged with criminal offences in Queensland are protected under the Human Rights Act. Rights in criminal proceedings include the right to be presumed innocent until proven guilty, the right to be tried in person and the right to examine witnesses. This imposes on the prosecution the onus of proving the offence and guarantees that guilt cannot be determined until the offence has been proved beyond reasonable doubt.

Part 12 of the Bill may limit this right because a person issued with a PIN becomes liable for a penalty for committing an offence without a trial and the rights that accompany a criminal proceeding. However, a person may choose to challenge the offence or penalty imposed in a PIN in court where they will receive the benefit of a trial and the rights that accompany a criminal proceeding. Further, when a PIN is issued for an offence no finding of guilt is made in respect to the alleged offence. As such, any limitation on this right is minor in nature.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Governments have an obligation to protect the community from public health risks, including pandemic diseases such as COVID-19. There is a strong public interest in effective measures being put in place to prevent or slow the spread of communicable disease to protect the health and wellbeing of the public. The purpose of part 12 of the Bill is to increase the effectiveness of measures designed to contain or respond to the spread of COVID-19 by ensuring penalties for the failure to comply with a direction of the CHO or an emergency officer can readily be enforced in accordance with the State Penalties and Enforcement regime. The ability to enforce directions issued by the CHO and emergency officers through issuing a PIN will promote enforcement as breaches can be immediately penalised through the imposition of a financial penalty. Effective enforcement will discourage offending behaviour and support compliance with directions to self-isolate and take other measures to contain the spread of COVID-19. This purpose is consistent with a free and democratic society based on human dignity, equality and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitations on property rights, the right to liberty and security of person, fair hearing and rights in criminal proceedings help increase the effectiveness of measures to contain or respond to the spread of COVID-19. The effectiveness of enforcement of directions issued by the CHO

and emergency officers will be increased by allowing PINs to be issued in response to failures to follow these directions. The limitations on human rights are directly related to the issuing of PINs and the consequences of not complying with a PIN.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

There are no less restrictive and reasonably available ways to achieve the purpose of Part 12 of the Bill. The only alternative to enforce directions of the CHO and emergency officers is to enforce each offence through the court system. The number of people who will be subject to directions from the CHO and emergency officers is currently unknown, however it is expected to be in the thousands. It can be expected that as the number of people subjected to the relevant directions increases, so too will the number of people failing to comply with these directions. Requiring each incidence of failure to comply with a direction to be decided by the criminal courts is not a reasonably available way to achieve the purpose. This approach would impose a significant additional burden on the courts and may discourage effective enforcement as minor failures to comply with the direction of the CHO or an emergency officer may not be pursued due to competing prosecution priorities and resource considerations. A lack of enforcement may result in people subject to directions issued by the CHO and emergency officers to view minor failures to comply as insignificant even though such failures could contribute further to the public health emergency and promote the spread of COVID-19.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The benefits of increasing the effectiveness of measures to contain or respond to the spread of COVID-19 significantly outweigh the potential limitations imposed on human rights by issuing PINs to enforce directions of the CHO and emergency officers. Part 12 of the Bill will ensure there is an administratively convenient way to enforce directions to take measures to contain or respond to the spread of COVID-19, which will support enforcement action and discourage people from breaching directions.

The nature and extent of the limitations on human rights are minor and are adequately addressed through existing safeguards in the State Penalties Enforcement Act including the ability to elect to challenge a PIN in court, the ability to appeal enforcement orders and mechanisms that allow individual circumstances to be taken into account and alternate methods of satisfying the debt to be agreed including instalment plans and work and development orders. These measures ensure that any restrictions on human rights are reasonable, justifiable and no more restrictive than necessary to encourage compliance with the directions of the CHO and emergency officers to contain or respond to the spread of COVID-19 in the community.

On balance, the importance of protecting the public from communicable disease in pandemic conditions through effective enforcement outweighs any potential limitations imposed on property rights, the right to liberty and security, fair hearing and rights in criminal proceedings.

***Amendments to the City of Brisbane Act 2010, the Local Government Act 2009, the Local Government (Dissolution of Ipswich City Council) Act 2018, the Local Government Electoral Act 2011, and the Local Government Regulation 2012***

(a) the nature of the right

*Recognition and equality before the law; Freedom of expression, Taking part in public life; Right to privacy and reputation*

The right to recognition and equality before the law encompasses the right to recognition as a person before the law and right to enjoy human rights without discrimination. It reflects the essence of human rights: that every person holds the same human rights by virtue of being human and not because of some particular characteristic or membership of a particular social group. The amendments to the *Local Government Electoral Act 2011* engage and promote the right to recognition and equality before the law. Allowing in respect of the quadrennial election for 2020, extended timeframes for applying for postal votes and the making of additional arrangements for electoral visitor and electronically assisted voting, where these measures are considered necessary to minimise serious risks to the health and safety of persons caused by the public health emergency involving COVID-19, will allow voters to be better supported to exercise their right to vote, despite prevailing conditions including their personal health or health concerns.

The right to freedom of expression protects the right of all persons to hold an opinion without interference, and the right of all persons to seek, receive and express information and ideas (including verbal and non-verbal communication). The forms of protected expression are broad, and include expression that is oral, written, print, art or in any other medium. The right to freedom of expression and the free flow of information and ideas, particularly about public and political issues, is considered to be a touchstone of a democratic society.

The right to take part in public life affirms the right of all persons to contribute to and exercise their voices in relation to the public life of the State. It ensures all persons have the opportunity to contribute to the political process and public governance, directly or through freely chosen representatives. The United Nations Human Rights Committee considers that the right imposes positive obligations on the State regarding the conduct of elections, including to preserve the impartiality of the electoral process and the right of citizens to choose their representatives freely.

Freedom of expression and the right to take part in public life are engaged by the amendments to the *Local Government Electoral Act 2011* which allow the Electoral Commission of Queensland, in respect of the quadrennial election for 2020, a direction about the distribution and display of how-to-vote cards or election material, or the prohibition of distribution of how-to-vote cards or election material at, in or around polling booths. The extent of any impact will depend on any specific direction given by the Electoral Commission of Queensland. Freedom

of expression and the right to take part in public life may be promoted if increased display of how-to-vote cards was to be permitted, including inside a polling booth or within six metres of its entrance, under the direction (and currently prohibited). However, freedom of expression may be limited in the event that continued distribution by persons of how-to-vote cards and election material around a polling booth was prohibited or restricted, because this would impact on information on how-to-vote cards or election material being conveyed to, and received by, electors who are exercising their voting choices.

The right to take part in public is also engaged by the amendments to the *City of Brisbane Act 2010* and the *Local Government Act 2009*, which allow the Minister to direct Brisbane City Council (BCC) or a local government to fill or not fill a vacancy of a councillor (including the mayor) only applies if the 2020 quadrennial election is not held in March 2020 and only applies until the day before the 2020 quadrennial election is to be held. The right to take part in public life may be limited for a person who wishes to fill a vacancy, if the Minister directs BCC or a local government to not fill the vacancy.

The right to privacy and reputation protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally. The right to privacy and reputation may be limited by the amendments as the increased use of postal voting or electronically assisted voting, and changes to arrangements to electoral visitor voting, could arguably expose voters who take up these voting methods to increased risks of their privacy, and information about their voting choices, not being kept private, such as in the event that the postal system is interfered with or their personal circumstances present difficulties for casting their vote in secret.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitations on human rights to be imposed by the *City of Brisbane Act 2010*, *Local Government Act 2009* and the *Local Government Electoral Act 2011*, if enacted, is to protect the Queensland public from risks to health and safety posed by the coronavirus disease, including limiting public events which may result contagion through person to person contact. Protecting the health and the safety of the public, including more vulnerable persons, is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitations are necessary to achieve the purpose because suspension of a notice of election, terminating an election, extended timeframes for applying for postal votes and making of additional arrangements for electoral visitor and electronically assisted voting, where these are considered necessary to avoid risk to health and safety, will reduce the requirements for persons

to attend in person to vote at a polling booth, and for polling booths to be staffed based on anticipated attendance. The limitations in relation to filling vacancies are also necessary to achieve the purpose as it is not certain when an election may be held if the election is not held in March 2020 as a result of the Minister suspending the election. It is appropriate that the Minister is able to direct that BCC or a local government not to fill a vacancy of a councillor as there is an impending election. The limitations would also potentially allow information on how-to-vote cards and election material to be communicated without a person attending a polling booth to distribute such cards. This will reduce person-to-person contact and contagion risks for individuals and the public more generally.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

There are no less restrictive and reasonable available ways to achieve the purpose of the amendments. The amendments are confined to the 2020 local government quadrennial election, with the risks to health and safety, being considered in the exercise of discretions by the Minister, or Electoral Commission of Queensland, as applicable, and filling a vacancy if the 2020 local government quadrennial election is not held in March 2020.

There are existing safeguards in the *Local Government Electoral Act 2011* to protect the privacy of electors for postal and electronically assisted voting, which will be unaffected by the amendments, as supplemented by existing criminal law. In particular, it is a statutory requirement that prescribed procedures for electronically assisted voting ensure the secrecy of each electronically assisted vote, and further statutory requirements for the processing of postal votes by the Electoral Commission of Queensland that ensure that the secrecy of postal votes are maintained.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on freedom of expression, taking part in public life and the right to privacy and reputation and having regard to the information and analysis detailed above, it is considered that the importance of protecting health and safety of individuals outweighs any potential limitations on freedom of expression, taking part in public life and the right to privacy and reputation.

### **Amendments to the *Economic Development Act 2012***

#### *Recognition and equality before the law*

(a) the nature of the right

Section 15 of the Human Rights Act provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination.

The Bill contains provisions that allow for the extension or suspension of statutory timeframes contained in the Economic Development Act in times of emergency (new sections 171M to 171O). It also allows for certain land uses to exceed or transgress parameters identified in conditions of a PDA development approval (new sections 171E to 171K) or for certain uses to be identified as declared uses (new section 171L).

This will not alter the statutory process by which planning instruments are created or PDA development applications are assessed, only the timeframes under which those processes are undertaken. For example, the amendments to the Economic Development Act will not alter the rights of an applicant, land owner or submitter regarding the assessment of a PDA development application. Further, the amendments will not alter the decision as to whether a PDA development application meets the criteria for public notification as identified in a PDA development scheme. On this basis the amendments to the Economic Development Act will not limit, restrict or negatively interfere with the right of an applicant or submitter to be recognised and treated fairly as a person as a part of planning processes within PDAs.

(b) the nature of the purpose of the limitation to be imposed by the provisions if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation on the human rights of recognition and equality before the law is to protect public interest during an applicable event (new section 171D), such as a public health emergency. Currently, under the Economic Development Act, no land uses with PDA development approval are eligible to exceed or otherwise transgress parameters of their development approval. The amendments to the Economic Development Act are required for certain land uses to exceed or otherwise transgress parameters identified in conditions of a PDA development approval when those land uses are identified as being related to the public health emergency.

The community expectation would be for the planning framework to respond to emergency circumstances, and that certain uses that provide a community need are able to operate as demand requires during this time. The proposal ensures community needs can be met during an unexpected event.

(c) the relationship between the limitation to be imposed by the provisions if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation to recognition and equality before the law, being the constraint or reduced constraint on certain proponents or uses, is fundamental to the delivery of essential services that respond to matters of social, economic or cultural need in emergency situations. The limit is key to achieving the purpose of the amendments to the Economic Development Act.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose of the provisions

Less restrictive limitations to the identified human rights would change the intent of the amendments to the Economic Development Act. Given the purpose of these amendments is to

respond to the emerging public health emergency of COVID-19, there are no other less restrictive or reasonably available ways to achieve this purpose.

- (e) the balance between the importance of the purpose of the provisions, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The benefits of the amendments associated with allowing uses to operate without transgressing existing conditions of a PDA development approval and ensuring statutory timeframes under the Economic Development Act allow for flexibility during a public health emergency are considered to outweigh any negative impacts to human rights (to the small extent that the right is limited).

The need to provide certainty, efficiency and transparency to land use planning and development system within PDAs during a time of uncertainty associated with the potential spread of COVID-19 is reasonable and demonstrably justifies the minor limitation to this human right.

#### *Freedom of expression*

- (a) the nature of the right

Section 21 of the Human Rights Act provides that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information of all kinds. It protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas (including verbal and non-verbal communication).

The human right of freedom of expression is relevant to the TUL provisions, which do not incorporate a process for third parties to view or comment on the application of provisions under the Economic Development Act (new sections 171E to 171K). The impact of this on the community is lessened given the TUL approval is only temporary for the duration of the applicable event and will not affect the operation of a use following the end of the applicable event (new section 171D).

Given the emergency or urgent nature of circumstances relating to an applicable event, provision for any third party to view or comment on a TUL application is not appropriate.

- (b) the nature of the purpose of the limitation to be imposed by the provisions if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation on the human rights of recognition and equality before the law and freedom of expression is to protect public interest during an applicable event, such as a public health emergency.

The community expectation would be for the planning framework within PDAs to respond to community needs and not be restrictive during emergency circumstances. The proposal ensures community needs can be met during an unexpected event.

(c) the relationship between the limitation to be imposed by the provisions if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation to freedom of expression by not incorporating provision for third parties to view or comment on an application for a TUL is justifiable to respond to the urgent situation relating to an emerging public health emergency. To allow broader freedom of expression in the TUL provisions would be contrary to the intent for urgent action and certainty for proponents and the community. A register of TULs is to be kept by the Department of State Development, Manufacturing, Infrastructure and Planning to allow for information sharing and greater transparency of decision making.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose of the provisions

Less restrictive limitations to the identified human rights would change the intent of the amendments. Given the purpose of these amendments to the Economic Development Act is to respond to the emerging public health emergency of COVID-19, there are no other less restrictive or reasonably available ways to achieve this purpose.

(e) the balance between the importance of the purpose of the provisions, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The need to provide certainty, efficiency and transparency to land use planning and development system within PDAs during a time of uncertainty associated with the potential spread of COVID-2019 is reasonable and demonstrably justifies the minor limitation to this human right.

*Right to privacy and reputation*

(a) the nature of the right

Section 25 of the Human Rights Act provides that a person has a right to privacy in the home, their family and in correspondence and this right should not be interfered with. The right also extends to their reputation, which cannot be attacked outside of the parameters of the law.

(b) the nature of the purpose of the limitation to be imposed by the provisions if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The potential limitation on the human right of privacy in the home is to enable certain land uses that provide for access to essential goods and services to be expanded to meet community needs during an applicable event (new section 171D) through the declaration of uses (new

section 171L) or through the granting of a TUL (new sections 171E to 171K). Many retail, health and similar uses (e.g. supermarkets, pharmacies, medical centres and community facilities) are often co-located with or adjoin residential land uses. A majority of residential uses come with an expectation of reasonable privacy, amenity and quiet enjoyment. Extension of operating limits of certain land uses may interfere with a person's typical expectation of privacy and quiet enjoyment of their home.

However, it is a community expectation that the planning framework within PDAs responds to community needs during emergency circumstances and that this may have some impact on the everyday lives of individuals in their homes. The proposal ensures community needs can be met during an unexpected event.

(c) the relationship between the limitation to be imposed by the provisions if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The expectation of privacy and quiet enjoyment of a residential premises is often achieved through conditions of a PDA development approval for adjoining or nearby non-residential land uses. In the circumstances of an unexpected or emergency event where a TUL is granted to allow for less stringent operating provisions, this is linked directly to the need to provide for community needs during the event.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose of the provisions

Less restrictive limitations to the identified human rights would change the intent of the amendments. Given the purpose of the Bill is to respond to the emerging public health emergency of COVID-19, there are no other less restrictive or reasonably available ways to achieve this purpose.

(e) the balance between the importance of the purpose of the provisions, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The need to provide certainty, efficiency and transparency to land use planning and development systems within PDAs during a time of uncertainty associated with the potential spread of COVID-2019, is reasonable and demonstrably justifies the minor limitation to this human right.

### **Amendments to the *Electoral Act 1992***

(a) the nature of the right

*Recognition and equality before the law; Freedom of expression; Taking part in public life; Right to privacy and reputation*

The right to recognition and equality before the law encompasses the right to recognition as a person before the law and right to enjoy human rights without discrimination. It reflects the

essence of human rights: that every person holds the same human rights by virtue of being human and not because of some particular characteristic or membership of a particular social group. The amendments to the Electoral Act engage and promote the right to recognition and equality before the law. Allowing, in respect of State by-elections held before the next general election, postponement of polling day or substitution of later days for days stated in a writ, adjournment of the poll to later dates, extended timeframes for applying for postal votes and the making of additional arrangements for electoral visitor and electronically assisted voting, where these measures are considered necessary to avoid risks to health and safety, will allow voters to be better supported to exercise their right to vote, despite prevailing conditions including their personal health or health concerns.

The right to freedom of expression protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas (including verbal and non-verbal communication). The forms of protected expression are broad and include expression that is oral, written, print, art or in any other medium. The right to freedom of expression and the free flow of information and ideas, particularly about public and political issues, is considered to be a touchstone of a democratic society.

The right to take part in public life affirms the right of all persons to contribute to and exercise their voices in relation to the public life of the State. It ensures all persons have the opportunity to contribute to the political process and public governance, directly or through freely chosen representatives. The United Nations Human Rights Committee considers that the right imposes positive obligations on the State regarding the conduct of elections, including to preserve the impartiality of the electoral process and the right of citizens to choose their representatives freely.

Freedom of expression and the right to take part in public life are engaged by the amendments to the *Electoral Act 1992* which allow the Electoral Commission of Queensland, in respect of State by-elections held before the next general election, a direction about the distribution or display of how-to-vote cards or other election material at a polling booth, or canvassing for votes in or near a polling booth. The extent of any impact will depend on any specific direction given by the Electoral Commission of Queensland. Freedom of expression and the right to take part in public life may be promoted if increased display of how-to-vote cards was permitted, including inside a polling booth or within six metres of its entrance, under the direction (and currently prohibited). However, freedom of expression may be limited in the event that continued distribution by persons of how-to-vote cards or canvassing for votes was prohibited or restricted, because this would impact on information on how-to-vote cards being conveyed to, and received by, electors who are exercising their voting choices.

The right to privacy and reputation protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally. The right to privacy and reputation may be limited by the amendments as the increased use of postal voting or electronically assisted voting, and changes to arrangements to electoral visitor voting, could be seen to expose voters who take up these voting methods to

increased risks to their privacy, and information about their voting choices, not being kept private, such as their personal circumstances presenting difficulties for making their vote in secret.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitations on human rights to be imposed the Electoral Act, if enacted, is to protect the Queensland public from risks to health and safety caused by the public health emergency involving COVID-19, including limiting public events which may result in contagion through person-to-person contact. Protecting the health and the safety of the public, including more vulnerable persons, is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitations are necessary to achieve the purpose because allowing for postponement of polling day or substitution of later days for days stated in a writ, extended timeframes for applying for postal votes and making of additional arrangements for electoral visitor and electronically assisted voting, where these are considered necessary to avoid risk to health and safety, will reduce the requirements for persons to attend in person to vote at a polling booth, and for polling booths to be staffed based on anticipated attendance. The limitations would also potentially allow information on how-to-vote cards to be communicated without a person attending a polling booth to distribute such cards. This will reduce person-to-person contact and health and safety for individuals and the public more generally.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonable available ways to achieve the purpose of the amendments. The amendments are confined to by-elections held before the next general election, with the purpose of minimising the risks to health and safety being considered in the exercise of discretions by the Governor, Speaker, or Electoral Commission of Queensland, as applicable.

There are existing safeguards in the Electoral Act to protect the privacy of electors for postal and electronically assisted voting, which will be unaffected by the amendments, as supplemented by existing criminal law. In particular, it is a statutory requirement that prescribed procedures for electronically assisted voting ensure the secrecy of each electronically assisted vote, and statutory requirements for the processing of postal votes by the Electoral Commission of Queensland that ensure that the secrecy of postal votes are maintained.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitation on freedom of expression, taking part in public life and the right to privacy and reputation and having regard to the information and analysis detailed above, I consider that the importance of helping to minimise the serious risks to the health and safety of persons caused by the public health emergency involving COVID-19 outweighs any potential limitations on freedom of expression, taking part in public life and the right to privacy and reputation.

### **Amendments to the *Planning Act 2016***

#### *Recognition and equality before the law*

- (a) the nature of the right

Section 15 of the Human Rights Act provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination.

Part 10 of the Bill contains provisions that allow certain uses to extend or exceed existing operating rights within conditions of approval, either as a declared use or by applying for a TUL. The TUL framework is eligible to be used by certain proponents to extend their operating rights where related to the purpose of an applicable event, where otherwise they may exceed or otherwise offend existing conditions of approval.

The certain proponents able to use the declared uses or TUL provisions are those where the use is related to or required as a result of the applicable event. For example, during the public health emergency of COVID-19, this would include uses that provide essential goods and services to the community.

- (b) the nature of the purpose of the limitation to be imposed by the provisions if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation on the human rights of recognition and equality before the law is to protect public interest during an applicable event, such as a public health emergency. The limit to the human right is as a result of the provisions not extending to all approved development or existing uses but constrained to those related to the affected event.

The community expectation would be for the planning framework to respond to emergency circumstances, and that certain uses that provide a community need are able to operate during this time. The proposal ensures community needs can be met during an unexpected event.

- (c) the relationship between the limitation to be imposed by the provisions if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation to recognition and equality before the law of constraining the provisions to certain proponents or uses is fundamental to the declared uses and TUL frameworks. The declared use and TUL frameworks are specific to certain uses where development conditions, requirements on a designation or limitation on existing use rights impede responses to matters of social, economic or cultural need. The limit is key to achieving the purpose of the Bill.

- (d) whether there are any less restrictive and reasonably available ways to achieve the purpose of the provisions

Less restrictive limitations to the identified human rights would fail to achieve the objectives of the Bill to respond to the emerging public health emergency of COVID-19. Accordingly, there are no other less restrictive or reasonably available ways to achieve this purpose.

- (e) the balance between the importance of the purpose of the provisions, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The benefits of the amendments in the Bill associated with allowing uses to operate without offending existing conditions of approval and ensuring statutory timeframes under the Planning Act can have some flexibility during a public health emergency, is considered to outweigh the negative impact to human rights (to the extent that it is limited).

The need to provide certainty, efficiency and transparency to land use planning and development system during a time of uncertainty associated with the potential spread of COVID-2019, reasonable and demonstrably justifies the minor limitation to human rights.

#### *Right to freedom of expression*

- (a) the nature of the right

Section 21 of the Human Rights Act provides that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information of all kinds. It protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas (including verbal and non-verbal communication).

The human right of freedom of expression is relevant to the TUL provisions of the Bill, which do not incorporate a process for third parties to view or comment on the application as applies to other application types under the Planning Act. The impact of this on the community is lessened given the TUL approval is temporary for the duration of the applicable event and will not affect the operation of a use following the end of the applicable event.

Given the emergency or urgent nature of circumstances relating to an applicable event, provision for third party to view or comment on a TUL application is not appropriate.

- (b) the nature of the purpose of the limitation to be imposed by the provisions if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation on the human rights of recognition and equality before the law and freedom of expression is to protect public interest during an applicable event, such as a public health emergency.

The community expectation would be for the planning framework to respond to and not be restrictive during emergency circumstances. The proposal ensures community needs can be met during an unexpected event.

- (c) the relationship between the limitation to be imposed by the provisions if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation to freedom of expression by not incorporating provision for third parties to view or comment on an application for a TUL is justifiable to respond to the urgent situation relating to the emerging public health emergency. To allow broader freedom of expression in the TUL provisions would be contrary to the intent for urgent action and certainty for proponents and the community.

- (d) whether there are any less restrictive and reasonably available ways to achieve the purpose of the provisions

Less restrictive limitations to the identified human rights would change the intent of the amendments. Given the purpose of the Bill is to respond to the emerging public health emergency of COVID-19, there are no other less restrictive or reasonably available ways to achieve this purpose.

- (e) the balance between the importance of the purpose of the provisions, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The limitation of human rights is minimal and necessary to provide certainty, efficiency and transparency to the land use planning and development system during a time of uncertainty associated with the potential spread of COVID-2019. On this basis, the Bill strikes a balance that is reasonable and demonstrably justified.

*Privacy and Reputation*

(a) the nature of the right

Section 25 of the Human Rights Act provides that a person has the right not to have the person's privacy, family, home, or correspondence unlawfully or arbitrarily interfered with and not to have the person's reputation unlawfully attacked.

(b) the nature of the purpose of the limitation to be imposed by the provisions if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The proposed amendments contained in Part 2 create the potential for:

- declared uses to operate 24 hours a day, 7 days per week; or
- to obtain a TUL.

It is possible that these changes may impede upon a person's privacy in the event that they live in proximity to a declared use or a property the subject of a TUL.

Conversely, the amendments relating to the extension or suspension of timeframes under the Act also may allow for the protection of privacy by ensuring adequate timeframes for development assessment and removing the risk of deemed approvals.

(c) the relationship between the limitation to be imposed by the provisions if enacted, and its purpose, including whether the limitation helps to achieve the purpose

While it is possible that these limitations may occur as a result of an applicable event, these powers will only be available to be exercised where preconditions prescribed in the Bill are met in relation to the event. The changes relating to TUL's are subject to considerations such as having regard to the nature of the applicable event and whether there are reasonable grounds for the change. Temporary Use Licences may also be issued subject to conditions.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose of the provisions

The applicable events, by their nature are time limited to respond to a particular situation such as the COVID-19 public health emergency. There are no other powers available in the Planning Act that would allow a timely response to address applicable event scenarios.

(e) the balance between the importance of the purpose of the provisions, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

While there may be the potential for these new powers to impact temporarily on a person's privacy (for example if a shop commences 24 hours operation in proximity to residential uses),

the power is only available for a limited time to address the applicable event. It is considered that the benefit of the proposed changes outweighs the potential impact upon the human right.

## **Conclusion**

In my opinion, the Public Health and Other Legislation (Public Health Emergency) Amendment Bill 2020 is compatible with human rights under the Human Rights Act because it limits the identified human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

**STEVEN MILES MP**  
MINISTER FOR HEALTH and MINISTER FOR AMBULANCE SERVICES

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