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# COVID-19 Emergency Response and Other Legislation Amendment Bill 2020

## Explanatory Notes

### Short title

The short title of the Bill is the COVID-19 Emergency Response and Other Legislation Amendment Bill 2020 (the Bill).

### Policy objectives and the reasons for them

#### Background

On 29 January 2020, a public health emergency was declared under section 319 of the *Public Health Act 2005* (Public Health Act) 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.

On 11 March 2020, the Director-General of the World Health Organization (WHO) declared COVID-19 a global pandemic.

Although Queensland's public health response to COVID-19 has kept rates of community transmission low and enabled restrictions on the movement and gathering of people to be significantly eased, due to the nature of the virus, COVID-19 still represents a significant risk to the health and wellbeing of many Queenslanders. It also has the potential to cause adverse economic and social consequences.

On 18 March 2020, the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* (Public Health Emergency Act) was urgently passed by the Legislative Assembly.

Subsequently, a further two significant legislative reforms were progressed during 2020 to respond to the impacts of the COVID-19 emergency—namely, the *COVID-19 Emergency Response Act 2020* (COVID-19 ER Act) and the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* (COVID-19 ER Amendment Act).

The COVID-19 ER Act:

- establishes a power to make emergency regulations for the residential tenancy and rooming accommodation sectors to address the impacts of the COVID-19 emergency;

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- facilitates implementation of the National Cabinet decision in relation to good faith leasing principles for relevant non-residential leases in Queensland;
  - provides for the establishment of a temporary Queensland Small Business Commissioner (QSBC); and
  - establishes a legislative modification framework of general application across the statute book (the modification framework) which provides for the making of secondary instruments under the following broad global heads of power:
    - reducing physical contact between persons;
    - statutory timeframes;
    - proceedings of courts/tribunals; and
    - authorisation to take actions or do things electronically.

To date, a number of regulations have been made under or pursuant to the COVID-19 ER Act. However, the COVID-19 ER Act and all secondary instruments enacted under the COVID-19 ER Act are set to expire on 31 December 2020.

Some legislative amendments required to respond to the COVID-19 emergency were unable to be made under the global heads of power in the COVID-19 ER Act or were unsuitable to be made by way of a secondary instrument. The COVID-19 ER Amendment Act therefore addressed those issues that could not be dealt with through the modification framework.

The COVID-19 ER Amendment Act made amendments to 23 different pieces of legislation to provide necessary adjustments across a range of portfolios to enable appropriate responses in the context of the pandemic. Some of these amendments enabled regulations or statutory instruments to be made. The majority of amendments to Acts made as part of the COVID-19 ER Amendment Act as well as the majority of the statutory instruments made under powers inserted by the COVID-19 ER Amendment Act are set to expire on 31 December 2020.

Queensland's public health response to the COVID-19 emergency has been swift and effective. However, in light of the volatile nature of the virus and learnings from other jurisdictions (including the most recent cluster in South Australia), there remains a potential for further outbreaks and need for restrictions in Queensland. As such, the COVID-19 emergency remains ongoing and the ability to respond rapidly to any outbreaks remains essential.

Throughout these Explanatory Notes:

- the regulations made under or pursuant to the COVID-19 ER Act;
- the COVID-19 related amendments made under regulation-making powers of other Acts (for example, the *Body Corporate and Community Management Act 1997* and *Building Units and Group Titles Act 1980*);
- the amendments to legislation made by the COVID-19 ER Amendment Act; and
- the statutory instruments made under the powers inserted by the COVID-19 ER Amendment Act;

which are due to expire on 31 December 2020 and are still required to respond to the impacts of the COVID-19 emergency, are referred to collectively as 'COVID-19 related legislation'.

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## Summary of the Bill

The objectives of the Bill are to:

- extend the operation of all COVID-19 related legislation which is still required to respond to the impacts of the COVID-19 emergency until 30 April 2021 or an earlier date to be prescribed by regulation (referred to as the ‘COVID-19 legislation expiry day’ throughout);
- insert appropriate transitional mechanisms which provide for the ability to return to normal operations in the most effective and efficient way once the COVID-19 related legislation is no longer needed;
- preserve rights and obligations that have accrued during the ‘response period’ and ‘extension period’ under the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020* (Leases Regulation);
- extend the temporary operation of the QSBC;
- amend the *Youth Justice Act 1992* (YJ Act) to allow the chief executive (youth justice) to delegate his or her powers to appropriately qualified temporary detention centre employees in the event of a future COVID-19 outbreak;
- amend the *Electoral Act 1992* (Electoral Act) to provide flexibility, if required, to facilitate the holding of a by-election in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency;
- amend the *Liquor Act 1992* (Liquor Act) to continue support for the artisan liquor sector by temporarily removing restrictions on sales to the public of the liquor of artisan distillers; and
- amend the process for filling a vacancy in the office of a mayor or councillor that arises during the period starting on a quadrennial election and ending on the day before the first anniversary of the election.

### Extension of operation of COVID-19 related legislation

The following secondary instruments, or aspects of them, which were enacted pursuant to powers under the COVID-19 ER Act (and other Acts) remain necessary to respond to the COVID-19 emergency, and their operation will therefore be extended:

- *Corrective Services (COVID-19 Emergency Response) Regulation 2020*
- *Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020*
- *Economic Development (COVID-19 Emergency Response) Regulation 2020*
- *Education Legislation (COVID-19 Emergency Response) Regulation 2020*
- *Explosives Legislation (COVID-19 Emergency Response) Regulation 2020*
- *Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020*
- *Health Legislation (COVID-19 Emergency Response) Regulation 2020*
- *Justice Legislation (COVID-19 Emergency Response—Community Titles Schemes and Other Matters) Regulation 2020* (including amendments contained in this Regulation made under the *Body Corporate and Community Management Act 1997* and the *Building Units and Group Titles Act 1980*)
- *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020* (Documents and Oaths Regulation)

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- *Justice Legislation (COVID-19 Emergency Response—Proceedings and Other Matters) Regulation 2020* (Proceedings Regulation)
  - *Local Government (COVID-19 Emergency Response) Regulation 2020*
  - *Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020*
  - *Planning (COVID-19 Emergency Response) Regulation 2020*
  - *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020*
  - Leases Regulation
  - *Youth Justice (COVID-19 Emergency Response) Regulation 2020.*

Further, the amendments made to the following legislation under the COVID-19 ER Amendment Act remain necessary to respond, or be able to respond, to the COVID-19 emergency, and their operation will therefore be extended:

- *Body Corporate and Community Management Act 1997*, chapter 7, part 3 and chapter 8, part 14
- *Building Units and Group Titles Act 1980*, part 6A and part 7, division 3
- *Casino Control Act 1982*, section 57A
- *Corrective Services Act 2006*, chapter 6, part 15A
- *Disaster Management Act 2003*, part 12A
- *Environmental Protection Act 1994*, chapter 11A
- *Gaming Machine Act 1991*, part 11A
- *Keno Act 1996*, section 116A
- *Lotteries Act 1997*, section 99A
- Liquor Act, part 10A
- *Manufactured Homes (Residential Parks) Act 2003*, section 146A
- *Mental Health Act 2016*, chapter 18B
- Public Health Act, part 7B
- YJ Act, section 264A.

An extension of a maximum of four months is considered a reasonable and proportionate response and allows learnings from any impact of the opening of domestic borders and the Christmas and New Year period to be fully assessed. Should further extensions of COVID-19 related legislation be considered necessary, another Bill will be required to be brought to and passed by Parliament. The amendments in this Bill have been drafted in such a way to ensure that any future extension (if required) could be affected through a single amendment to the definition of ‘COVID-19 legislation expiry day’ in section 4A of the COVID-19 ER Act as inserted by the Bill.

#### Broader transitional arrangements

There are currently no transitional provisions in the COVID-19 ER Act nor is there an explicit power for regulations made under or in reliance on the Act to be made for a savings purpose or to address transitional matters.

However, a transitional framework is necessary to facilitate a return to normal operations once the COVID-19 related legislation is no longer required. For example,

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transitional arrangements will be needed in relation to incomplete documents made in accordance with the Documents and Oaths Regulation prior to expiry of the regulation.

The Documents and Oaths Regulation allows witnesses to the signing of wills, enduring powers of attorney, advance health directives, general powers of attorney, affidavits and statutory declarations to confirm on a later date that they witnessed the signing of the document. Similarly, signatories to deeds can sign electronically and in counterparts. Transitional provisions will be needed once the Documents and Oaths Regulation expires to deal with the execution of documents that are started but not finished at the expiry date.

Other subordinate legislation made under or pursuant to the COVID-19 ER Act and amendments made under the COVID-19 ER Amendment Act are likely to need specific transitional provisions to enable the return to normal operations.

Therefore, the Bill provides for a transitional regulation making power which enables regulations to be made, where necessary, to return to normal operations in the most effective and efficient way once the COVID-19 related legislation is no longer needed.

This approach will minimise any risk, provide clarity to the public and stakeholders who are affected by the temporary modified arrangements and provide a toolkit to respond to any transitional issues which may crystallise.

#### Preserving accrued rights and obligations under the Leases Regulation

The Leases Regulation, made on and effective from 28 May 2020, implements the Queensland Government's response to the National Cabinet's mandatory *Code of Conduct – SME Commercial Leasing Principles During COVID-19*.

Under the COVID-19 ER Act, the Leases Regulation expires on 31 December 2020, but a number of the provisions apply in respect of a response period that is defined as 29 March 2020 to 30 September 2020. The Leases Regulation was amended on 29 September 2020 to extend the measures in respect of the response period, with modifications, from 1 October 2020 to 31 December 2020 (extension period).

The Leases Regulation was a response to the initial shock of COVID-19 restrictions and, in many cases, achieved its desired outcome of encouraging good-faith leasing negotiations and enabling rent relief and protection from eviction for lessees during the period from 29 March 2020 to 31 December 2020 (the lease protection period). It is not proposed to further extend the lease protection period under the Leases Regulation.

However, the extension of the expiry of the Leases Regulation under the COVID-19 ER Act (to the COVID-19 legislation expiry day) will continue rights and obligations accrued under the Leases Regulation, and ensure that disputes that have not concluded are able to continue to be progressed after the end of the lease protection period.

#### Extension of Queensland Small Business Commissioner

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The QSBC was introduced as a temporary measure to support small business in response to the COVID-19 emergency and is currently in place until 31 December 2020.

Under the COVID-19 ER Act, the functions of the QSBC include to:

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

The QSBC has played a critical role in avoiding lengthy and costly commercial leasing disputes during the COVID-19 pandemic with early information, advice and mediation services. The function has assisted many Queensland businesses to successfully manage the impact of COVID-19 and resolve leasing issues in an effective and timely way, in many cases through informal mechanisms. The QSBC is continuing to receive strong service demand.

During the 2020 State Election campaign, the Government committed to appointing a permanent QSBC and creating an office to support the QSBC as part of a suite of initiatives targeting small business.

As result, the Bill proposes an extension of the temporary QSBC to enable the QSBC to continue to assist after 31 December 2020 in relation to affected lease disputes in respect of the response and extension periods. In addition, the extension of the temporary QSBC will ensure continuity of support and services for small business as they recover from the impacts of COVID-19 ahead of the establishment of the permanent QSBC.

#### Youth Justice Act amendments

The COVID-19 ER Amendment Act inserted section 264A into the YJ Act, allowing the chief executive (youth justice) to appoint appropriately qualified persons as temporary detention centre employees during the COVID-19 emergency period.

All temporary detention centre employees have certain powers (e.g. a power to search – *Youth Justice Regulation 2016*, section 23), either by virtue of their appointment or following specified administrative action (e.g. completion of training).

However, some powers require a chief executive decision before they can be exercised (e.g. a decision about when and how to search – *Youth Justice Regulation 2016*, section 23).

Section 312 of the YJ Act allows the chief executive to delegate his or her powers to appropriately qualified public service officers (see *Public Service Act 2008*, section 8). However, not all temporary detention centre employees will be public service officers. For example, a number of police officers were appointed as temporary detention centre employees during the recent outbreak of COVID-19 at Brisbane Youth Detention Centre. Police officers are employed under the *Police Service Administration Act 1990*,

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not the *Public Service Act 2008*. Other potential temporary detention centre employees include contractors or youth workers ‘on loan’ from non-government organisations, who would also not be public service officers.

Therefore, the Bill proposes to further bolster preparedness for future COVID-19 outbreaks by allowing delegations of chief executive powers to appropriately qualified temporary detention centre employees.

#### Electoral Act amendments

The Public Health Emergency Act and the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020* both inserted new provisions into the Electoral Act to facilitate, during the declared COVID-19 public health emergency, the holding of the 2020 State General Election (part 12B) and any necessary by-elections prior to the 2020 State General Election (part 12A).

However, these arrangements do not apply to any by-election that is held after the 2020 State General Election. Therefore, this Bill inserts arrangements into the Electoral Act to cover such by-elections, modelled on the arrangements set out in parts 12A and 12B.

This will provide flexibility, if required, to facilitate the holding of any by-election for which the writ was issued on or before the COVID-19 legislation expiry day in a way that helps minimise serious risks to the health and safety of persons arising from the COVID-19 emergency. The amendments will enable the Government, in line with advice from the Chief Health Officer, to manage disruptions caused by the disease, including social distancing measures which are incompatible with the existing arrangements under the Electoral Act.

#### Amendments to the Liquor Act for artisan distillers

The objective of the amendment is to allow artisan distillers with a producer/wholesaler licence under the Liquor Act to temporarily sell their own liquor without the need to comply with the usual restriction of only 2.5% of total sales able to be sold to the public.

Ordinarily, while artisan distillers may sell liquor made on the premises for consumption at the venue and as takeaway, these sales may only occur for defined purposes (such as a souvenir of a distillery tour, or with a meal) and must not exceed 2.5% of the licensee’s total sales.

As a response to COVID-19, the COVID-19 ER Amendment Act inserted a new Part 10A into the Liquor Act, which gives the Commissioner for Liquor and Gaming (Commissioner) the power to issue temporary takeaway liquor authorities (authorities) to licensees and permittees.

An authority may only be granted for a COVID-related purpose for eligible licensed premises. Premises are eligible if the business in the premises cannot be conducted in the way it was before the COVID-19 emergency without contravening a public health direction. The Bill extends the Commissioner’s power to grant an authority from 31 December 2020 to the COVID-19 legislation expiry day.

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An authority in force from 23 March 2020 for producer/wholesaler licences allows licensees who produce between 400 and 450,000 litres of spirits at their licensed premises each year (i.e. artisan distillers) to sell takeaway liquor to the public without limitation. If the Commissioner is unable to continue the authority after 31 December 2020 because normal trading conditions have resumed, artisan distillers will once again be subject to the 2.5% restriction on retail sales of their own liquor.

This outcome is inconsistent with the Government's commitment to developing the boutique liquor sector in Queensland. It is therefore necessary to amend the restrictions which apply to producer/wholesaler licences so artisan distillers are not disadvantaged if a takeaway liquor authority cannot be granted after 31 December 2020.

### Councillor vacancy amendments

Chapter 6, part 2, division 3 of the *Local Government Act 2009* (LGA) provides for when a councillor's office becomes vacant and the way in which the vacancy is to be filled. On 12 October 2020, the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020* (Integrity Act) amended the LGA in relation to how vacancies are to be filled.

The LGA provides for the following processes for all vacancies, both mayoral and councillor, in divided and undivided local governments:

- a vacancy arising during the beginning of a local government's term is to be filled by appointment of a runner-up or, if there is no runner-up who is eligible and consents to the appointment, by a by-election;
- a vacancy arising during the middle of a local government's term is to be filled by a by-election;
- a vacancy arising during the final part of a local government's term is to be filled by appointment. In the case of a mayor, another councillor is appointed by local government resolution. In the case of a councillor, the appointment is of a qualified person who is a nominee of a political party, if relevant, by local government resolution.

The 'beginning' of a local government's term is the period starting on a quadrennial election and ending on the day before the first anniversary of the election.

The 'middle' of a local government's term is the period starting on the first anniversary of a quadrennial election and ending on the day before the third anniversary of the election.

The 'final part' of a local government's term is the period starting on the third anniversary of a quadrennial election and ending on the day before the next quadrennial election.

The policy objective of Part 5 of the Bill is to amend the process for filling vacancies that arise during the beginning of a local government's term. Vacancies in the office of a mayor during this period are to be filled by a by-election, rather than by appointing a runner-up. For vacancies in the office of a councillor that arise during the beginning of

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the local government's term, the local government must decide by resolution to fill the vacancy by a by-election or by appointing a runner-up.

Part 5 of the Bill also provides for transitional arrangements in relation to actions taken, including any appointment of a runner-up to a vacant office, in the period starting on 12 October 2020 and ending immediately before commencement (the relevant period) as a result of a vacancy that arose during that period and for how vacancies arising during the relevant period are to be filled.

Part 6 of the Bill makes a minor clarification amendment to the *Local Government Electoral Act 2011* (LGEA).

## **Achievement of policy objectives**

### Extension of operation of COVID-19 related legislation

The Bill amends all impacted Acts and subordinate legislation that need to be preserved in order to respond to the impacts of the COVID-19 emergency by inserting a new expiration date of the COVID-19 legislation expiry day.

The exception to this is the amendment to the COVID-19 ER Act itself which will remove the current end date of 31 December 2020 for that Act but not set a new end date. This will facilitate the continued operation of the temporary QSBC and ensure any transitional regulations that are made (see below) can operate for as long as operationally required.

### Broader transitional arrangements

The Bill inserts a broad transitional regulation making power which enables regulations to be made, where necessary, to allow for the return to normal operations in the most effective and efficient way once the COVID-19 related legislation is no longer needed. The power will allow the regulation to have retrospective application, if required.

The inclusion of a specific transitional regulation making power means the COVID-19 ER Act will need to stay in effect for a period of time after the extraordinary powers provided by the Act are no longer required to respond to the COVID-19 emergency. This is to ensure there is an appropriate head of power that authorises the making and validity of regulations which address transitional issues.

As a result, to facilitate the most effective transitional framework, the Bill:

- amends the COVID-19 ER Act so that the ability to make a regulation (other than a transitional regulation) pursuant to a power under the COVID-19 ER Act ends on the COVID-19 legislation expiry day (this effectively renders the extraordinary powers under the Act dormant on this date);
- prescribes that all regulations (other than transitional regulations) made pursuant to the COVID-19 ER Act expire on the COVID-19 legislation expiry day (this means that only transitional regulations will survive after 30 April 2021);
- omits the expiry date for the COVID-19 ER Act;

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- provide that a transitional regulation expires two years after the COVID-19 law expires.

#### Preserving accrued rights and obligations under the Leases Regulation

The Bill amends section 23 of the COVID-19 ER Act to provide that a regulation made with respect to retail leases and other prescribed leases expires on the COVID-19 legislation expiry day.

The Bill also amends the Leases Regulation to preserve rights and obligations that have accrued during the ‘response period’ and ‘extension period.’

#### Extension of the QSBC

The Bill omits section 19(7) of the COVID-19 ER Act so that the appointment of the QSBC can continue beyond 31 December 2020 and clarifies that the appointment of the commissioner continues in effect after 31 December 2020 despite the term of appointment stated in the commissioner’s instrument of appointment.

#### Youth Justice Act amendments

The Bill amends the YJ Act to allow the chief executive (youth justice) to delegate his or her powers to appropriately qualified temporary detention centre employees.

This will enable the safe operation of a detention centre in the event that regular staff are quarantined in accordance with health advice, and amongst the non-quarantined staff and any temporary detention centre employees appointed to the centre, there are insufficient appropriately qualified public service officers to receive delegations to ensure key decisions can be made in a timely manner.

#### Electoral Act amendments

The Bill inserts a new part into the Electoral Act, modelled on parts 12A and 12B, which will apply to by-elections for which the writ was issued on or before the COVID-19 legislation expiry day. The purpose of the new part will be to facilitate the holding of by-elections in a way that helps minimise risks to the health and safety of persons caused by the COVID-19 emergency.

The new Part includes provisions which:

- enable the cut-off day for electoral rolls and cut-off days for nominations of candidates (as stated in the writ) to be a date earlier than the day provided for under section 84 (based on section 392N of the Electoral Act);
- allow the Governor or Speaker, as the case requires, to substitute later days for days stated in a writ already issued, including postponing polling day (based on section 392D);
- allow the day for taking or resuming an adjourned poll to be fixed by the Electoral Commission Queensland (ECQ) to the earliest Saturday on which it may practicably and safely be taken or resumed, rather than being limited to no later than 34 days after polling day (based on section 393E);

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- provide that a regulation may be made, in consultation with the ECQ, to declare that all electors in the by-election or electors of a stated class are to vote in the by-election by way of postal vote (see sections 392O and 392Z(4));
  - provide modified timeframes for pre-poll voting (see section 392P);
  - allow the time and day by which an elector may request a postal vote to be fixed to a time and day by the ECQ, rather than by 12 days before the polling day (based on sections 392F and 392Q);
  - allow requests for elector visitor voting to be refused and met by the making of alternative arrangements, to the extent practicable, for voting (based on sections 392G and 392R);
  - enable the ECQ to declare additional classes of electors who may make an electronically assisted vote (based on sections 392H and 392S);
  - allow the ECQ to make procedures about how an elector may make an electronically assisted vote, without the need for the procedures to be approved by a regulation and tabled in the Legislative Assembly (based on section 10 of the By-Elections Regulation and section 392S));
  - empower the ECQ to give a direction about the distribution or display of how-to-vote cards or other election material at a polling booth and canvassing for votes in or near a polling booth, with an offence applying to persons who contravene such a direction (sections 392I and 392T of the Electoral Act);
  - allow the ECQ to give a direction about the number of scrutineers each candidate may have at a polling booth or other place at which a scrutineer is entitled to be present under the Electoral Act, or prohibiting a scrutineer from being present at a polling booth or other place at which a scrutineer is otherwise entitled to be present under the Electoral Act, with an offence applying to a contravention (section 8 of the By-Elections Regulation and section 392U);
  - allow a returning officer or member of the ECQ's staff in charge of a polling booth to give a direction about the movement of candidates or scrutineers at the polling booth for the election, and areas where they may be, with an offence applying to a contravention (section 9 of the By-Elections Regulation and section 392V);
  - empower a returning officer to direct a member of the ECQ's staff to carry out the counting of votes at a stated place and arrange for the counting of votes to be filmed by a member of the ECQ's staff (sections 11 and 12 of the By-elections Regulation and section 392W);
  - allow for a regulation to be made which limits any declaration or direction that may be given by the ECQ under the new sections (section 392X); and
  - provide a broad regulation power which can vary or modify any provision in part 7 of the Electoral Act (which contains provisions about the calling of elections, nomination of candidates for elections, arrangements for elections, how voting takes place, counting of votes and the notification of election results) in order to facilitate the holding of a by-election in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency (see section 392Y).

#### Amendments to the Liquor Act for artisan distillers

The Bill achieves the policy objective by amending section 75 of the Liquor Act, which restricts liquor sales by producer/wholesaler licensees to the public for particular purposes and places a 2.5% limit on those sales. The change will exempt artisan

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distillers (determined by reference to minimum and maximum production volumes) from the operation of the section, allowing them to sell their own liquor for consumption on the premises and takeaway for any purpose and without the 2.5% sales restriction.

This change exceeds the COVID-19-related temporary authority for producer/wholesaler licences, which only relates to takeaway sales. However, the change aligns with an existing exemption from the operation of section 75 for producer/wholesaler licensees with a brewery licence under the *Excise Act 1901* (Cth), which includes craft brewers.

The amendment will remain in place until it is removed by proclamation. This will allow sufficient time for the Government to progress more comprehensive reforms to support growth in the sector and allow longer-term recovery post-COVID-19.

#### Councillor vacancy amendments

The policy objective of Part 5 of the Bill is achieved by amending the LGA to provide that the way a vacancy is to be filled depends on whether the vacancy is in the office of the mayor or of another councillor and whether the office becomes vacant during the beginning, middle or final part of the local government's term.

Part 5 of the Bill provides that a vacancy in the office of a mayor during the beginning or middle of a local government's term will be filled by a by-election and during the final part of the term will be filled by the local government appointing, by resolution, another councillor to the office.

In relation to a vacancy in the office of a councillor other than the mayor, the amendments provide that if the vacancy arises during the beginning of a local government's term, the local government must decide, by resolution, whether to fill the vacancy by a by-election or by appointing a runner-up. If the local government decides to appoint a runner-up, the procedure under section 166A of the LGA applies.

Section 166A provides for filling a vacancy by appointing a runner-up from the last quadrennial election or, if no runner-up is eligible and consents to the appointment, by a by-election. Under section 166A, the Electoral Commission of Queensland (ECQ) must give a notice to the runner-up from the quadrennial election first in order of priority advising them of the vacancy and that, if they are qualified to be a councillor they may consent to be appointed by a specified deadline. If the runner-up consents, the local government must appoint them to the vacant office. If the first runner-up does not consent, the ECQ must give a notice to the runner-up second in priority and so on. If there are no runners-up remaining the vacancy must be filled by a by-election.

The process for filling a vacancy in the office of a councillor that arises during the middle or the final part of the local government's term is unchanged.

Part 5 of the Bill provides for the following transitional arrangements about anything done in relation to filling a vacant office of a mayor or councillor that became vacant during the relevant period:

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- section 166A of the LGA as in force from time to time before commencement (former section 166A) does not apply and is taken never to have applied in relation to filling the vacant office;
  - anything done under former section 166A in relation to filling the vacant office is taken never to have been done;
  - if a local government appointed a runner-up to a vacant office during the relevant period under former section 166A, the office is taken to be vacant, and to have always been vacant since it became vacant during the relevant period and the runner-up is taken never to have been appointed.

The operative subsections of this provision which have retrospective effect apply despite the *Acts Interpretation Act 1954*, section 20 (Saving of operation of repealed Act etc).

The transitional provision does not affect any entitlement to remuneration or other benefits accrued, or accruing, to the runner-up under an Act during the appointment period.

Part 5 of the Bill provides that if an office of mayor or councillor became vacant during the relevant period and either had not been filled immediately before commencement or is taken to be vacant under new section 338, new chapter 6, part 2, division 3 applies to filling the vacant office. Despite new section 163(3) of the LGA, the local government has 2 months from commencement to fill the vacant office. The operative subsections of these provisions which have retrospective effect apply despite the *Acts Interpretation Act 1954*, section 20 (Saving of operation of repealed Act etc).

However, in relation to a vacant office of a councillor, if the local government decides under the new provisions to appoint a runner-up to fill the vacancy, any actions taken prior to commencement in relation to this are taken to have been done under new section 166A and a runner-up who was appointed under the former section 166A is taken to have been appointed from the commencement and to have held office continuously from that day.

Part 6 of the Bill makes a minor amendment to the LGEA to clarify that the date fixed for a by-election must be within 2 months after the vacancy happens for consistency with section 163(3) of the LGA.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives.

## **Estimated cost for government implementation**

### QSBC

The Government made an election commitment to appoint a permanent QSBC and create an office to support the QSBC as part of a suite of initiatives targeting small business. This included \$6.4M over three years to support continuation of the QSBC.

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## Leases Regulation

In addition to the costs for the State in facilitating dispute resolution through the QSBC, there may be additional resourcing costs incurred by the Queensland Civil and Administrative Tribunal (QCAT) and the courts for matters to which the response and extension period apply that cannot be successfully mediated.

## Councillor vacancy amendments

The amendments may have resourcing implications for the ECQ as they provide for by-elections to be held to fill vacancies that arise during the beginning of the local government's term. However, it should be noted that the costs of by-elections are typically borne by local governments.

There are no other significant costs for implementation of the amendments. Any costs will be met within normal budgetary processes.

## **Consistency with fundamental legislative principles**

### Extension of operation of COVID-19 related legislation – Part 2 of the Bill

The most significant potential breach of the fundamental legislative principles relates to the nature of the powers extended by the Bill (in particular, the modification framework) to the extent that it may not have sufficient regard to the institution of Parliament (section 4(2)(b) *Legislative Standards Act 1992* (Legislative Standards Act)) or the rights and liberties of individuals (section 4(2)(a) *Legislative Standards Act*).

### ***Institution of Parliament***

The Bill extends the operation of the regulation-making powers and modification framework under the COVID-19 ER Act to the COVID-19 legislation expiry day. This extension continues the ability for various Acts to be modified by subordinate legislation, should that be required. The use of secondary instruments to implement the modification framework ('Henry VIII clauses') represents a potential departure from the fundamental legislative principle requiring that legislation has sufficient regard to the institution of Parliament (section 4(2)(b) *Legislative Standards Act*).

The resulting amendments which may be facilitated by the modification framework will impact on fundamental legislative principles in different ways, but broadly represent a further potential departure in the sense that amendments may:

- allow the delegation of legislative power in cases, and to persons, that may not ordinarily be considered to be appropriate (section 4(4)(a) *Legislative Standards Act*); and
- subject the exercise of a delegated legislative power to what may ordinarily be considered to be insufficient scrutiny by the Legislative Assembly (section 4(4)(b) *Legislative Standards Act*).

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### ***Rights and liberties of individuals***

The extension of the operation of the modification framework also represents a potential departure from the fundamental legislative principle requiring that legislation has sufficient regard to rights and liberties of individuals (section 4(2)(a) of the Legislative Standards Act) in the sense that future amendments may:

- make rights and liberties, or obligations, dependent on administrative power in circumstances where the power may not ordinarily be considered to be sufficiently defined or subject to appropriate review (section 4(3)(a) Legislative Standards Act);
- not be consistent with principles of natural justice, and in particular the right to be heard and the right to procedural fairness (section 4(3)(b) Legislative Standards Act);
- allow the delegation of administrative power in cases, and to persons, that may not be considered appropriate (section 4(3)(c) Legislative Standards Act), were it not for the state of emergency currently in place in Queensland; and
- adversely affect rights and liberties, or impose obligations, retrospectively (section 4(3)(g) Legislative Standards Act).

### ***Consistency of subordinate legislation made under or pursuant to the COVID-19 ER Act***

The Bill extends the operation of 17 principal regulations which have been made to date under or pursuant to powers provided for in the COVID-19 ER Act. Four of these regulations have been further amended. The extent to which these regulations impact on fundamental legislative principles is addressed in the Explanatory Notes accompanying each legislative instrument (the list below includes both the principal and amendment regulations).

- [Explanatory Note](#) – *Corrective Services (COVID-19 Emergency Response) Regulation 2020*
- [Explanatory Note](#) – *Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020*
- [Explanatory Note](#) – *Economic Development (COVID-19 Emergency Response) Regulation 2020*
- [Explanatory Note](#) – *Education Legislation (COVID-19 Emergency Response) Regulation 2020*
- [Explanatory Note](#) – *Explosives Legislation (COVID-19 Emergency Response) Regulation 2020*
- [Explanatory Note](#) – *Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020*
- [Explanatory Note](#) – *Health Legislation (COVID-19 Emergency Response) Regulation 2020*
- [Explanatory Note](#) – *Justice Legislation (COVID-19 Emergency Response—Community Titles Schemes and Other Matters) Regulation 2020*
- [Explanatory Note](#) – *Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Regulation 2020*
- [Explanatory Note](#) – *Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Amendment Regulation 2020*

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- [Explanatory Note](#) – *Justice Legislation (COVID-19 Emergency Response—Proceedings and Other Matters) Regulation 2020*
  - [Explanatory Note](#) – *Local Government (COVID-19 Emergency Response) Regulation 2020*
  - [Explanatory Note](#) – *Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020*
  - [Explanatory Note](#) – *Planning (COVID-19 Emergency Response) Regulation 2020*
  - [Explanatory Note](#) – *Planning Legislation (Economic Recovery Measures and Other Matters) Amendment Regulation 2020*
  - [Explanatory Note](#) – *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020*
  - [Explanatory Note](#) – *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020*
  - [Explanatory Note](#) – *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*
  - [Explanatory Note](#) – *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Amendment Regulation 2020*
  - [Explanatory Note](#) – *Youth Justice (COVID-19 Emergency Response) Regulation 2020*

While the Bill extends the operation of the regulation-making powers and modification framework under the COVID-19 ER Act, it is not reasonably foreseeable that further subordinate legislation will be made under or pursuant to the powers provided for under the COVID-19 ER Act that will radically depart from the types of instruments that have already been made.

Therefore, should the need arise for further secondary instruments to be enacted, any potential inconsistency with fundamental legislative principles will be canvassed in the Explanatory Notes accompanying the secondary instrument.

The Bill also extends the safeguard measures which accompany the regulation-making powers and modification framework under the COVID-19 ER Act. This includes that any retrospective application is limited in nature, and that no regulations or statutory instruments enacted under the COVID-19 ER Act are able to be exercised so as to amend or override the Human Rights Act, or any particular provision of the Human Rights Act, thereby preserving its important human rights protections.

### ***Consistency of Acts amended by COVID-19 ER Amendment Act***

Although Queensland's response to the COVID-19 emergency has been swift and effective, the COVID-19 emergency continues to present an extraordinary, unprecedented situation that requires a continued and measured response.

The Bill also extends the operation of 12 Acts which were amended as part of the COVID-19 ER Amendment Act. The consistency with fundamental legislative principles of amendments to legislation made under the COVID-19 ER Amendment Act were addressed in the [Explanatory Notes](#) to the Justice and Other Legislation (COVID-19 Emergency Response) Amendment Bill 2020.

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In addition, as a result of this extension, the life of the *Gaming Tax Notice 2020* and the *Gaming Tax Notice (No. 2) 2020* will also be extended. The extent to which these notices impact on fundamental legislative principles is addressed in the Explanatory Notes accompanying each legislative instrument:

- [Explanatory Note](#) – *Gaming Tax Notice 2020*
- [Explanatory Note](#) – *Gaming Tax Notice (No. 2) 2020*

#### Broader transitional arrangements – clause 15

The inclusion of a broad transitional regulation making power enables a regulation to be made, where necessary, to facilitate the return to normal operations in the most effective and efficient way once any COVID-19 law is no longer needed.

The transitional regulation making power may be considered a breach of the fundamental legislative principle under section 4(2)(b) of the Legislative Standards Act, that legislation should have sufficient regard to the institution of Parliament and should not impose obligations retrospectively (section 4(3)(g) Legislative Standards Act).

#### ***Institution of Parliament***

The Bill provides for the ability to make transitional regulations which may be considered a breach of the fundamental legislative principle that legislation should have sufficient regard to the institution of Parliament.

This potential breach is justified as the inclusion of the transitional regulation making power is an important safeguard to provide for flexibility to ensure legal and commercial certainty in transitioning back to normal operations. As the COVID-19 emergency has presented an unprecedented situation across Queensland, the exact nature of transitional arrangements required may not be immediately clear. The transitional regulation making power is limited to matters necessary to make provision to facilitate a smooth transition from any extraordinary measures back to normal operations.

Further, any regulations made under this power will be subject to tabling and disallowance by the Legislative Assembly, and will expire two years after the day the COVID-19 law to which it relates expires.

#### ***Retrospective application***

A regulation made under this power could give rise to a potential breach of fundamental legislative principles given it may allow a regulation to impose obligations retrospectively. This is necessary to enable the smooth transition from extraordinary measures back to normal operations and recognises that, given the uncertainty and volatility of the COVID-19 emergency, a transitional issue may not be identified until after the expiry of the COVID-19 law and, therefore, necessitate some level of retrospective application.

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Any further potential departures from the fundamental legislative principles will be addressed in the Explanatory Notes accompanying any regulation made under the transitional regulation making power provided for in the Bill.

#### Leases Regulation – preserving accrued rights – Part 2, Division 6 of the Bill

The Leases Regulation was made under the COVID-19 ER Act as an emergency response measure to the COVID-19 emergency and under the COVID ER Act, will expire on 31 December 2020.

The Explanatory Notes for the Leases Regulation state that overriding landlords' ordinary property rights (section 4(2)(a) of the Legislative Standards Act) is justified on the basis of the need to respond to the financial hardship being experienced by some tenants due to closures and restrictions on movement and social distancing caused by the COVID-19 emergency, and to provide a fair sharing of the burden of the emergency between landlords and tenants.

The end of the response period and the extension period under the Leases Regulation will allow a return to the ordinary commercial relations between lessors and lessees under affected leases that existed prior to the COVID-19 emergency. Preserving accrued rights and obligations, by postponing the expiration date of the Leases Regulation, will continue to impact landlords' property rights. The justification for this is the same as above for the Leases Regulation.

#### Amendments to YJ Act – Part 2, Division 7 of the Bill

The extension of the existing ability to appoint temporary detention centre employees (section 264A) does not raise any fundamental legislative principle issues.

The amendment of the YJ Act to allow the delegation of chief executive powers raises the question whether the legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the Legislative Standards Act), particularly given children in detention are some of the most vulnerable people in our community. This includes whether the legislation allows delegation of administrative power only in appropriate cases and to appropriate persons.

The powers will only be delegated to 'appropriately qualified' temporary detention centre employees, as defined in section 312 of the YJ Act. They will only be delegated in circumstances associated with the COVID-19 emergency, and potential delegates will only exist when reasonably necessary for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres (YJ Act section 264A(2)). The appointments of the delegates must be revoked if no longer required ((YJ Act section 264A(6)), in which case the delegation will lapse.

The powers are necessary for the good order of detention centres, and the safety and wellbeing of children and staff. It is essential to have a sufficient number of staff with delegations available in each detention centre at all times to ensure that key decisions can be made in a timely manner.

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The youth justice principles (YJ Act schedule 1) and the Human Rights Act provide strong frameworks for the exercise of the powers.

Other safeguards against improper use of delegated powers include:

- *Acts Interpretation Act 1954* section 27A(10A) preserves the delegator's obligation to ensure that the function or power is properly performed or exercised;
- all responsibilities and obligations of detention centre employees apply to temporary detention centre employees, including prerequisites to the exercise of certain powers;
- the *Youth Justice Regulation 2016* requires individuals to have undertaken specified training before exercising powers;
- body worn cameras are used within detention centres; and
- independent oversights include the Public Guardian and the Ombudsman.

Any breach of fundamental legislative principles is justified, given the emergent situation and the need to protect the health and wellbeing of children and staff. Further, as the provisions will sunset on 30 April 2021, and possibly earlier if prescribed, any infringement of rights and liberties will be limited.

#### Amendments to the Electoral Act – Part 3 of the Bill

##### ***Rights and liberties***

The following amendments impact on the rights and liberties of individuals (section 4(2)(a) of the Legislative Standards Act) particularly in relation to political communication and human rights including the rights to freedom of expression, taking part in public life, freedom of movement and privacy and reputation:

- changing the dates for the closing of the electoral rolls, nomination of candidates and polling day stated in the writ;
- allowing the Governor or the Speaker to postpone the date for a by-election polling day by more than 21 days (as currently provided for in section 86 of the Electoral Act);
- allowing the ECQ to fix a date for the taking or resumption of an adjourned poll that may be more than 34 days after the polling day (as currently provided for in section 100 of the Electoral Act);
- enabling a regulation to be made providing that all electors in a by-election or a stated class of electors must vote by postal vote;
- modifying timeframes for making a postal vote request;
- allowing issuing officers to be directed not to visit the elector, or electors of the class, or any electors;
- allowing the ECQ to issue directions in relation to the display or distribution of how-to-vote cards and other election material and canvassing for votes in or near polling booths;
- allowing the ECQ to give a direction about the number of scrutineers each candidate may have at a polling booth or other place that scrutineers are otherwise entitled to be present, and allowing the returning officer or member of the ECQ's staff in charge of a polling booth to give a direction about the movement of candidates or scrutineers at the polling booth; and

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- allowing the ECQ to make procedures which potentially impact on how particular individuals vote.

The impacts are justified on the basis that public health considerations may necessitate changes to the way a by-election is conducted to reduce the spread of COVID-19. The amendments will only apply in relation to by-elections for which the writ was issued before the COVID-19 legislation expiry day.

Also, whether legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the Legislative Standards Act) includes whether, for example, consequences imposed by legislation are proportionate and relevant to the actions to which the consequences are applied by the legislation. Legislation must impose penalties which are proportionate to the offence.

Whilst the new part will contain new offences, for example an offence for contravening a direction given by the ECQ, a returning officer or member of the ECQ's staff in charge of a polling booth without reasonable excuse, the maximum penalties prescribed are commensurate with the penalties applying to similar offences in the Electoral Act.

### ***Institution of Parliament***

The proposed broad regulation making power, which includes the making of a regulation to vary or modify any provision in part 7 of the Electoral Act, raises a potential inconsistency with the fundamental legislative principle that legislation must have sufficient regard to institution of Parliament (section 4(2)(b) of the Legislative Standards Act).

Despite Queensland's current strong position in relation to COVID-19, the worldwide COVID-19 emergency is still ongoing and there is the possibility of a further wave or waves of infection in the State, particularly as borders open. This may necessitate the need for alternative arrangements to be put in place for the holding and conduct of by-elections which can be engaged if needed. It is in the public interest to include a regulation-making power of this nature to ensure that there are no legislative impediments or gaps that would prevent a by-election proceeding in an appropriate way depending on the prevailing circumstances.

Under the proposed provisions, the Minister may only recommend that the Governor in Council make the regulation if the Minister is satisfied the regulation is necessary to achieve the purpose of this part and once approved by the Governor in Council, must be tabled in the Legislative Assembly and may be the subject of a disallowance motion.

Further, the amendments will allow certain legislative requirements or timeframes to be varied without legislative amendment or a regulation being made. This raises a potential inconsistency with the fundamental legislative principle that legislation must have sufficient regard to the institution of Parliament (section 4(2)(b) of the Legislative Standards Act). The amendments allow the Governor or the Speaker to postpone the date for a by-election polling day by more than 21 days (as currently provided for in section 86 of the Electoral Act) and will enable the ECQ to:

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- fix a date for the taking or resumption of an adjourned poll that may be more than 34 days after the polling day (as currently provided for in section 100 of the Electoral Act);
  - vary the cut-off date for applications for a postal vote;
  - declare additional categories of voter that can make an electronically assisted vote;
  - enable the ECQ to issue directions about the display and distribution of how-to-vote cards; and
  - enable the ECQ to issue directions relating to the number and movement of scrutineers at a polling booth or other place they are entitled to be present.

These arrangements are justified on the basis that allowing such procedures to be made, and directions to be given, may be necessary depending on the prevailing circumstances at the time a by-election is held so as to minimise risks to health and safety caused by the COVID-19 emergency. Further, the ECQ, in consultation with Queensland Health, is best placed to assess prevailing circumstances and manage these temporary measures.

#### Amendments to the Liquor Act for artisan distillers – Part 4 of the Bill

The Bill provides for the amendments to producer/wholesaler licences for artisan distillers to be removed by a clause commencing on proclamation. This arguably could breach the requirement to have sufficient regard to the rights and liberties of individuals under section 4(2)(a) of the Legislative Standards Act. Producer/wholesaler licensees who are artisan distillers will not know when the temporary right afforded to them will be removed, which may mean the legislation is ambiguous and unclear (section 4(3)(k) of the Legislative Standards Act).

It may also arguably breach the requirement to have sufficient regard to the institution of Parliament under section 4(2)(b) of the Legislative Standards Act, as the effect of the amendment is to allow subordinate legislation to remove a right provided by Parliament.

However, the potential breaches are considered justifiable on the basis of public interest. The changes introduced by the Bill provide artisan distillers with certainty about their trading rights in the event temporary COVID-19 related legislative measures no longer apply. In addition, the amendments will put artisan distillers on an equal footing with craft brewers until further comprehensive reforms to support the industry can be implemented to provide a permanent avenue to access increased liquor trading ability.

#### Councillor vacancy amendments – Part 5 of the Bill

##### ***Rights and liberties***

Under section 4(2)(a) of the Legislative Standards Act, the fundamental legislative principles include requiring that legislation has sufficient regard to rights and liberties of individuals.

The transitional provisions in Part 5 of the Bill may impact the rights and liberties of individuals in relation to whether the legislation:

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- adversely affect rights and liberties, or impose obligations, retrospectively (section 4(3)(g) of the Legislative Standards Act) and
  - is unambiguous and drafted in a sufficiently clear and precise way (section 4(3)(k) of the Legislative Standards Act).

### ***Retrospective application***

Part 5 of the Bill operates retrospectively by providing for transitional arrangements for any vacancy in the office of a mayor or councillor that arose in the period starting on 12 October 2020 and ending immediately before commencement. The transitional arrangements provide that the process for filling the vacancy in former section 166A of the LGA does not apply to the vacancy and that anything done in relation to filling the vacancy is taken never to have been done. Further, if the vacant office has been filled by appointment of the runner-up, the office is taken to be vacant and to always have been vacant and the runner-up is taken never to have been appointed. The part also provides that the vacancy must be filled under the provisions of new chapter 6, part 2, division 3 of the LGA. This adversely affects the right of an eligible runner-up to be appointed and to remain appointed to the vacant office of a mayor or of a councillor if the local government determines that a by-election should be held.

It is considered that the Bill has sufficient regard to the rights and liberties of individuals as the amendments are necessary to ensure that the communities in which a vacancy arose before commencement are represented by duly elected candidates as mayor or as councillor where the local government has decided that a by-election should be held. This will provide an additional opportunity for persons to nominate as candidates for election to the vacant office, and for electors to vote for their preferred candidate in that by-election. The runner-up may choose to nominate as a candidate in the by-election if they remain eligible to be a councillor.

If a runner-up is appointed by the local government during the relevant period, the Bill confirms their entitlement to remuneration or other benefits to which they became entitled as a result of the appointment. Also, if the local government decides to fill a vacant office of a councillor by appointing a runner-up under the new process, the Bill preserves actions taken in relation to this before commencement. If a runner-up had been appointed prior to commencement, that person is taken to be appointed from commencement.

Further, the former Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs made a statement on 10 November 2020 advising that once the new parliament is sworn in, the Palaszczuk Government will introduce and pass a bill to retrospectively amend the LGA. This statement provided notice to those persons directly affected, as well as the community generally, of the proposal to make retrospective amendments.

Part 5 of the Bill impacts on the right to take part in public life under section 23 of the Human Rights Act. This impact is addressed in the Statement of Compatibility with Human Rights for the Bill, which indicates that the part is considered to be compatible with human rights because although it limits, restricts or interfere with the right to take part in public life, the limitation is reasonably and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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### *Uncertainty – rights of third parties*

The transitional provisions in Part 5 of the Bill may create uncertainty in relation to the rights of third parties who deal with the local government during the time after a runner-up is appointed to a vacant position and until the runner-up is taken to be not be appointed and to have never been appointed.

However, this is considered appropriate in the circumstances to assist in giving effect to the overarching intention that any appointee during the period from 12 October 2020 until commencement of the new process under the Bill is deemed to have never been appointed.

## **Consultation**

### Extension of operation of COVID-19 related legislation

The Queensland Law Society (QLS), Crime and Corruption Commission, Director of Public Prosecutions (DPP) and the Bar Association of Queensland were consulted in relation to the extension of the Proceedings Regulation. Generally, stakeholders supported extension of the Proceedings Regulation for the duration of the COVID-19 emergency.

The QLS, DPP, the Bar Association of Queensland, the Public Trustee and the Public Guardian were consulted in relation to the extension of the Documents and Oaths Regulation. In particular, the QLS indicated its support for the extension of the Documents and Oaths Regulation beyond 31 December 2020 noting that many of the initiatives included in the Regulation have greatly assisted QLS members and their clients during the pandemic.

Legal and industry stakeholders, including the QLS, the National Retail Association and the Shopping Centre Council of Australia and the Property Council of Australia (Qld), were consulted in relation to the expiry of the measures in the Leases Regulation.

The Office of the Independent Assessor was consulted in relation to extension of the *Local Government (COVID-19 Emergency Response) Regulation 2020* and supported the extension.

Members of the COVID-19 Housing Security Sub Committee of the Ministerial Housing Council were consulted in relation to the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020*.

The Family Responsibilities Commission was consulted in relation to the *Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020*.

### Youth justice related amendments

The QLS, Legal Aid Queensland, the Aboriginal and Torres Strait Islanders Legal Service, Youth Advocacy Centre, YFS Legal, the Australian Workers Union and Together Queensland were consulted in relation to the extension of the YJ Act

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provisions and the amendment to allow chief executive delegations to temporary detention centre employees.

The proposal to extend the *Youth Justice (COVID-19 Emergency Response) Regulation 2020* was supported.

Stakeholders expressed concern that the proposal to allow the delegation of chief executive powers to temporary detention centre employees who are not public service officers could result in inappropriate persons being delegated those powers. However, this is made unlikely by the requirement that only ‘appropriately qualified’ temporary detention centre employees may be delegated powers; by other provisions and statutory frameworks including the youth justice principles (YJ Act schedule 1), the *Human Rights Act 2019*, and the *Acts Interpretation Act 1954* section 27A(10A); and by other safeguards such as body-worn cameras and independent oversights including the Public Guardian and the Ombudsman.

Stakeholders also raised the issue of training for delegates. The usually urgent circumstances of temporary detention centre employee appointments mean training will inevitably be less comprehensive than normal, but the training delivered to temporary detention centre employees at Brisbane Youth Detention Centre in August-September 2020 included, amongst other content, the general operational environment; use of force under the YJ Act; and decision making and delegations.

#### Amendments to the Liquor Act for artisan distillers

Formal consultation has not been undertaken about the amendment to producer/wholesaler licences for artisan distillers. However, consultation was undertaken regarding the Liquor (Artisan Liquor) Amendment Bill 2020 (Artisan Liquor Bill), which lapsed on 6 October 2020. The Artisan Liquor Bill proposed to create a new artisan producer licence specifically for artisan distillers and craft brewers, authorising unlimited sales of the licensee’s own liquor as takeaways and for on-premises consumption. Consensus about the artisan producer licence was reached at a roundtable meeting attended by representatives from the Australian Distillers Association, the Independent Brewers Association, the Queensland Hotels Association, Clubs Queensland, government agencies and other stakeholders on 2 March 2020.

As the temporary amendments to producer/wholesaler licences are required urgently and mirror authorisations proposed for artisan distillers which previously received stakeholder support, further consultation was not undertaken.

#### Councillor vacancy amendments

The Local Government Association of Queensland (LGAQ) and a number of mayors and councillors raised concerns that the amendments to the LGA in the Integrity Act could give rise to the possibility that a candidate who only achieved a small percentage of the vote could be appointed to a vacant position. The LGAQ supports the proposed amendments.

The Townsville City Council and the Rockhampton Regional Council were consulted as these local governments are directly affected by the amendments and the transitional

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provisions due to vacancies which arose after 12 October 2020 and before commencement.

Given the urgent nature of the Bill, consultation with other non-government stakeholders has not been possible.

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state.

However, in developing the Bill, consideration has been given to legislative responses to the COVID-19 emergency in other jurisdictions; and measures that have been taken by other jurisdictions to extend their legislative response beyond their initial expiry date. This includes: *COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020* (Vic); the *COVID-19 Legislation Amendment (Emergency Measures) Act 2020* (NSW); the *COVID-19 Response and Economic Recovery Omnibus Act 2020* (WA); *COVID-19 Emergency Response Act 2020* (SA); the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (Tas); and the *COVID-19 Emergency Response Act 2020* (ACT).

The amendments to the Liquor Act are specific to the State of Queensland and are not uniform with or complementary to legislation of the Commonwealth or another state. However, other jurisdictions, including New South Wales and Tasmania, have introduced legislative initiatives to support the artisanal distilling industry.

The councillor vacancy amendments are specific to the State of Queensland.

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# Notes on provisions

## Part 1 Preliminary

*Clause 1* states that, when enacted, the Act will be cited as the *COVID-19 Emergency Response and Other Legislation Amendment Act 2020*.

*Clause 2(1)* provides that Part 2, division 2 is taken to have commenced on 2 December 2020. Part 2, division 2 provides for amendments to the *Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020*.

*Clause 2(2)* provides that section 4(2) commences on the day after the COVID-19 legislation expiry day. Section 4(2) omits the definition of ‘COVID-19 legislation expiry day’ from the *Acts Interpretation Act 1954*.

*Clause 2(3)* provides that section 39 and schedule 1 commence on 1 March 2021. Section 39 and schedule 1 provide for amendments to body corporate and community management regulation modules commencing on 1 March 2021.

*Clause 2(4)* provides that section 45(2) commences on a day to be fixed by proclamation. Section 45(2) removes section 75(4A) of the Liquor Act, as inserted on assent by clause 45(1).

## Part 2 Amendments related to extending the expiry of COVID-19 emergency response legislation

Division 1 deals with amendments to the *Acts Interpretation Act 1954*.

*Clause 3* provides that this division amends the *Acts Interpretation Act 1954*.

*Clause 4* amends schedule 1 (Meaning of commonly used words and expressions) to insert the definition of ‘COVID-19 legislation expiry day’. Subsection (2) provides for this definition to be omitted when no longer needed (as per clause 2(2) of the Bill, this will be the day after the COVID-19 legislation expiry day).

Division 2 deals with amendments to the *COVID-19 Emergency Response Act 2020*.

*Clause 5* provides that this division amends the *COVID-19 Emergency Response Act 2020*.

*Clause 6* amends section 4 (Application of Act) to provide that a reference in section 25(3) which enables a transitional regulation for a COVID-19 law to be inconsistent with the affected law for the COVID-19 law, and any other Act, to the extent necessary to achieve the transition does not include a reference to being inconsistent with the *Human Rights Act 2019*.

*Clause 7* inserts new section 4A (Meaning of *COVID-19 legislation expiry day*) to provide for the definition of ‘COVID-19 legislation expiry day’. ‘COVID-19

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legislation expiry day' is defined to mean the earlier of 30 April 2021 or another day prescribed by regulation as the COVID-19 legislation expiry day.

*Clause 8* amends section 5 (Extraordinary regulations) to provide that an extraordinary regulation must be made before, and expires on, the COVID-19 legislation expiry day.

*Clause 9* amends section 12 (Power of entity to modify statutory time limit) to provide that the power of an entity to modify a period within which the entity, or another entity, is authorised to do a thing, may be extended only for a period that ends on or before the COVID-19 legislation expiry day.

*Clause 10* amends section 13 (Regulation-making power to modify statutory time limit) to provide that if a regulation modifies a period within which an entity is authorised to do a thing or a period at the end of which a thing expires, the period may be extended only for a period that ends on or before the COVID-19 legislation expiry day.

*Clause 11* amends section 15 (Regulation-making power, and power of court, to modify statutory time limit relating to proceeding) to provide that if a regulation modifies a period within which an entity is authorised or required to do a thing relating to a proceeding, the period may be extended only for a period that ends on or before the COVID-19 legislation expiry day.

*Clause 12* amends section 19 (Appointment of commissioner) by omitting subsection (7) which prescribes the end date of the appointment of the small business commissioner.

*Clause 13* amends section 23 (Regulation-making power for retail leases and other prescribed leases) to provide that any regulation made under this section must be made before the COVID-19 legislation expiry day and expires on the COVID-19 legislation expiry day.

*Clause 14* amends section 24 (Regulation-making power for residential tenancies and rooming accommodation etc.) to provide that any regulation made under this section must be made before the COVID-19 legislation expiry day and expires on the COVID-19 legislation expiry day.

*Clause 15* inserts new Part 9 (Transitional provisions) to provide a transitional framework.

New Division 1 (Transitional regulation-making power) includes new section 25 (Transitional regulation-making power) which provides for a transitional regulation-making power to prescribe transitional arrangements.

Section 25(1) provides that the transitional regulation may make provision where this Act or an affected law does not make sufficient provision in order to allow or facilitate the doing of anything to achieve the transition from the operation of an affected law, as modified by a COVID-19 law, to the operation of the affected law after the expiry of the COVID-19 law.

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Section 25(2) provides that the transitional regulation may apply retrospectively to a day no earlier than the day the COVID-19 law expires.

Section 25(3) provides that a transitional regulation may be inconsistent with the affected law and any other Act to the extent necessary to achieve the transition required by subsection (1).

Section 25(4) provides that the transitional regulation must declare it is a transitional regulation and is made under this section.

Section 25(5) provides that the transitional regulation expires 2 years after the day the COVID-19 law expires.

Section 25(6) provides definitions for terms used in this section including ‘affected law’, ‘COVID-19 law’ and ‘expiry’.

*Affected law* is defined to mean an Act under which an extraordinary regulation has been made; or the *Residential Tenancies and Rooming Accommodation Act 2008*; or the *Retail Shop Leases Act 1994*; or another Act of which a COVID-19 law is a provision or was a provision before it expired.

*COVID-19 law* is defined to mean an extraordinary regulation, or a provision of an extraordinary regulation, even if the extraordinary regulation or provision expired before the commencement; or a regulation made under section 23 or 24, or a provision of a regulation made under section 23 or 24, even if the regulation or provision expired before the commencement; or a provision of an Act, mentioned in schedule 1AA, even if the provision expired before the commencement.

The term *expiry* is defined to include repeal.

New Division 2 (Transitional provision for COVID-19 Emergency Response and Other Legislation Amendment Act 2020) provides for transitional arrangements in relation to the *COVID-19 Emergency Response and Other Legislation Amendment Act 2020*.

New section 26 (Appointment of small business commissioner) enables the continuation of the small business commissioner’s appointment after 31 December 2020.

Subsection (1) provides that this section applies for a person who, immediately before commencement, held office as the small business commissioner. Subsection (2) makes clear that the person’s appointment as commissioner continues in effect despite the term of appointment stated in the person’s instrument of appointment.

*Clause 16* inserts new Schedule 1AA (Schedule 1AA COVID-19 laws) which lists all of the COVID-19 laws for the purposes of new section 25(6), paragraph (c).

Division 3 deals with amendments to the *Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020*.

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*Clause 17* provides that this division amends the *Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020*.

*Clause 18* omits existing sections 11 to 13 of the *Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020* and inserts new section 11 (Transitional provision for COVID-19 Emergency Response and Other Legislation Amendment Act 2020) and new section 12 (Expiry).

New section 11(1) provides that this section applies in relation to an application made under section 32 or 86 of the *Domestic and Family Violence Protection Act 2012* during the period starting on 4 December 2020 and ending immediately before the enactment of the *COVID-19 Emergency Response and Other Legislation Amendment Act 2020*.

To remove any doubt, section 11(2) provides that sections 7 and 8 apply, and are taken always to have applied, in relation to the requirement under section 32 or 86 of the *Domestic and Family Violence Protection Act 2012* for the applicant to verify the application.

New section 12 provides that the regulation expires on the COVID-19 legislation expiry day.

Division 4 deals with amendments to the *Explosives Legislation (COVID-19 Emergency Response) Regulation 2020*.

*Clause 19* provides that this division amends the *Explosives Legislation (COVID-19 Emergency Response) Regulation 2020*.

*Clause 20* inserts new section 2A (Definition) to provide a definition for the term ‘COVID-19 response period’. COVID-19 response period is defined to mean the period starting on the day this regulation commenced; and ending on the COVID-19 legislation expiry day.

*Clause 21* amends section 3 (Modification of the Explosives Act 1999, s 19 (Term of authority)) to provide that, for the COVID-19 response period, the term of an authority for a fireworks contractor or fireworks operator licence ends on the COVID-19 legislation expiry day. Subsection (2) omits an unnecessary definition.

*Clause 22* amends section 4 (Modification of the Explosives Regulation 2017, s 33 (Shotfirer licence)) to provide that that modification authorised by this section applies for the COVID-19 response period.

*Clause 23* amends section 5 (Modification of the Explosives Regulation 2017, s 37 (Shotfirer licence)) to provide that that modification authorised by this section applies for the COVID-19 response period.

*Clause 24* amends section 12 (Expiry) to provide the regulation expires on the COVID-19 legislation expiry day.

Division 5 deals with amendments to the *Gaming Machine Act 1991*.

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*Clause 25* provides that this division amends the *Gaming Machine Act 1991*.

*Clause 26* amends section 367E(3) of the *Gaming Machine Act 1991* by replacing the words ‘31 December 2020’ with the words ‘the COVID-19 legislation expiry day’.

*Clause 27* amends section 367F of the *Gaming Machine Act 1991* by replacing the words ‘31 December 2020’ with the words ‘the COVID-19 legislation expiry day’.

*Clause 28* amends the note to section 491 of the *Gaming Machine Act 1991* by replacing the words ‘31 December 2020’ with the words ‘the COVID-19 legislation expiry day’.

*Clause 29* inserts new part 12, division 23 to provide for transitional provisions for the *COVID-19 Emergency Response and Other Legislation Amendment Act 2020*.

New section 493 (Expiry of gaming tax notices) provides that section 367E, as in force from the commencement, applies to a gaming tax notice mentioned in that section, whether the gaming tax notice was made before or after the commencement.

Division 6 deals with amendments to the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*.

*Clause 30* provides that this division amends the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*.

*Clause 31* amends the note to section 2 (Declaration) by replacing the words ‘31 December 2020’ with the words ‘the COVID-19 legislation expiry day’.

*Clause 32* amends section 12 (Lessor under affected lease must not take prescribed action on particular grounds) to clarify that a lessor under an affected lease must not, during or after the response period or extension period take a prescribed action on the grounds in section 12(1).

*Clause 33* amends section 14 (Parties must renegotiate rent payable and other conditions) to provide that rent payable refers to any or all of the rent payable during the response period or extension period.

*Clause 34* amends section 16 (Further rent negotiations) to clarify that the section relates to rent payable.

Division 7 provides for amendments to the *Youth Justice Act 1992*.

*Clause 35* provides that this division amends the *Youth Justice Act 1992*.

*Clause 36* amends section 264A (Appointment of temporary detention centre employees – COVID-19 emergency).

Subsection (1) amends sections 264A(5) and (8) to provide that an appointment of an appropriately qualified person as a temporary detention centre employee ends on the COVID-19 legislation expiry day, or an earlier day stated in the instrument of

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appointment, unless the appointment is earlier revoked and that section 264A expires on the COVID-19 legislation expiry day.

Subsection (2) inserts new section 264(7A) to provide that the chief executive may delegate the chief executive's powers under this Act to an appropriately qualified temporary detention centre employee.

Subsection (3) inserts a new definition of 'appropriately qualified' to cross reference to the definition provided in section 312(2).

Division 8 provides for amendments to other legislation.

*Clause 37* amends a variety of Acts.

Subsection (1) amends a number of provisions across various Acts to change any reference to 31 December 2020 in those provisions to the COVID-19 legislation expiry day. This will extend the operation of the primary legislation still required to respond to the COVID-19 emergency.

Subsection (2) amends the example to section 323F(1)(b) of the *Body Corporate and Community Management Act 1997* which demonstrate when a levy is outstanding prior, during and after the COVID-19 legislation expiry day by changing the date in the example from 1 February 2021 to 1 June 2021.

Subsection (3) amends section 2(1) of the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* by replacing '1 January 2021' with 'the day after the COVID-19 legislation expiry day'. This will ensure that the commencement of Chapter 13, Part 29 of the *Environment Protection Act 1994*, as inserted by this Amendment Act, will be delayed till the day after the COVID-19 legislation expiry day.

*Clause 38* amends a variety of statutory instruments.

Subsection (1) amends a number of provisions across various statutory instruments to change any reference to 31 December 2020 in those provisions to the COVID-19 legislation expiry day. This will extend the operation of the statutory instruments still required to respond to the COVID-19 emergency.

Subsection (2) amends section 6(2)(b)(ii) of the *Economic Development (COVID-19 Emergency Response) Regulation 2020* to provide that the submission period for a PDA development application or amendment application must end no later than 30 April 2021.

Subsection (3) amends section 13 of the *Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020* to provide that the requirement that the board members meet in person at least once a year (as per section 123(5) of the *Family Responsibilities Commission Act 2008*) is taken to be satisfied for a year if the members hold a board meeting in that year using any technology allowing reasonably contemporaneous and continuous communication between the members.

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Subsection (4) amends section 5(1)(b) of the *Justice Legislation (COVID-19 Emergency Response—Community Titles Schemes and Other Matters) Regulation 2020* by omitting ‘during the COVID-19 emergency period’ and inserting ‘on or before the COVID-19 legislation expiry day’.

Subsection (5) amends sections 12 and 13 of the *Justice Legislation (COVID-19 Emergency Response—Community Titles Schemes and Other Matters) Regulation 2020* by omitting ‘during the COVID-19 emergency period’ and inserting ‘on or before the COVID-19 legislation expiry day’.

*Clause 39* provides that Schedule 1 amends the regulation modules under the *Body Corporate and Community Management Act 1997* it mentions.

### **Part 3 Amendment of Electoral Act 1992**

*Clause 40* provides that this part amends the *Electoral Act 1992* (Electoral Act).

*Clause 41* omits the definition of by-election from section 197. The definition is re-inserted into Schedule 1 (Dictionary).

*Clause 42* inserts new part 12C (By-elections held during the COVID-19 emergency period) into the Electoral Act.

New section 392ZB (Purpose of part) provides that the purpose of part 12C is to facilitate the holding of a by-election to which the part applies in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 emergency. Subsection (2) defines ‘COVID-19 emergency’ for the purpose of this section.

New section 392ZC (Application of part) provides that part 12C applies for each by-election for which the writ for the by-election is issued on or before the COVID-19 legislation expiry day and despite any other provisions of this Act about the holding of a by-election.

New section 392ZD (Definitions for part) provides a definition of the term ‘postal vote’ and provides that in this part a reference to the returning officer in relation to a by-election is a reference to the returning officer for the electoral district for which a by-election is being held.

New section 392ZE (Time limits in writ) provides that, in relation to the writ issued for a by-election, the cut-off day for the electoral rolls and cut-off day for the nomination of candidates stated in the writ may be a day earlier than the day provided for under section 84(1)(b) and (c) of the Electoral Act. The section also provides that, in relation to a writ issued and despite anything in the Electoral Act, the Governor or Speaker (whoever issued the writ) may declare by gazette notice that the polling day is postponed to a later day stated in the notice or another day to be fixed by further gazette notice, or substitute a later day for the day stated in the writ under section 84(1)(b), (c), (d) or (e) (by gazette notice made before, on or after a day specified in the writ).

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New section 392ZF (Adjournment of poll) allows the ECQ to fix as the day for the taking of an adjourned poll, the earliest Saturday on which it is satisfied the poll may practicably and safely be taken or resumed (rather than a day not later 34 days after the polling day for the election).

New section 392ZG (Procedure for voting) provides that a regulation may be made declaring that for a by-election electors, or electors of a stated class, must vote by postal vote and permit electors, to whom the declaration applies, to vote in other ways, for example, by making an electronically assisted vote.

New section 392ZH (Pre-poll ordinary voting) ensures that any change to the cut-off day for the nomination of candidates made as a result of new section 392ZE does not affect the period when an elector may make an ordinary pre-poll vote.

New section 392ZI (Making a declaration vote using posted voting papers) allows the ECQ to fix an earlier or later time and day, by publishing a notice on its website, by which an elector may make a postal vote request under section 119.

New section 392ZJ (Electoral visitor voting) allows the ECQ or returning officer to direct an issuing officer not to visit an elector who has requested to vote as an electoral visitor voter, electors in the by-election or electors of a particular class if the ECQ is satisfied that a risk to the health and safety of an issuing officer is posed. The ECQ or the returning officer must, to the extent practicable, have the issuing officer make alternative arrangements, if practicable, to enable the elector affected by the direction to vote in the by-election.

New section 392ZK (Electronically assisted voting) allows the ECQ, having regard to the purposes of the part, to declare an additional class of electors to be able to make an electronically assisted vote in the by-election. The section also allows the ECQ to make procedures for electronically assisted voting for the by-election and for these procedures to take effect when published on the ECQ's website or any later day stated in the procedures.

New section 392ZL (Distribution or display of how-to-vote cards or other election material) allows the ECQ to give a direction about the display or distribution of how-to-vote cards and election material or prohibiting a person from canvassing for votes in or near a polling booth or permitting the display of political statements at a place mentioned in section 190(1), if the ECQ is satisfied that, having regard to the purposes of the part, it would be in the public interest to regulate, limit or prohibit the distribution of how-to-vote cards or other election material or canvassing for votes in or near a polling booth. The direction must be published on the ECQ's website. It is an offence with a maximum penalty of 10 penalty units to contravene a direction under the section.

New section 392ZM (Directions about candidates or scrutineers at particular places) provides for the ECQ to give a direction for a by-election about the number of scrutineers each candidate may have at a polling booth or other place at which a scrutineer is entitled to be present under the Electoral Act, or prohibiting a scrutineer from being present at a polling booth or other place at which a scrutineer is otherwise entitled to be present under the Electoral Act, with an offence applying to a contravention.

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New section 392ZN (Direction about movement of candidates or scrutineers) provides for the returning officer or member of the ECQ's staff in charge of a polling booth for a by-election to give a direction about the movement of candidates or scrutineers at the polling booth for the by-election, and areas where they may be, with an offence applying to a contravention.

New section 392ZO (Counting of votes) provides that the returning officer may arrange for the counting of votes to be filmed by a member of the ECQ's staff. It further provides that the returning officer may direct a member of the ECQ's staff to carry out the counting of votes at a stated place.

New section 392ZP (Restriction on directions) provides that the ECQ, returning officer or member of the ECQ's staff must not give a direction under this part of a kind prescribed under section 392Q as a kind of direction that may not be given under the provision or in circumstances prescribed under section 392Q as circumstances in which a direction may not be given.

New section 392ZQ (Regulation about by-elections) allows a regulation to make provision about a matter to facilitate the holding of the by-election in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 emergency.

New section 392ZR (Matters about regulation under this part) applies to regulations under this part and subsection (2) provides, amongst other things, that the regulation may be inconsistent with the Electoral Act, including, for example, by modifying the application of part 7 in relation to the by-election, to the extent necessary to achieve the purpose of this part. Subsection (3) provides that the Minister may recommend the making of the regulation only if satisfied the regulation is necessary to achieve the purpose of this part. Subsection (4) provides that the Minister must consult with the ECQ before recommending the making of a regulation under new section 392ZG. Subsection (5) provides that the regulation must declare that it is made under this part.

New section 392ZS (Expiry) provides that part 12C, and any regulations made under it, will expire on the later of the following – the COVID-19 legislation expiry day (in the event no by-election is held under this part) or one year after the name of the candidate elected in the last by-election to which this part applies, is published in the gazette.

*Clause 43* amends Schedule 1 (Dictionary) to omit and insert a definition of by-election.

## **Part 4 Amendment of Liquor Act 1992**

*Clause 44* provides that this part amends the *Liquor Act 1992* (Liquor Act).

*Clause 45* amends section 75 of the Liquor Act (Restriction on sale of liquor under producer/wholesaler licence) to exempt artisan distillers from the operation of the section for sales of their own liquor.

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Subsection (1) inserts new subsection (4A) into section 75. New subsection 75(4A)(a) provides that section 75 does not apply to a producer/wholesaler licensee if the licensee produces no less than 400 litres and no more 450,000 litres of spirits at the licensed premises in any financial year. New subsection 75(4A)(b) provides the exemption applies only to the sale of spirits produced by the licensee. The effect of new section 75(4A) is artisan distillers with a producer/wholesaler licence will be able to sell their own liquor to the public for consumption on the premises and as takeaway, without the requirement for such sales to be for a particular purpose; or limited to 2.5% of total liquor sales.

Subsection (2) then provides for the subsequent omission of new subsection 75(4A). This will have the effect of removing the exemption from the operation of section 75 for artisan distillers. This provision will commence by proclamation. The effect of the subsection is to allow the exemption under 75(4A) to be removed upon the implementation of more comprehensive reforms to support growth in the sector.

## **Part 5 Amendment of Local Government Act 2009**

*Clause 46* provides that Part 5 amends the *Local Government Act 2009*.

*Clause 47* amends section 161(2) of the LGA to provide that the way in which a vacancy is to be filled depends on whether the vacancy is in the office of the mayor or of another councillor; and whether the office becomes vacant during the beginning, middle or final part of the local government's term.

*Clause 48* inserts new section 164 to provide that a vacancy in the office of a mayor during the beginning or middle of a local government's term is to be filled by a by-election and during the final part of the term is to be filled by the local government appointing, by resolution, another councillor to the office.

*Clause 49* replaces section 166 to provide that a vacancy in the office of a councillor who is not the mayor must be filled by—

- if the office becomes vacant during the beginning of the local government's term, either by a by-election or by appointing a runner-up under section 166A as decided, by resolution, by the local government;
- if the office becomes vacant during the middle of the local government's term the vacancy, by a by-election;
- if the office becomes vacant during the final part of the local government's term, by following the procedure under section 166B.

*Clause 50(1)* amends the heading of section 166A of the LGA to clarify that the section applies only to particular vacancies arising during the beginning of a local government's term.

*Clause 50(2)* replaces section 166A(2) to provide that the section applies if a local government decides under section 166(1)(a) to fill the vacant office of a councillor by following the procedure in this section.

*Clause 50* also makes minor and consequential amendments to section 166A.

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*Clause 51* amends the heading of section 166B of the LGA to clarify that the section applies only to particular vacancies arising during the final part of a local government's term.

*Clause 51* also amends section 166B by removing references to the mayor and how a vacancy in the office of the mayor is to be filled in the final part of the local government's term. This will be provided for in section 164 (Filling a vacancy in the office of mayor).

*Clause 52* inserts new Part 16 into the LGA (Transitional provisions for COVID-19 Emergency Response and Other Legislation Amendment Act 2020).

New section 337 (Definitions for part) provides definitions of the terms *former*, *new* and *relevant period*.

New section 338 (Effect of particular things done under former s166A) applies if, during the relevant period, the office of a mayor or another councillor became vacant and anything was done under section 166A of the LGA as in force from time to time before commencement (former section 166A) in relation to filling the vacant office.

From the commencement—

- former section 166A does not apply and is taken never to have applied in relation to filling the vacant office;
- anything done under former section 166A for filling the vacant office is taken never to have been done.

To remove any doubt, new section 338(3) declares that, if a local government appointed a runner-up to a vacant office during the relevant period under former section 166A(4)(b), on the commencement—

- the office is taken to be vacant, and to have always been vacant since it became vacant during the relevant period; and
- the runner-up is taken never to have been appointed.

New section 338(4) provides that the section does not affect any entitlement to remuneration or other benefits accrued or accruing under an Act in respect of the appointment period, as defined in section 338(5), because of the runner-up's appointment under former section 166A.

New section 338(6) provides that new section 338(2) and (3) apply despite the *Acts Interpretation Act 1954*, section 20.

New section 339 (Filling particular vacancies in office of mayor) applies if the office of a mayor became vacant during the relevant period and either had not been filled immediately before commencement or, on commencement, is taken to be vacant under new section 338.

New section 339(2) provides that new chapter 6, part 2, division 3 applies in relation to filling the vacant office.

New section 339(3) provides that, despite new section 163(3) of the LGA, the local government must fill the vacant office within 2 months from commencement.

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New section 339(4) provides that subsections (2) and (3) apply despite the *Acts Interpretation Act 1954*, section 20.

New section 340 (Filling particular vacancies in office of another councillor generally) applies if the office of a councillor became vacant during the relevant period and either had not been filled immediately before commencement or, on commencement, is taken to be vacant under new section 338.

New section 340(2) provides that new chapter 6, part 2, division 3 applies in relation to filling the vacant office.

New section 340(3) provides that, despite new section 163(3) of the LGA, the local government must fill the vacant office within 2 months from commencement.

New section 340(4) provides that subsections (2) and (3) apply despite the *Acts Interpretation Act 1954*, section 20.

Section 340 is subject to section 341.

Section 341 (Filling particular vacancies in office of another councillor under new s 166A) applies if a local government decides under new section 166(2), as applied under section 340, that a vacancy in the office of a councillor, other than the mayor, is to be filled by following the procedure under new section 166A.

Despite section 338(2) and (3)(b) and section 159, anything done during the relevant period under former section 166A for filling the vacant office is taken to have been done under new section 166A and if during the relevant period the local government filled the vacant office by appointing a runner-up under former section 166A(4)(b), the runner-up is taken to have been appointed under new section 166A(4)(b) on the commencement and to have held office as a councillor continuously from that day.

New section 341(3) provides that new subsection (4) applies if during the relevant period, the electoral commission gave a vacancy notice under former section 166A(3) to a runner-up, and the deadline for the runner-up was a day after the end of the relevant period, and the runner-up did not, before the end of the relevant period, consent to being appointed to the vacant office.

New section 341(4) provides that the electoral commission must, under new section 166A(6), as applied under section 340, extend the day and time stated in the vacancy notice to a day and time after the day the decision mention in subsection (1) was made.

## **Part 6 Amendment of Local Government Electoral Act 2011**

*Clause 53* provides that Part 6 amends the *Local Government Electoral Act 2011*.

*Clause 54* amends section 24(2) of the LGEA to provide that the date fixed for a by-election must be within 2 months after the vacancy happens.

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## **Schedule 1 Amendments to body corporate and community management regulation modules commencing on 1 March 2021**

Schedule 1 amends a range of modules.

### *Body Corporate and Community Management (Accommodation Module) Regulation 2020*

Clause 1 inserts new section 45A in the *Body Corporate and Community Management (Accommodation Module) Regulation 2020* (Accommodation Module 2020). The Accommodation Module 2020 commences on 1 March 2021 and repeals the *Body Corporate and Community Management (Accommodation Module) 2008* (Accommodation Module 2008). This amendment will ensure the temporary capacity of committees under the Accommodation Module 2008 to make decisions regarding common property use and access that are reasonably necessary for compliance with a COVID-19 health direction will continue under the Accommodation Module 2020. The new section 45A expires on the COVID-19 legislation expiry day.

### *Body Corporate and Community Management (Commercial Module) Regulation 2020*

Clause 1 inserts new section 17A in the *Body Corporate and Community Management (Commercial Module) Regulation 2020* (Commercial Module 2020). The Commercial Module 2020 commences on 1 March 2021 and repeals the *Body Corporate and Community Management (Commercial Module) 2008* (Commercial Module 2008). This amendment will ensure the temporary capacity of committees under the Commercial Module 2008 to make decisions regarding common property use and access that are reasonably necessary for compliance with a COVID-19 health direction will continue under the Commercial Module 2020. The new section 17A expires on the COVID-19 legislation expiry day.

### *Body Corporate and Community Management (Small Schemes Module) Regulation 2020*

Clause 1 inserts new section 17A in the *Body Corporate and Community Management (Small Schemes Module) Regulation 2020* (Small Schemes Module 2020). The Small Schemes Module 2020 commences on 1 March 2021 and repeals the *Body Corporate and Community Management (Small Schemes Module) 2008* (Small Schemes Module 2008). This amendment will ensure the temporary capacity of committees under the Small Schemes Module 2008 to make decisions regarding common property use and access that are reasonably necessary for compliance with a COVID-19 health direction will continue under the Small Schemes Module 2020. The new section 17A expires on the COVID-19 legislation expiry day.

### *Body Corporate and Community Management (Standard Module) Regulation 2020*

Clause 1 inserts new section 53A in the *Body Corporate and Community Management (Standard Module) Regulation 2020* (Standard Module 2020). The Standard Module 2020 commences on 1 March 2021 and repeals the *Body Corporate and Community*

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*Management (Standard Module) 2008* (Standard Module 2008). This amendment will ensure the temporary capacity of committees to make decisions under the Standard Module 2008 regarding common property use and access that are reasonably necessary for compliance with a COVID-19 health direction will continue under the Standard Module 2020. The new section 53A expires on the COVID-19 legislation expiry day.