

# COVID-19 Emergency Response and Other Legislation Amendment Bill 2021

## Statement of Compatibility

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

In accordance with section 38 of the *Human Rights Act 2019*, I, Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence make this statement of compatibility with respect to the COVID-19 Emergency Response and Other Legislation Amendment Bill 2021 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

## Overview of the Bill

### Extension of COVID-19 related legislation

The COVID-19 public health emergency declared in January 2020 in response to the COVID-19 and its pandemic potential is ongoing and measures which protect the health, safety and welfare of Queenslanders, mitigate the spread of COVID-19 in the community, and facilitate the continued functioning of Queensland institutions and economy to the extent possible are still required.

On 8 March 2021, the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* received assent, extending the operation of temporary legislative provisions introduced in 2020 to facilitate Queensland's swift and effective public health response to the COVID-19 public health emergency until 30 September 2021. This includes the extension of emergency powers for the Chief Health Officer to make public health directions to limit or respond to the spread of COVID-19 in Queensland. As at 8 March 2021, there were 19 public health directions in force in Queensland.

In addition to the public health framework, temporary and, in some cases, extraordinary legislative measures were introduced by the *COVID-19 Emergency Response Act 2020* (ER Act) and the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* (Amendment Act) to allow for flexible and rapid responses to a range of things disrupted, caused or affected by the pandemic. The majority of these measures were initially to expire on 31 December 2020.

In recognition of the continued uncertainty surrounding the effects of, and response to, the COVID-19 public health emergency, in December 2020 the *COVID-19 Emergency Response and Other Legislation Amendment Act 2020* (Extension Act) was passed. The Extension Act extended the impending expiry of measures introduced by the ER Act or the Amendment Act, as well as secondary instruments made under those measures that were still required to the newly termed COVID-19 legislation expiry date. In the Extension Act, the COVID-19 legislation expiry date was set at 30 April 2021 or an earlier date to be prescribed by regulation.

The Extension Act also introduced a limited number of new measures, including the power to make regulations to facilitate transitional arrangements.

Together, the ER Act, Amendment Act, Extension Act, secondary instruments made under or pursuant to these Acts or COVID-19 related regulations or 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*) that expire on the COVID-19 legislation expiry day are referred to as COVID-19 related legislation.

The Bill extends the operation of COVID-19 related legislation still required to respond to the impacts of the COVID-19 emergency to 30 September 2021, or an earlier date prescribed by regulation, by amending the definition of COVID-19 legislation expiry day in the ER Act.

This amendment will extend the operation of regulation-making powers under the ER Act related to residential tenancies and retail and other relevant leases, as well as the legislative modification framework of general application across the statute book (the modification framework) which provides for the making of secondary instruments to modify existing legislative requirements under the following broad global heads of power:

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

The following secondary instruments, or aspects of them, enacted pursuant to powers under the ER Act (and other Acts) will also 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*
- *Justice Legislation (COVID-19 Emergency Response—Proceedings and Other Matters) Regulation 2020*
- *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*
- *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*

- *Youth Justice (COVID-19 Emergency Response) Regulation 2020*

The operation of the amendments made to the following legislation by the Amendment Act and Extension Act will also 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
- *Electoral Act 1992*, part 12C
- *Environmental Protection Act 1994*, chapter 11A
- *Gaming Machine Act 1991*, part 11A
- *Keno Act 1996*, section 116A
- *Liquor Act 1992* part 10A
- *Lotteries Act 1997*, section 99A
- *Manufactured Homes (Residential Parks) Act 2003*, section 146A
- *Youth Justice Act 1992*, section 264A

The amendments to the following secondary instruments made by the Extension Act will also be extended:

- *Body Corporate and Community Management (Accommodation Module) Regulation 2020*
- *Body Corporate and Community Management (Commercial Module) Regulation 2020*
- *Body Corporate and Community Management (Small Schemes Module) Regulation 2020*
- *Body Corporate and Community Management (Standard Module) Regulation 2020*

The life of *Gaming Tax Notice 2020* and *Gaming Tax Notice (No. 2) 2020* will also be extended.

Modifications to the *Coroners Act 2003* to extend the period for providing the annual report of the Domestic and Family Violence Death Review Advisory Board made by the *Justice Legislation (COVID-19 Emergency Response – Proceedings and Other Matters) Regulation 2020* are no longer required and will be omitted by the Bill.

The Bill also ensures that the power to make a regulation under the ER Act to facilitate the transition from the law as modified by the COVID-19 related legislation to the law following expiry of the COVID-19 related legislation can be exercised by the Minister responsible for administering the relevant law.

### **Amendments to the *City of Brisbane Act 2010* and the *Local Government Act 2009* to enable local governments to make ‘extraordinary decisions’ during the 2021-2022 financial year**

To help safeguard local government revenue streams through the declared COVID-19 public health emergency, the Amendment Act inserted new section 96A into the *City of Brisbane Act 2010* (COBA) and new section 94A into the *Local Government Act 2009* (LGA) to provide a temporary regulation-making power for local governments to make ‘extraordinary decisions’ about the levying of rates and charges for the 2020-2021 financial year.

Subsequently, the *Local Government Legislation Amendment Regulation (No. 1) 2020* inserted new provisions into the *City of Brisbane Regulation 2012* (CBR) and the *Local Government Regulation 2012* (LGR) to provide that, for the 2020-2021 financial year, a local government may decide by resolution made other than at the local government's budget meeting for the financial year (an extraordinary decision), what rates and charges are to be levied for the period of the financial year starting on a day not earlier than the day the resolution is made and ending on 30 June 2021.

Recognising the ongoing nature of the COVID-19 public health emergency, the Bill inserts new provisions into the COBA and the LGA to permit local governments to decide, outside of the annual budget meeting, what rates and charges are to be levied for the remainder of the 2021-2022 financial year. The Bill provides this authority exclusively under the COBA and the LGA without the need for a regulation to be made before local governments can make extraordinary decisions.

**Amendments to the *City of Brisbane Act 2010*, the *Local Government Act 2009*, the *Local Government Electoral Act 2011* and the *State Penalties Enforcement Regulation 2014* to facilitate the holding of COVID-safe local government by-elections and fresh elections**

The *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* received assent on 19 March 2020. It amended the COBA, the LGA, the *Local Government (Dissolution of Ipswich City Council) Act 2018*, the *Local Government Electoral Act 2011* (LGEA) and the LGR to provide flexibility, if required, for the election date for the 2020 quadrennial local government election and statutory processes for the conduct of the election, to help minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency.

The *Local Government Electoral (2020 Quadrennial Election) Regulation 2020* was notified on 27 March 2020 and included amendments in relation to Electoral Commission Queensland (ECQ) directions to candidates and scrutineers and the filming of counting of votes.

However, these arrangements do not apply to local government by-elections or fresh elections held after the 2020 quadrennial local government election. Therefore, this Bill amends the COBA, the LGA, the LGEA and the *State Penalties Enforcement Regulation 2014* (SPE Regulation) to provide flexibility to facilitate the holding of a local government by-election for filling a vacant office of a councillor (including a mayor) or a fresh election, in a timely way that helps minimise the health and safety risks associated with COVID-19. These amendments will apply to a local government by-election if notice of the by-election is published on or before the COVID-19 legislation expiry day or to a fresh election if a regulation that provides for the election to be held is made on or before the COVID-19 legislation expiry day.

The Bill prescribes offences under the SPE Regulation, to apply:

- when a person, without reasonable excuse, contravenes a direction of the ECQ about how, where and when how-to-vote cards may be distributed/displayed at a polling booth for the election; prohibiting the distribution/display of how-to-vote cards and other election material at a polling booth for the election; prohibiting a person from canvassing for votes in or near polling booths; permitting the display of certain political statements. The maximum penalty that applies for this offence is 10 penalty units. The penalty infringement notice (PIN) fine is 1 penalty unit;

- when a person, without a reasonable excuse, contravenes a direction of the ECQ about the number of scrutineers each candidate may have at a polling booth or other place a scrutineer is entitled to be present under the LGEA or prohibiting a candidate or scrutineer from being present at a polling booth or other place where the candidate or scrutineer would otherwise be entitled to be present under the LGEA. The maximum penalty that applies for this offence is 20 penalty units. The PIN fine is 2 penalty units; and
- when a candidate or scrutineer, without a reasonable excuse, does not comply with a direction of a returning officer, presiding officer for a polling booth or a member of the ECQ's staff who is re-counting ballot papers under section 96A of the LGEA about movement at a polling booth or other place where the candidate or scrutineer is entitled to be present under the Act. The maximum penalty that applies for this offence is 20 penalty units. The PIN fine is 2 penalty units.

### **Amendments to the *City of Brisbane Regulation 2012* and the *Local Government Regulation 2012* to extend the operation of temporary local government and committee meeting provisions**

Chapter 8, part 2A of the CBR and chapter 8, part 2, division 4 of the LGR provide temporary additional provisions in relation to local government and committee meetings to help minimise serious risks to the health and safety of persons caused by COVID-19. Generally, the provisions allow for meetings to be held by audio link or audio visual link and to be closed to the public for health and safety reasons associated with COVID-19, and do not disapply any regular local government and committee meeting requirements under chapter 8, part 2 of the CBR and the LGR. The provisions are set to expire on 30 June 2021.

To ensure continued flexibility for local governments in addressing the ongoing COVID-19 public health emergency, the Bill extends the operation of the additional local government and committee meeting provisions. Under the Bill, the provisions will now expire on the COVID-19 legislation expiry day.

## **Human Rights Issues**

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

#### **Extension of the powers in the ER Act**

The regulation-making powers and modification framework under the ER Act have the potential to limit most, if not all, of the human rights protected by the *Human Rights Act 2019* (HR Act) depending on the nature of the secondary instruments that may be enacted or exercised under the empowering provisions. This was acknowledged in the [Statement of Compatibility](#) that accompanied the ER Act, noting that the human rights implications would not crystallise until a specific proposal (that is, a regulation, extraordinary regulation, statutory instrument or notice) had been developed and enacted.

However, those implications have now crystallised in the form of a number of secondary instruments the majority of which are being extended under the Bill. The human rights that are relevant to each of the secondary instruments that would be extended by the Bill are set out in the human rights certificates that accompanied each of the following Regulations:

- [Human Rights Certificate](#) – *Corrective Services (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Economic Development (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Education Legislation (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Explosives Legislation (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Health Legislation (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Justice Legislation (COVID-19 Emergency Response—Community Titles Schemes and Other Matters) Regulation 2020*
- [Human Rights Certificate](#) – *Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Regulation 2020*
- [Human Rights Certificate](#) – *Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Amendment Regulation 2020*
- [Human Rights Certificate](#) – *Justice Legislation (COVID-19 Emergency Response—Proceedings and Other Matters) Regulation 2020*
- [Human Rights Certificate](#) – *Local Government (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Planning (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Planning Legislation (Economic Recovery Measures and Other Matters) Amendment Regulation 2020*
- [Human Rights Certificate](#) – *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020*
- [Human Rights Certificate](#) – *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Amendment Regulation 2020*
- [Human Rights Certificate](#) – *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Amendment Regulation 2021*
- [Human Rights Certificate](#) – *Youth Justice (COVID-19 Emergency Response) Regulation 2020*

The abovementioned human rights certificates were made in the names of the Minister who, at the time, administered the law or provision under which the identified secondary instrument was made, and I am advised that those certificates accurately reflect the human rights that are limited by each secondary instrument.

It is not, at this point, reasonably foreseeable that any secondary instruments will be enacted or exercised in the future under the ER Act powers which radically depart from the types of instruments that have already been made. This means that there are no reasonably foreseeable limitations on human rights in addition to those detailed in the human rights certificates noted above and the Statement of Compatibility for the ER Act. Should the need arise for any further secondary instruments to be enacted, the potential limitations of human rights will be canvassed in a human rights certificate which will be attached to the secondary instrument.

### **Transitional arrangements**

Expanding the application of the transitional regulation-making power ensures the power can be exercised by the most appropriate decision-maker and does not limit human rights to any greater extent than what was identified in the Statement of Compatibility for the Extension Act. Further, when any transitional regulations come to be made under the arrangements, they will necessarily be accompanied by a human rights certificate which discusses the compatibility of any limitations on human rights that do arise.

### **Extension of amendments in the Amendment Act**

The human rights that are limited by the amendments made to the *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 1992*, part 10A; *Manufactured Homes (Residential Parks) Act 2003*, section 146A; *Mental Health Act 2016*, chapter 18B; and *Public Health Act 2005*, part 7B under the Amendment Act are set out in the [Statement of Compatibility](#) that accompanied that Act.

In addition, the human rights impacts of the gaming tax notices are set out in the Human Rights Certificates for the:

- [Gaming Tax Notice 2020](#);
- [Gaming Tax Notice \(No 2\) 2020](#); and
- [Gaming Tax Amendment Notice 2020](#).

### **Extension of amendments in the Extension Act**

The human rights that are limited by the amendments made to the *Electoral Act 1992*, part 12C under the COVID-19 Extension Act are set out in the [Statement of Compatibility](#) that accompanied that Act.

**Amendments to the *City of Brisbane Act 2010* and the *Local Government Act 2009* to enable local governments to make ‘extraordinary decisions’ during the 2021-2022 financial year**

The amendments to the COBA and the LGA to allow local governments to decide rates and charges for the 2021-2022 financial year outside of the annual budget meeting limit the following human right:

- right to property (section 24 of the HR Act).

**Amendments to the *City of Brisbane Act 2010*, the *Local Government Act 2009*, the *Local Government Electoral Act 2011* and the *State Penalties Enforcement Regulation 2014* to facilitate the holding of COVID-safe local government by-elections and fresh elections**

The amendments to the COBA, the LGA and the LGEA to provide flexibility to facilitate the holding of local government by-elections and fresh elections and to provide for enforcement through the SPE Regulation limit the following human rights:

- freedom of movement (section 19 of the HR Act);
- freedom of expression (section 21 of the HR Act);
- taking part in public life (section 23 of the HR Act);
- property rights (section 24 of the HR Act);
- privacy and reputation (section 25 of the HR Act);
- right to liberty and security of person (section 29 of the HR Act);
- fair hearing (section 31 of the HR Act); and
- rights in criminal proceedings (section 32 of the HR Act).

**Amendments to the *City of Brisbane Regulation 2012* and the *Local Government Regulation 2012* to extend the operation of temporary local government and committee meeting provisions**

The amendments to the CBR and the LGR which enable local government and committee meetings to continue to be closed to the public for health and safety reasons associated with COVID-19, limit the following human right:

- right to take part in public life (section 23 of the HR Act).

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

**Extension of the ER Act mechanisms**

(a) the nature of the right

Information relating to the general nature and scope of the human rights, required under section 13(2)(a) of the HR Act, has been provided above under the heading ‘Human rights relevant to the Bill – Extension of the powers in the ER Act’ (and by reference to various other statements of compatibility and human rights certificates, as detailed).

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

The purpose of further extending the expiry of the powers under the ER Act is to ensure that the Queensland Government remains flexible and responsive to the evolving and emerging challenges of, and continuing disruptions caused by, the pandemic. While one purpose of the powers under the ER Act is to protect the health, safety and welfare of persons affected by the COVID-19 public health emergency, the powers also respond to things affected or disrupted by the COVID-19 emergency (such as public administration, small business, judicial process and certain leasing arrangements).

The COVID-19 public health emergency in Queensland is ongoing. Measures which protect the health, safety and welfare of Queenslanders, mitigate the spread of COVID-19 in the community and facilitate the continued functioning of Queensland institutions and economy to the extent possible are still required.

The ability to respond rapidly has been a key factor in Queensland's sustained low COVID-19 case numbers to date, however the risks and impacts of the pandemic continue to emerge and evolve. New variants of COVID-19 spread more quickly and the recent cluster of cases in a Brisbane quarantine hotel resulted in rapid response measures being put in place to reduce the public health risk. Together with recent events in other Australian jurisdictions and the ongoing impact of COVID-19 around the world, this illustrates how quickly circumstances can change.

Having the ability to respond at short-notice to things caused or affected by the COVID-19 public health emergency, at least while there is a need for extraordinary public health powers, will continue to ensure public health objectives are met, while balanced with essential and ongoing social and economic needs of our communities and service delivery responsibility of the State Government.

(c) the relationship between the limitation to be imposed by the extension of the COVID-19 ER Act mechanisms, and its purpose, including whether the limitation helps to achieve the purpose

By extending the expiry of the powers under the ER Act, the necessary flexibility is provided to enable the Government to respond to the ongoing COVID-19 public health emergency if and when challenges emerge. To date, the secondary instruments that have been made under the modification framework have enabled the ongoing administration of Government and services in a way that is safe and that protects the health and wellbeing of the Queensland community during the COVID-19 public health emergency.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the extension of the powers under the ER Act

Given the extraordinary nature of the powers under the ER Act, the Bill proposes an extension of their expiration until 30 September 2021 or an earlier date to be prescribed by regulation.

The proposed extension is consistent with the approach taken to extension of public health powers, including COVID-19 emergency powers provided to the Chief Health Officer and emergency officers, under the *Public Health Act 2005* in the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021*.

Without any extension the powers under the ER Act will expire on 30 April 2021. This would leave the Queensland Government without the ability to respond flexibly to emerging challenges of the COVID-19 public health emergency at a time where highly contagious mutant strains of the virus are developing and spreading and restrictions, including short periods of lock down, have been recently imposed both in Queensland and in other Australian jurisdictions.

The five month extension aligns the expiry of the powers with the current expiry of the Chief Health Officer's powers to make public health directions to limit or respond to the spread of COVID-19 in Queensland under the *Public Health Act 2005*. An extension of less than five months would not ensure that the powers under the ER Act are available at least while the Chief Health Officer has powers to make public health directions related to COVID-19.

Importantly, the Bill retains the ability for the Executive to prescribe by regulation an expiry date for COVID-19 related legislation before 30 September 2021. This enables the ongoing consideration of the most up to date public health advice in relation to the COVID-19 pandemic, including consideration of the impact that a vaccine becoming available may have on limiting the public health risks of COVID-19 in Queensland, and how the pandemic is impacting Queensland institutions and delivery of services, to inform decisions about the ongoing need to remain flexible and responsive to evolving and emerging challenges of the pandemic.

In addition, nothing in the Bill prevents the amendment or repeal of legislative amendments, subordinate legislation or statutory instruments through ordinary processes when they are no longer necessary to respond to the COVID-19 public health emergency.

It is therefore considered that there is no less restrictive and reasonably available way to achieve the purpose of ensuring that the Queensland Government remains flexible and responsive to emerging challenges of the COVID-19 public health emergency.

(e) the balance between the importance of the purpose of the extension of the COVID-19 ER Act mechanisms, which would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The need to ensure that the Queensland Government remains flexible and responsive to emerging challenges of the pandemic through the powers under the ER Act outweighs the harm that may be caused to human rights. This is especially so when considering that, despite their extraordinary nature, the application of the HR Act to the powers under the ER Act is explicitly preserved, that secondary instruments enacted under the ER Act to date have been compatible with human rights as evidenced by their human rights certificates, and powers under those secondary instruments must be exercised compatibly with human rights under section 58 of the HR Act.

(f) any other relevant factors

Not applicable.

**Extension of the amendments in the Amendment Act**

Extension of the amendments made to the *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 1992*, part 10A; *Manufactured Homes (Residential Parks) Act 2003*, section 146A; *Mental Health Act 2016*, chapter 18B; *Public Health Act 2005*, part 7B; and *Youth Justice Act 1992*, section 264A under the Amendment Act is necessary to continue to meet the proper purposes identified for each of the amendments.

The proper purposes of the amendments (including the amendments authorising the creation of gaming tax notices) are set out in the [Statement of Compatibility](#) that accompanied that Act, which also considers the rational relationship between the limitations and the purposes, the necessity of the limitations, and a fair balance (as required under section 13 of the HR Act).

I am satisfied that the limitations on human rights that arise under each of these amendments continues to be reasonable and proportionate on the basis of the justification set out in the original [Statement of Compatibility](#) that accompanied the Act.

#### **Extension of the amendments in the Extension Act**

Extension of the amendments made to the *Electoral Act 1992*, part 12C under the Extension Act is necessary to continue to meet the proper purposes identified for the amendments.

The proper purposes of the amendments are set out in the [Statement of Compatibility](#) that accompanied that Act, which also considers the rational relationship between the limitations and the purposes, the necessity of the limitations, and a fair balance (as required under section 13 of the HR Act).

I am satisfied that the limitations on human rights that arise under each of these amendments continues to be reasonable and proportionate on the basis of the justification set out in the original [Statement of Compatibility](#) that accompanied that Act.

#### **Amendments to the *City of Brisbane Act 2010* and the *Local Government Act 2009* to enable local governments to make ‘extraordinary decisions’ during the 2021-2022 financial year**

##### **(a) the nature of the right**

The amendments to the COBA and the LGA to allow local governments to decide rates and charges for the 2021-2022 financial year outside of the annual budget meeting limit the right to property (section 24 of the HR Act).

The right to property protects the right of all persons to own property (alone or with others) and provides that people have a right not to be arbitrarily deprived of their property. The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality, and freedom. The right includes the protection from the deprivation of property. The term ‘deprived’ is not defined by the HR Act, however deprivation in this sense is considered to include the

substantial restriction on a person's use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use his or her property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it or deriving profits from it). The right does not provide a right to compensation.

Property is likely to include all real and personal property interests recognised under general law (for example, interests in land, contractual rights and shares) and may include some statutory rights (especially if the right includes traditional aspects of property rights, such as to use, transfer, dispose and exclude).

The concept of arbitrariness in the context of the right to property carries a human rights' meaning of 'capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought'.

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

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

The purpose of the limitation on the right to property is to ensure local governments are able to respond to the potential economic impacts on their financial sustainability because of the COVID-19 public health emergency.

It is important that local governments have the flexibility to revisit their rates and charges decisions to adapt to changing economic conditions to maintain their financial sustainability.

This is consistent with a free and democratic society as the financial sustainability of local governments ensures they are able to provide important community services to their constituents and continue the representation of the will of their electors.

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

The amendments will provide the required flexibility to ensure local governments are able to revisit and, if necessary, increase rates and charges with a view to safeguarding revenue as they respond to the COVID-19 public health emergency during the 2021-2022 financial year. This will help to achieve the purpose by limiting the period in which rates and charges decisions can be revisited to the 2021-2022 financial year to safeguard revenue.

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

The amendments are necessary to provide a process for allowing local governments to revisit their rates and charges decisions so they can be responsive to the changing economic conditions

caused by the COVID-19 public health emergency and the impact on their operations. There are no reasonable alternatives available that will allow local governments to respond effectively to the economic impact on their financial sustainability due to their limited sources of revenue.

The proposed authority for local governments to make extraordinary decisions is confined to the 2021-2022 financial year and will expire on 30 June 2022. A decision made under the new provisions will apply prospectively from the day the decision is made, ensuring decisions about rates and charges are not applied retrospectively.

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

On balance, the importance of ensuring the financial sustainability of local governments in the context of the COVID-19 public health emergency outweighs the potential limitation on property rights that may occur if local governments increase rates and charges during the 2021-2022 financial year.

(f) any other relevant factors

Not applicable.

**Amendments to the *City of Brisbane Act 2010*, the *Local Government Act 2009*, the *Local Government Electoral Act 2011* and the *State Penalties Enforcement Regulation 2014* to facilitate the holding of COVID-safe local government by-elections and fresh elections**

***Amendments to the COBA, the LGA and the LGEA***

(a) the nature of the right

The amendments to the COBA, the LGA and the LGEA to provide flexibility to facilitate the holding of local government by-elections and fresh elections limit the following human rights:

- freedom of movement (section 19 of the HR Act);
- freedom of expression (section 21 of the HR Act);
- taking part in public life (section 23 of the HR Act); and
- privacy and reputation (section 25 of the HR Act).

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

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

The right to take part in public life and freedom of expression are inherently linked in the context of elections. The proposed amendments will limit these rights by allowing:

- the cut-off day for the voters rolls and nomination of candidates to be a day that is not a day provided for in sections 18 and 25 of the LGEA for a local government by-election or fresh election – insofar as these amendments may operate to alter the period during which a person may update the voters roll or nominate as a candidate for the local government by-election or fresh election;
- a returning officer to adjourn a polling day to a later day than the period stated in section 53 of the LGEA and for the Minister to postpone a polling day – insofar as these amendments may operate to alter the period during which a person may cast their vote on polling day;
- the ECQ to declare that electoral visitor voting is not available for a local government by-election or fresh election, or for 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 local government by-election or fresh election, or electors of a particular class if the ECQ is satisfied that there is a risk to the health and safety of an issuing officer. However, alternative arrangements are required to be made to enable electors affected by the declaration or direction to vote – insofar as these amendments may make it more challenging for certain voters to exercise their right to vote; and
- the ECQ to issue directions in relation to the display or distribution of how-to-vote cards at polling booths for a local government by-election or fresh election, with an offence applying to persons who contravene such a direction without a reasonable excuse – insofar as these amendments may impact on the ability of candidates, political parties, third parties and other individuals to communicate with voters.

The right to privacy and reputation protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The scope of the right to privacy is very broad, but at its most basic is concerned with notions of personal autonomy and dignity. The UNHRC has said that it refers to those aspects of life in which a person can freely express his or her identity, either alone or in relationships with others.<sup>1</sup> It protects privacy in the personal sense (and in the sense of personal information, data collection and correspondence) but also extends to an individual's private life more generally.

The right to privacy under the HR Act protects individuals against unlawful or arbitrary interferences with their privacy. The concept of lawfulness in the context of the right to privacy means that no interference can take place except in cases envisaged by the law. Interference authorised by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the International Covenant on Civil and Political Rights (ICCPR).<sup>2</sup> The European Court of Human Rights has also said that an interference will be lawful if it is authorised by a law that is adequately accessible and formulated with sufficient precision to enable a person to regulate his or her conduct by it.<sup>3</sup> These are concepts that are consistent with the rule of law principles. The concept of arbitrariness in the context of the right to privacy carries a human rights' meaning of 'capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought'.<sup>4</sup>

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<sup>1</sup> *Coeriel and Aurik v The Netherlands* (Communication No 45/1991) [10.2].

<sup>2</sup> United Nations Human Rights Committee, *General Comment No. 16*.

<sup>3</sup> *Sunday Times v United Kingdom* [1979] ECHR 1, [49].

<sup>4</sup> *WBM v Chief Commissioner of Police* (2012) 43 VR 466, 472 (Warren CJ, Hansen JA agreeing).

The freedom of movement protects a person's right to move freely within Queensland and to enter and leave it and choice of residence, if they are lawfully within Queensland. The right is based upon Article 12 of the ICCPR. The ICCPR states in part that the right shall not be subject to any restrictions except those which are provided by law and are necessary to protect public health. However, the UNHRC considers that the right for individuals to move freely should not be unnecessarily affected by legal and bureaucratic barriers.

The freedom of movement and the right to privacy are both limited to the extent that the proposed amendments will 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 LGEA, 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 LGEA, with an offence applying to a candidate or a scrutineer who contravenes such a direction without a reasonable excuse;
- a returning officer, presiding officer or member of the ECQ's staff to give a direction about the movement of candidates or scrutineers at the polling booth for a local government by-election or fresh election, and areas where they may be, with an offence applying to a candidate or scrutineer who contravenes such a direction without a reasonable excuse;
- a returning officer to arrange for the counting of votes to be filmed by a member of the ECQ's staff; and
- a returning officer to direct a member of the ECQ's staff to carry out the counting of votes at a stated place.

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

The COVID-19 pandemic remains a threat to the Queensland community. The primary purpose of the amendments is to protect public health when holding a local government by-election or fresh election, in particular the health, safety and wellbeing of people in the Queensland community, as well as local government election participants and officials and the ECQ staff, from the health and safety risks posed by COVID-19 and its spread. The amendments will limit situations and attendance at public events to minimise person-to-person contact, but in doing so promote the right to life (protected under section 16 of the HR Act). The State Government has positive obligations in relation to protecting the health and safety of its citizens and this is consistent with a free and democratic society based on human dignity, equality and freedom.

The amendments will also support possible alternative arrangements for the conduct of a local government by-election or fresh election which may be required as a result of COVID-19. For example, facilitate the increased use of postal voting and electronically assisted voting at local government by-elections and fresh elections to reduce the risk of the spread of COVID-19.

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

While Queensland is currently in a strong position in respect of active cases of COVID-19, the limitations are necessary to achieve the purpose to protect public health, should there be an outbreak (whether State-wide or in a local government area or division). This is especially the

case where local government by-elections or fresh elections involve the gathering of large groups of people at a single place (such as a polling booth) and the public health advice relating to COVID-19 has been to require social distancing.

Accordingly, the amendments are required to support possible alternative arrangements for the conduct of a local government by-election or fresh election to reduce the risk of COVID-19 transmission for the following reasons:

- providing flexibility around the statutory processes and timeframes for the cut-off day for voters rolls and nomination of candidates and adjourning or postponing a polling day will allow the conduct of a local government by-election or fresh election to account for delays that may be caused by COVID-19 and to allow for alternative arrangements for the local government by-election or fresh election to be made;
- facilitating the increased use of postal voting, postal ballots and electronically assisted voting will reduce the need for persons to attend in person to vote at a polling booth, and for polling booths to be staffed based on anticipated attendance. This will in turn reduce person-to-person contact and protect the health and safety of individuals and the public more generally;
- provisions which would enable the ECQ to decline to offer electoral visitor voting reduces person-to-person contact and the potential for issuing officers to spread the virus as they travel between different residences;
- allowing the ECQ to give directions about the display or distribution of how-to-vote cards and election material at polling booths for a local government by-election or fresh election will reduce person-to-person contact and contagion risks; and
- 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, or by allowing the returning officer, presiding officer or member of the ECQ's staff to give a direction about the movement of candidates or scrutineers at the polling booth, will limit person-to-person contact and the risk of super-spreading events.

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

There are no less restrictive and reasonably available ways to achieve the purpose of the amendments. The amendments are confined to local government by-elections and fresh elections where a notice for an election is issued on or before the COVID-19 legislation expiry day, and do not affect a by-election or fresh election unless a power is exercised by the Minister or the ECQ under the amendments, or a regulation is made about the conduct of local government by-elections or fresh elections. However, when the Minister or ECQ exercises a power, they must have regard to the health and safety risks of COVID-19 posed to the public or to individuals impacted.

Further, the Minister or ECQ must exercise a power provided by the amendments in a way that is compatible with human rights and in exercising the power give proper consideration to the relevant human rights, unless the Minister or ECQ could not reasonably have acted differently or made a different decision because of a Queensland law, law of another State or a Commonwealth law (section 58 of the HR Act).

In relation to any potential regulation made under the proposed regulation-making power, in the absence of any information about the nature of the regulation and the prevailing health conditions at the time the regulation is made, it is difficult to balance any potential limitation

on human rights with the purpose of the amendments. The human rights certificate that accompanies any regulation made under this power will provide detailed consideration as to how the regulation is compatible with human rights.

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

On balance, taking into account the nature and extent of the limitation on the rights to freedom of expression, taking part in public life and the right to privacy and reputation, I consider that the purpose of protecting public health when holding a local government by-election or fresh election and promoting the right to life, outweighs the negative impact on the rights to freedom of expression, taking part in public life and the right to privacy and reputation.

(f) any other relevant factors

Not applicable.

### ***Amendments to the SPE Regulation***

(a) the nature of the right

The amendments to allow enforcement of offences for local government by-elections and fresh elections through the issuing of PINs under the SPE Regulation limit the following human rights:

- property rights (section 24 of the HR Act);
- right to liberty and security of person (section 29 of the HR Act);
- fair hearing (section 31 of the HR Act); and
- rights in criminal proceedings (section 32 of the HR Act).

The right to property protects the right of all persons to own property (alone or with others) and provides that people have a right not to be arbitrarily deprived of their property. Property is likely to include all real and personal property interests recognised under general law and may include some statutory rights. Prescribing the offences as infringement notice offences under the SPE Regulation will mean that they will be subject to the enforcement powers under the *State Penalties Enforcement Act 1999* (SPE Act) if, for example, an individual fails to pay the infringement notice fine. Enforcement action under the SPE Act in relation to an unpaid fine may include, among other things, the suspension of an individual's driver licence, vehicle immobilisation or seizure and sale of property (for example, a vehicle owned by the individual). Such enforcement action limits the right to property.

The right to liberty and security of the person protects the personal physical liberty of all persons, including the right not to be arrested or detained except in accordance with the law. The fundamental value which the right to liberty and security expresses is freedom, which is acknowledged to be a prerequisite for equal and effective participation in society. The right is directed at all deprivations of liberty (including, but not limited to, criminal sanctions) and will be relevant whenever a person is placed at risk of imprisonment. Enforcement action under the SPE Act may, in rare circumstances, result in arrest and imprisonment where a person fails to pay an amount specified in an enforcement order, which limits the right.

The right to a fair hearing provides individuals with the right to have a charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This facilitates procedural fairness and protects natural justice.

Similarly, the rights in criminal proceedings provide the right to be presumed innocent until proven guilty according to law as well as rights to certain minimum guarantees, including the right of accused persons to be informed of the nature and reason for a charge and to defend themselves personally or through legal assistance. Prescribing the offences under the SPE Regulation enables a fine of a fixed amount to be issued to an individual by the ECQ without a charge being decided by an independent court after a fair and public hearing, and without the person having the opportunity to exercise their rights in criminal proceedings.

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

The purpose of prescribing these offences under the SPE Regulation is to enable the ECQ to take timely action to enforce directions on-the-spot at the polling booth or other place where activities in relation to a by-election or fresh election are being held. The intention is to provide a quick and clear deterrent to other individuals from engaging in similar behaviour and send a clear message to all individuals that the directions given by the ECQ, the returning officer or member of the ECQ's staff to regulate the presence and movement of persons at relevant places must be complied with.

As noted above, the broader purpose of these directions is to protect the Queensland public from risks to health and safety caused by the COVID-19 public health emergency, including limiting situations and public events which may result in contagion through person-to-person contact.

Ensuring an appropriate and timely enforcement mechanism is available to the ECQ for individuals who disregard and fail to comply with these directions supports the protection of the health and the safety of the public, including more vulnerable persons, which is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom.

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

Prescribing these offences under the SPE Regulation allows on-the-spot fines to be issued. This, in turn, facilitates an enforcement mechanism that immediately addresses the offending behaviour and provides a clear deterrent to others by showing that contraventions will be penalised. It also achieves the purpose of ensuring (as best as is possible) that arrangements that support the protection of the health and the safety of the public are complied with.

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

There is no less restrictive and reasonably available way to achieve the purpose of prescribing the offences under the SPE Regulation. Prosecuting the offences through the courts would involve delays and would not provide an immediate or effective enforcement response to the conduct.

Once an infringement notice has been issued to an individual, there are various protections built into the enforcement system under the SPE Act, including the ability for persons to elect to have the matter heard in court at various stages of the process. In particular, section 15 of the SPE Act requires that all penalty infringement notices must indicate that the individual may elect to have the matter of the offence decided by a court. This promotes awareness that persons may elect for the matter of the offence to be heard by a court at the time the person is issued with an infringement notice fine.

The State Penalties Enforcement Registry (SPER) enforcement system also includes a number of protections to ensure that there are supports and options available to assist persons who are experiencing hardship and unable to pay their fines (such as through paying by instalments, or through a work and development order which can include undertaking relevant courses, attending counselling and treatment programs or completing work with an approved hardship partner).

It is also important to note that, insofar as the enforcement mechanisms relating to the seizure of property and imprisonment under the SPE Act are concerned, there are several protections built into the fine enforcement system.

In respect of the limitation on the right to property through the seizure and sale of property or vehicle immobilisation, there are protections in place to ensure that this would only occur infrequently for the prescribed offences. Importantly, the threshold amount which must be owed before vehicle immobilisation can occur is prescribed under the SPE Act and currently set at \$5,000. In terms of seizure and sale, SPER only undertakes this activity where it has registered an interest over the property to be seized. The SPE Act requires that the total amount owed by a debtor must be more than \$500 (for an interest in a motor vehicle) before SPER can register an interest over property. The maximum amount of a fine that can be issued for the relevant offences for contravening directions is set at 1 penalty unit in relation to how to vote cards and two penalty units for each of the offences relating to candidates and scrutineers.

In respect of the limitation on the right to liberty through the possible fine enforcement mechanism of arrest and imprisonment, there are protections in place to ensure this is action of a last resort. The SPER Charter (provided for under section 9 of the SPE Act) makes it clear that the use of other enforcement actions for unpaid fines must be preferred over arrest and imprisonment.

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

On balance, taking into account the nature and extent of the limitations and having regard to the information and analysis detailed above, I consider that the importance of helping to minimise the serious risks to the health and safety of persons caused by the COVID-19 public health emergency by providing the ECQ with an effective on-the-spot enforcement mechanism to ensure compliance with their directions outweighs any limitations on the right to property, right to liberty and security, fair hearing and rights in criminal proceedings.

(f) any other relevant factors

Not applicable.

**Amendments to the *City of Brisbane Regulation 2012* and the *Local Government Regulation 2012* to extend the operation of temporary local government and committee meeting provisions**

(a) the nature of the right

The amendments to the CBR and the LGR which enable local government and committee meetings to continue to be closed to the public for health and safety reasons associated with COVID-19 limit the right to take part in public life (section 23 of the HR Act).

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

The proposal to continue to provide for local government and committee meetings to be closed to the public if the chairperson of the meeting is satisfied it is not practicable for the public to attend the meeting because of health and safety reasons associated with COVID-19 limits the right to take part in public life to the extent that these meetings will not be open to the public to observe or listen to discussions and decisions that would usually be conducted in the open.

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

Protecting the health and safety of the public is a fundamental responsibility of Government and is consistent with a free and democratic society based on human dignity, equality, and freedom. The spread of COVID-19 presents a clear danger to the health and wellbeing of Queenslanders and as a result there is strong public interest in implementing effective measures to prevent and minimise the spread of COVID-19 in Queensland.

Gatherings of people present a heightened risk for spreading COVID-19 and the purpose of the limitation is to enable the chairperson of a local government or committee meeting to make responsive decisions about public access to a meeting to mitigate the health risks posed by COVID-19.

It is in this respect that limiting the public's right to take part in public life is justified by the promotion of the right to life for the people who participate in, or observe these meetings, in the context of the health risks posed by the spread of COVID-19.

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

The limitation imposed on the public's right to take part in public life by enabling restricted access to local government and committee meetings achieves the purpose. While opening local government and committee meetings to the public provides those who are interested the opportunity to physically observe the meetings, it also increases the risk for the spread of COVID-19 due to the gathering of people in enclosed spaces.

The proposal will enable the chairperson of a local government or committee meeting to continue to respond to the health risks of COVID-19 by restricting access to a meeting, where appropriate, to discourage the gathering of people in enclosed spaces. This promotes the right to life for councillors, committee members and the public as it prevents or minimises the risk of spreading COVID-19 and is consistent with the Queensland and Commonwealth Governments' measures to promote social distancing and discourage gatherings of people to help contain COVID-19.

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

There are no less restrictive and reasonably available ways to achieve the purpose of the proposal.

Extending the operation of the additional temporary local government and committee meeting provisions minimises the impact on the limitation by continuing to impose existing meeting requirements on meetings that have been closed to the public, other than requirements about meetings being open to the public and closing a meeting, including requirements for taking minutes and making the minutes available for inspection by the public at a local government's public office and on the local government's website. This will allow the public to remain informed about the discussions and decisions made in restricted access meetings. The temporary meeting provisions will operate for a limited time and expire on the COVID-19 legislation expiry day.

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

On balance, taking into account the nature and extent of the limitation on the right to take part in public life and having regard to analysis and justification above, it is considered that the benefits and purpose of promoting life by enabling the chairperson of a local government or committee meeting to restrict access to a meeting in response to the health risks posed by COVID-19 outweighs any potential limitations imposed on the identified human right.

(f) any other relevant factors

Not applicable.

## Conclusion

In my opinion, the COVID-19 Emergency Response and Other Legislation Amendment Bill 2021 is compatible with human rights under the HR Act because it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

**SHANNON FENTIMAN MP**  
Attorney-General and Minister for Justice  
Minister for Women

Minister for the Prevention of Domestic and Family Violence

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