

Public Health and Other Legislation (Further Extension of Expiring Provisions) 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, Yvette D'Ath MP, Minister for Health and Ambulance Services and Leader of the House make this statement of compatibility with respect to the Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021.

In my opinion, the Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021 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

On 29 January 2020, a public health emergency was declared under section 319 of the *Public Health Act 2005* due to the outbreak of COVID-19 and its pandemic potential (the COVID-19 emergency). The declared COVID-19 emergency was most recently extended until 29 June 2021.¹

While Queensland's management of outbreaks in the community has been rapid and effective, the COVID-19 emergency is ongoing and measures are still required to protect the health, safety and welfare of Queenslanders; mitigate the spread of COVID-19 in the community; and facilitate the continued functioning of Queensland's institutions and economy to the extent possible.

Despite overall low numbers of COVID-19 in Queensland and few restrictions now in place on the movement and gathering of people, there is still potential for larger scale outbreaks. The current global epidemiological situation, with sustained growth in new cases and the spread of highly transmissible COVID-19 variants, continues to present a very significant risk to the community.

Recent outbreaks in other Australian jurisdictions and continued large-scale transmission around the world serve as a clear reminder of how rapidly COVID-19 can spread and overwhelm health systems. The pandemic continues to be unpredictable, as recently underscored by the sudden state-wide lockdown of Victoria on 28 May 2021 following a widespread outbreak in Greater Melbourne; the three-day lockdown of Greater Brisbane on 29 March 2021 following cases of community transmission; and the changes to the recommendations for use of the AstraZeneca vaccine in people under 50 years of age.

¹ *Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation 2021* s 2.

Certain risks for community transmission in Queensland, such as interstate cross-border travel, will remain while the virus continues to circulate in Australia. Queensland continues to receive significant numbers of overseas arrivals and cases of COVID-19 continue to be detected in hotel quarantine, including highly contagious variants. Large numbers of COVID-19 cases in Papua New Guinea are also a concern, particularly for transmission in North Queensland and the Torres Strait. Risks for community transmission in Queensland from interstate cross-border travel also remain whenever there is an outbreak of COVID-19 in Australia.

As at 31 May 2021, the World Health Organization reported a total of 170,051,718 confirmed positive COVID-19 cases reported globally. Australia has experienced a lesser burden from COVID-19 than other countries. However, as at 31 May 2021, the Australian Government Department of Health reported 30,106 confirmed COVID-19 cases, including 910 deaths in Australia. As at 31 May 2021, there had been 1,618 confirmed cases of COVID-19 in Queensland, including 14 active cases, with seven deaths relating to COVID-19 being Queensland residents.

The current global epidemiological situation, with sustained growth in new cases and the spread of highly transmissible COVID-19 variants, continues to present a significant risk to Australia and Queensland. The ongoing circulation of the virus in countries with limited public health responses, overwhelmed public health systems and limited or inequitable access to vaccination continues to invite further variants. The B.1.6.1.7 variant, first detected in India, has been newly designated by the World Health Organization as a variant of concern, joining the UK (B.1.1.7), South African (B.1.351) and Brazilian (P.1) variants. Growing evidence around the variants of concern indicates that they spread more readily and can cause more severe disease.

The public health emergency for COVID-19 continues to require a significant response from the health system and support from other government departments. It is expected the need for emergency powers will remain until a large number of the Queensland population has been vaccinated and the risk of widespread outbreaks has subsided.

COVID-19 legislative framework

Queensland's swift and effective response to the COVID-19 emergency has been underpinned by amendments to legislation across a range of portfolios.

Public Health Act amendments

Amendments to the Public Health Act have supported Queensland's approach to managing the health risks associated with COVID-19. Among other things, the amendments:

- increase powers for emergency officers and the Chief Health Officer to limit, or respond to, the spread of COVID-19 in Queensland, including by issuing directions to require physical distancing, restrict movement and gatherings, require persons to quarantine or self-isolate and implement other containment measures;²
- authorise the sharing of confidential information for contact tracing;³

² *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* pt 11.

³ *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* s 64.

- encourage compliance with quarantine requirements, border restrictions and other public health directions by providing appropriate penalties for contraventions;⁴
- increase the period for which a regulation may extend a declared public health emergency from seven to 90 days;⁵ and
- enable fees to be charged for costs associated with the mandatory quarantine of persons in government-provided accommodation.⁶

As these emergency measures were enacted through urgent Bills or as amendments during consideration in detail, sunset clauses and expiry provisions were inserted into the amending Acts to provide for the amendments to expire by early 2021 unless extended.

On 8 March 2021, the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* received assent and extended the expiry dates of the Public Health Act amendments until the end of the day on 30 September 2021.

Other COVID-19 legislative measures

Other temporary, and in some cases extraordinary, COVID-19 legislative measures were introduced in other legislation to allow for flexible and rapid responses to a range of things disrupted, caused or affected by the COVID-19 emergency.

An initial suite of COVID-19 legislative measures was introduced by the *COVID-19 Emergency Response Act 2020* (ER Act), which received assent on 23 April 2020. These measures included amendments to several Acts to:

- enable meetings of the Legislative Assembly to take place, by whole or in part, via technology such as teleconferencing or videoconferencing during the COVID-19 emergency;
- clarify that Members of Parliament may participate in parliamentary committee meetings via technological means;
- establish a power to make emergency regulations for the residential tenancy and rooming accommodation sectors to address the impacts of the COVID-19 emergency;
- facilitate implementation of the National Cabinet decision in relation to good faith leasing principles for relevant non-residential leases in Queensland; and
- provide for the establishment of a temporary Queensland Small Business Commissioner (Small Business Commissioner) to deliver expanded advocacy functions for Queensland small business and administer mediation services in relation to small business tenancy disputes.

The ER Act also established a legislative modification framework of general application across the statute book ('the modification framework') allowing legislative requirements to be modified in the following areas, if required:

⁴ *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* pt 12; *Corrective Services and Other Legislation Amendment Act 2020* s 55X.

⁵ *Public Health (Declared Public Health Emergencies) Amendment Act 2020* s 4.

⁶ *Community Services Industry (Portable Long Service Leave) Act 2020* pt 13 divs 5–6.

- attendance at places or meetings, making and associated use of documents, and physical presence requirements;
- statutory timeframes for the doing or expiry of a thing; and
- proceedings of courts and tribunals.

The modification framework authorises the making of extraordinary regulations (or, in limited situations, statutory instruments) which modify the operation of an Act to the extent necessary to achieve a purpose of the ER Act.⁷ A number of extraordinary regulations have been made pursuant to this power.

Additional COVID-19 legislative measures were authorised by the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020*, which received assent on 25 May 2020 and amended 19 separate Acts to support the Queensland Government's response to COVID-19. The Act also inserted time-limited regulation-making powers into some of the Acts amended. These measures respond to a range of issues, including:

- safeguarding revenue streams for local governments and assisting in minimising the economic impacts of COVID-19 on the State;
- allowing affected registered workers to apply for payment of all or part of their long service leave;
- allowing mental health patients to be granted leave to comply with public health directions and enabling declarations to be made about authorised mental health services through an expedited process;
- providing particular measures to assist Queensland businesses, bodies corporate and individuals suffering financial and operational stress caused by the public health emergency;
- assisting Queensland's health and disability sectors to operate safely and effectively;
- ensuring there is an ability for COVID-19 testing of persons suspected of committing particular offences;
- assisting Queensland's adult corrective services and youth detention sectors to operate safely and effectively; and
- clarifying the operation of the provisions for the modification of statutory time limits relating to COVID-19.

In the same manner as the urgent amendments to the Public Health Act, these additional COVID-19 legislative measures were progressed urgently with limited opportunity for public and parliamentary scrutiny. Sunset clauses were included in the amending Acts to ensure the amendments (and any extraordinary regulations and statutory instruments made under them) would not continue permanently without further scrutiny by Parliament.

⁷ Sections 4, 5(5), 6(3) and 25(3) of the COVID-19 Emergency Response Act provide that modifications to an Act may be inconsistent with that Act, and with any other Act or law, except the *Human Rights Act 2019*.

In December 2020, the *COVID-19 Emergency Response and Other Legislation Amendment Act 2020* extended the expiry of most COVID-19 related measures, including secondary instruments made under the modification framework that were still required. The measures were extended until the newly termed ‘COVID-19 legislation expiry day’, which was set at 30 April 2021 or an earlier date to be prescribed by regulation. The Act also introduced a limited number of new measures, including the power to make regulations to facilitate transitional arrangements. The broad transitional regulation-making power enables regulations to be made, where necessary, to allow for the return to normal operations in the most effective and efficient way once the temporary COVID-19 legislative measures are no longer needed. A transitional regulation will expire two years after the COVID-19 legislation expiry day.

In March 2021, the *COVID-19 Emergency Response and Other Legislation Amendment Act 2021* further extended the temporary COVID-19 legislative measures until 30 September 2021 or an earlier date to be prescribed by regulation. This Bill also introduced amendments to the *City of Brisbane Act 2010* and *Local Government Act 2009*, and the *Local Government Electoral Act 2011*.

Extension of expiring provisions

The Bill extends the operation of the emergency powers and other COVID-19 related amendments to the Public Health Act. The COVID-19 emergency continues to require a significant response from the health system, and given the continued unpredictability of the pandemic and uncertainties regarding the rollout of the vaccine both nationally and internationally, the extension of these amendments will ensure that public health measures remain in place to allow Queensland to effectively manage overseas arrivals and the risk of local outbreaks, including of highly contagious COVID-19 variants.

The Bill also extends most of the temporary amendments and extraordinary measures put in place in other legislation to manage the broader impact of COVID-19 on businesses, institutions and the economy.

Certain measures are not considered necessary beyond 30 September 2021. To ensure only those emergency measures that are essential to supporting Queensland’s response to the COVID-19 emergency are extended, the Bill does not extend the following measures:

- the *Explosives Legislation (COVID-19 Emergency Response) Regulation 2020*, which provides short-term relief and flexibility for certain license-holders and the resource exploration industry;
- the *Health Legislation (COVID-19 Emergency Response) Regulation 2020*, which provides for extensions of the time periods for applying for and deciding matters related to licences under the *Food Act 2006* and *Pest Management Act 2001*;
- section 800J of the *Mental Health Act 2016* allowing a declaration of a mental health service to be made on the Queensland Health website instead of in the government gazette; and
- section 351D of the *Corrective Services Act 2006* allowing the chief executive to direct corrective service officers to perform duties under the Act at the corrective services facility administered by an engaged service provider.

This is consistent with previous amending legislation, that has either repealed measures that are no longer required or allowed these measures to lapse.⁸

Electronic service of quarantine directions

Currently, a direction to isolate or quarantine under section 362H of the Public Health Act must be given to a person by an emergency officer in writing. In practice, directions are usually issued electronically, such as by sending a direction to a person's nominated email address. This is particularly important for contact tracing, as the sheer volume of potential close contacts of confirmed COVID-19 cases and the size of the geographical area in which directions must be given makes personal service of orders impractical in many cases.

The Public Health Act does not explicitly deal with the issue of how a quarantine direction notice may be given in writing. Also, the Act does not specify at what point in time a direction issued to a person via email is deemed to have been received by the person. The Bill amends the Public Health Act to clarify that directions given by an emergency officer under section 362H of the Act may, with a person's consent, be provided to a person electronically via a unique electronic address nominated by the person. The amendments provide that, unless the contrary is proved, a direction given in this manner is deemed to have been received by the person on the day and at the time the direction is sent to the person's nominated electronic address.

The amendments align with current practice, which is heavily reliant on electronic communications to facilitate rapid contact tracing in response to potential outbreaks of COVID-19 and the efficient management of quarantine systems, including the Queensland Border Declaration Pass system. Given the volume of directions that have been, and will continue to be, issued through electronic communications, the Bill also includes a provision validating directions that were issued electronically before the amendments commence.

Quarantine fees

From 1 July 2020, persons required to undertake hotel quarantine have been required to contribute to the costs of government accommodation by payment of a quarantine fee.⁹ As the rollout of COVID-19 vaccines progresses in Australia and overseas, additional demands will be placed on the quarantine system as more people from a broader range of cohorts are permitted to enter Queensland following a period of mandatory quarantine. The entry of particular cohorts, such as critical and skilled workers and persons who support service-related industries such as tourism and education, is critical to the State's economic recovery.

⁸ For example, the *COVID-19 Emergency Response and Other Legislation Amendment Act 2021* amended the *Justice Legislation (COVID-19 Emergency Response – Proceedings and Other Matters) Regulation 2020* to remove modifications to the *Coroners Act 2003* that extended the period for providing the annual report of the Domestic and Family Violence Death Review Advisory Board. Similarly, the *COVID-19 Emergency Response and Other Legislation Amendment Act 2020*, which extended the expiry of most subordinate legislation made under the ER Act, did not extend the *Transport Legislation (COVID-19 Emergency Response) Regulation (No. 2) 2020*. This regulation expired on 31 December 2020.

⁹ *Public Health Act 2005*, pt 7AA, inserted by Part 13, Division 5 of the *Community Services Industry (Portable Long Service Leave) Act 2020*.

To address these challenges, amendments to the Public Health Act are required to improve the State's ability to recoup quarantine-related expenses and ensure that Queensland's quarantine system remains sustainable and responsive to changing public health and economic circumstances.

The Bill amends the Public Health Act to improve payment and collection of quarantine fees and make the quarantine fee system more adaptable to the changing nature of the COVID-19 emergency, including any future easing of border restrictions. In particular, the amendments will support the State's economic recovery as increasing numbers of persons are permitted to enter Queensland, including critical and skilled workers and other cohorts that support service-related industries such as tourism and education.

Since the introduction of a requirement for people to pay quarantine fees, a significant proportion of fees has not been paid. To increase the proportion of quarantine fees that are paid and provide more flexibility for payment and collection arrangements, the Bill amends the Public Health Act to provide that quarantine fees for persons in prescribed cohorts may be required to be paid in advance, before the person's arrival in Queensland.

Specifically, the Bill inserts a power in the Public Health Act to allow a regulation to prescribe cohorts of travellers who will be required to pay quarantine fees before arriving in Queensland, and whether a cohort is eligible to apply for waiver of quarantine fees. This will allow for a staged approach that is responsive to changing public health and economic circumstances.

To facilitate the prepayment of quarantine fees for prescribed cohorts, the Bill provides the ability for third parties to assume liability for the payment of a person's quarantine fees. Currently, an invoice for quarantine fees can only be issued to the person who is required to quarantine. While third parties such as employers can pay invoices on behalf of the persons to whom an invoice is issued, there is no mechanism for a third party to formally accept liability for another person's quarantine fees.

To minimise disruption and facilitate a smooth transition to a prepayment system, the approach in the Bill builds on the current framework for charging quarantine fees under the Public Health Act. Fees associated with the costs of a person's quarantine, such as for accommodation and meals, will continue to be prescribed by regulation, and an invoice will still need to be issued to persons before they legally incur any financial obligation or debt. Provisions will be retained to allow persons to apply for a waiver of fees. However, a regulation may prescribe that particular persons are not eligible to apply for a waiver. If a person is required to prepay their quarantine fees, any application for a fee waiver must be submitted prior to the person's arrival in Queensland, unless the chief executive exercises their discretion to accept a late application.

For practical reasons, the Bill allows the chief executive of Queensland Health to determine matters such as the amount that a person must prepay, the manner in which they must prepay the required amount, and the date and time by which the prepayment must be received. The Bill also permits notices and invoices to be sent electronically to a person if the person consents to receiving the documents in such a manner.

The Bill also enables full or partial refunds to persons that have paid their quarantine in advance. This will allow for the reconciling of anticipated and actual fees where, for example, a person's travel arrangements change and they do not arrive in Australia, or they quarantine for a shorter period than would ordinarily be required (such as if they are transferred to a hospital).

The Bill includes minor amendments to clarify that quarantine fees may be prescribed for particular costs associated with quarantine arrangements approved for specific persons or cohorts. The amendments also clarify that prescribed fees may reflect both direct and indirect costs for quarantine that are incurred by the government. Clarifying these matters will ensure that appropriate fees can be prescribed for a broad range of potential cohorts and quarantine arrangements.

Human Rights Issues

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

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

- Right to equality before the law (section 15)
- Right to life (section 16)
- Protection from torture and cruel, inhuman or degrading treatment (section 17)
- Freedom of movement (section 19)
- Freedom of thought, conscience, religion and belief (section 20)
- Freedom of expression (section 21)
- Peaceful assembly and freedom of association (section 22)
- Taking part in public life (section 23)
- Right to property (section 24)
- Privacy and reputation (section 25)
- Protection of families (section 26(1))
- Protection of children (section 26(2))
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to liberty and security of person (section 29)
- Humane treatment when deprived of liberty (section 30)
- Fair hearing (section 31)
- Retrospective criminal laws (section 35)
- Right to education (section 36)
- Right to health services (section 37)

Human rights promoted by the Bill

Public Health Act amendments

Right to life

The Bill provides powers for the Chief Health Officer to issue public health directions and emergency powers to emergency officers that are reasonably necessary to assist in containing, or responding to, the spread of COVID-19 within the community.

The right to life imposes substantive and procedural obligations on the State to take appropriate steps and adopt positive measures to protect life. The protective obligation extends to requiring authorities to put in place measures that would protect an individual from real and immediate risks to their life.

The Bill promotes the right to life by extending the expiry dates for the amendments to support the Queensland Government's health response, including the emergency powers provided to the Chief Health Officer and emergency officers to issue directions to limit, and respond to, the spread of COVID-19 in Queensland.

Protection from torture and cruel, inhuman or degrading treatment

Section 17(c) of the Human Rights Act provides that a person must not be subjected to medical or scientific experimentation or treatment without the person's full, free and informed consent.

The Bill continues to provide emergency powers to emergency officers that are reasonably necessary to assist in containing, or responding to, the spread of COVID-19 within the community. This includes extending the time that an emergency officer (medical) can detain a person under a detention order to 14 days where they reasonably believe it is necessary to assist in containing or responding to the spread of COVID-19.

Section 354 of the Public Health Act requires the emergency officer (medical) to request that the detained person be subject to a medical examination. This section establishes protections for the detained person by requiring the emergency officer (medical) to:

- explain the examination in a way the detained person is likely to readily understand;
- tell the detained person they may refuse the examination; and
- give the detained person the opportunity to choose the doctor to perform the examination.

The Bill therefore promotes the protection from torture and cruel, inhuman and degrading treatment by providing the necessary requirements to ensure that a person cannot be medically examined without their full, free and informed consent.

Other COVID-19 related amendments – Amendments to the *Body Corporate and Community Management Act 1997* relating to financial management requirements and the *Building Units and Group Titles Act 1980* allowing committees to extend the due date for payment of proprietor contributions

Right to property

The Bill continues amendments to the *Body Corporate and Community Management Act 1997* and the *Building Units and Group Titles Act 1980* to temporarily adjust particular financial management arrangements and requirements for bodies corporate.

The right to property protects the right of all persons to own property alone or in association with others and provides that people have a right not be arbitrarily deprived of their property.

The Bill promotes the right to property by providing bodies corporate with increased flexibility to accommodate individual lot owners who may be experiencing difficulty paying their normal body corporate contributions due to, for example, reduced income arising from COVID-19. The amendments to the Body Corporate and Community Management Act also aim to protect individual lot owners experiencing financial stress by preventing bodies corporate from charging penalty interest on outstanding contributions in the period from commencement until expiry of the amendments on the COVID-19 legislation expiry day.

The right to property is considered to be protected and promoted by these amendments.

Other COVID-19 related amendments – Amendment to the *Corrective Services Act 2006* relating to the appointment of acting members of the Parole Board Queensland

The Bill continues amendments to the *Corrective Services Act 2006* that increase the duration the Governor in Council may appoint a qualified person to act in the office of a prescribed board member of the Parole Board Queensland (the Board) from three months to one year. In response to COVID-19, the Board urgently set up a temporary fourth board to assist in hearing and deciding on an increasing number of parole applications, particularly in response to prisoners identified as vulnerable to COVID-19.

The ability for the Governor in Council to appoint a suitably qualified person to act in the office of a prescribed board member for longer than three months enabled quick establishment of this temporary board and increases the Board's capacity to hear applications for the duration of the pandemic.

The human rights relevant to this amendment are the:

- right to life;
- right to liberty and security of the person; and
- right to humane treatment when deprived of liberty.

These rights are considered to be protected and promoted by this amendment.

The amendment supports the timely hearing of parole applications by the Board by ensuring the Parole Board Queensland has the flexibility to respond to the increase in applications during the COVID-19 emergency.

By supporting greater capacity for the Board to hear parole matters, the amendment protects and promotes the:

- the right to life, by ensuring the Board is resourced to consider parole applications in a timely manner without unreasonable delay reduces the risk of exposure of prisoners to any outbreak of COVID-19 within a correctional facility;
- right to liberty and security of the person, by ensuring the Board is resourced to consider parole applications in a timely manner without unreasonable delay reduces the risk of arbitrary detention; and
- right to humane treatment when deprived of liberty by ensuring the Board is resourced to consider parole applications in a timely manner without unreasonable delay, ensuring parole applications of prisoners are able to be considered as close to their parole eligibility date as possible.

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*)

Public Health Act amendments – Emergency powers provided to the Chief Health Officer and emergency officers appointed under the Public Health Act to respond to the declared public health emergency

(a) the nature of the right

Right to equality before the law

Every person has the right to enjoy the person's human rights without discrimination. The part of the right that provides that a person is equal before the law and is entitled to the equal protection of the law without discrimination requires public entities, as well as courts and tribunals in undertaking certain functions, to treat people equally when applying the law and to not apply the law in a discriminatory or arbitrary way. Discrimination includes (but is not limited to) direct and indirect discrimination as defined in the *Anti-Discrimination Act 1991*.

This right is engaged by the power of the Chief Health Officer to issue public health directions, as a direction could have a disproportionate impact on certain groups. For example, a direction limiting freedom of movement may disproportionately affect access to services by people with a disability.

In practice, any restriction on the movement of people made under a direction includes an exemption for a person to leave their principal place of residence or move freely to obtain medical treatment to preserve the person's quality of life. This measure does not extend to cosmetic or non-urgent medical treatments but to people requiring medical attention or other forms of care, such as people with a disability.

Further, the Chief Health Officer is a public entity for the purposes of the Human Rights Act and when making public health directions under section 362B of the Public Health Act will be required to consider the human rights impacts, including whether there is any disproportionate impact on certain classes of people. This right is not limited by the Bill.

Freedom of movement

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

The continuation of the amendments to the Public Health Act will limit the right to freedom of movement by continuing to authorise the Chief Health Officer and emergency officers to restrict the movement of any person or group of persons to limit, or respond, to the spread of COVID-19 in Queensland; require persons to isolate or quarantine themselves for periods of up to 14 days; require persons to stay at or in, or not to stay at or in, a stated place; restrict contact between groups of persons; and provide other directions that are necessary to protect public health. Freedom of movement may also be restricted by the provisions of the Bill that continue to allow emergency officers to require owners and operators of businesses and undertakings to open, close or limit access to their facilities.

Right to privacy and reputation

The continuation of the amendments to the Public Health Act also engages the right to privacy, which is broadly construed and includes a specific right against interference with a person's physical integrity as well as a person's personal information. The Bill engages the right to privacy by continuing to authorise the Chief Health Officer and emergency officers to interfere with a person's bodily autonomy, for example, by restricting a person's movement. However, the right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. This internal limitation applies here because the Bill only continues the existing framework which authorises restrictions on movement pursuant to a lawful direction predicated on a reasonable belief that the restriction is necessary to assist in containing, or responding to, the spread of COVID-19.

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

The Bill continues the powers of the Chief Health Officer and emergency officers to issue directions that may restrict the ability of persons to leave their homes or other premises, to enter particular facilities, or to freely move about and engage in activities within the public health emergency area for COVID-19. The Bill also continues to allow for directions to be issued to owners and operators of businesses to open, close or limit access to their facilities for stated purposes. These restrictions may limit the rights of persons to engage and gather with others in the community.

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

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

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

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

In addition to the general cultural rights, the Human Rights Act recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first peoples. They have the right to enjoy, maintain, control, protect and develop their culture, language and kinship ties with other members of their community. The right also protects Aboriginal peoples and Torres Strait Islander people's right to maintain and strengthen their distinct spiritual relationship with the land, territories, waters, coastal seas and other resources, and to conserve and protect the environment. Directions to prohibit gatherings of people, to enforce self-isolate, or to otherwise restrict the movement of groups and individuals may limit the ability of Aboriginal peoples and Torres Strait Islander peoples to engage with community and their traditionally owned or otherwise occupied lands and waters.

Right to property

Every person has the right to own property alone or in association with others and must not be arbitrarily deprived of their property.

Requirements to quarantine or otherwise restricting a person's movement and entry into Queensland may restrict a person's use of private property, albeit temporarily.

The powers of the Chief Health Officer under section 362F and 362I of the Public Health Act requiring a business to open, close or limit access to any facility used in a business may also impact on a person's right to property. It is acknowledged that the human right is engaged by virtue of the potential loss to the business owner due to changes in the delivery of services or a mandated closure. However, given the need to protect human life and limit the spread of the virus, it is considered that addressing the public health risks do not make the limitation on a person's right to property an arbitrary limitation on human rights.

Taking part in public life

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

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

Right to protection of families and children

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

Physical separation of families could occur under the amendments made to the Public Health Act if, for example, a person is ordered to self-isolate or a facility such as an aged care facility is directed to restrict access to visitors. This limitation would be temporary and would not restrict other means of communication and engagement among family members, for example through phone calls, video conferencing or social media. The limitation on the right to protection of families would also not be arbitrary, as the actions would be taken in an effort to protect the health and safety of family members and the wider community.

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

The exercise of emergency powers has the potential to impact children through, for example, temporarily restricting their movement, restricting the movement of family or other contacts, or restricting their access to certain facilities or events. Also, directions may not consider the child’s views or give their views due weight, which does not respect their capacity to influence the determination of their best interests. However, there are other aspects of the child’s best interests which weigh in favour of the amendments, such as their right to life and their health and wellbeing.

Right to liberty and security of person

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

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

This right is subject to a number of internal limitations and qualifications. Relevantly, the detention must not be arbitrary in the sense that it must not be capricious, unpredictable or unjust or otherwise disproportionate to the legitimate aim that is sought. The continuing detention powers are clearly defined and subject to limits, including that the person giving the direction or order must reasonably believe that it is necessary to assist in containing or responding to the spread of COVID-19. In addition, a direction to self-isolate by an emergency officer and a detention order by an emergency officer (medical) can only detain a person for 14 days. The ability to detain a person for this period aligns with publicly available information from the Australian Health Protection Principal Committee that most people who are infected with COVID-19 will develop symptoms within 14 days of infection. This time period is therefore a reasonable and proportionate response to the risk of COVID-19 spreading unknowingly through the community. Accordingly, the ability to detain a person is not arbitrary.

The right to liberty and security also incorporates a number of procedural elements, including that a person who is detained must be informed at the time of detention of the reason for detention and that a detained person is able to apply to a magistrate for a declaration or order regarding the lawfulness of the person's detention.

These procedural aspects of the right are not limited in relation to a detention order issued by an emergency officer (medical). The existing provisions under Chapter 8, Part 7 of the Public Health Act allow a person subject to such a detention order to appeal the decision of a magistrate on an application for an order ending a person's detention to the District Court.

These procedural aspects of the right will continue to be limited in relation to the exercise of powers under Chapter 8, Part 7A as there remains no appealable provisions for a person issued a direction to isolate at a particular place by an emergency officer.

Public health directions made by the Chief Health Officer are not time limited, however the directions must be revoked once the direction is no longer necessary to assist in containing or responding to the spread of COVID-19 in the community. This procedural requirement provides protection against ongoing limitations to the right to liberty and security of the person.

Humane treatment when deprived of liberty

All persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person. The right to humane treatment means that people in detention should not be subject to hardship or constraint in addition to the deprivation of liberty. However, some rights are unavoidably restricted in a closed environment, for example, freedom of movement, elements of freedom of expression and some elements of privacy.

Chapter 8 of the Public Health Act allows people to be detained for a period of up to 14 days, either in their homes or in government nominated accommodation, such as hotel quarantine. The detention gives rise to the human right of humane treatment when deprived of liberty.

Like all rights in the Human Rights Act, the right to humane treatment when deprived of liberty can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Right to education

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

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

Right to health services

Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment. The continuation of the amendments does not limit or place any impediments on a person's right to receive health services. While undertaking mandatory quarantine, a person will be provided with the health services they require.

The continuation of the amendments to the Public Health Act will limit the right to freedom of movement by continuing to authorise the Chief Health Officer and emergency officers to restrict the movement of any person or group of persons to limit, or respond, to the spread of COVID-19 in Queensland; require persons to isolate or quarantine themselves for periods of up to 14 days; require persons to stay at or in, or not to stay at or in, a stated place; restrict contact between groups of persons; and provide other directions that are necessary to protect public health. As a consequence, there may be restrictions on a person's ability to access health and medical services temporarily while in isolation.

In practice, any restriction on the movement of people includes an exemption for a person to leave their principal place of residence or move freely to obtain medical treatment to preserve the person's quality of life. This measure does not extend to cosmetic or non-urgent medical treatments but to people requiring medical attention or other forms of care, such as people with a disability.

As such, this right is not limited by the continuation of the amendments.

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

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

Based on the current progress of the vaccine rollout, the best available public health evidence to date and the experience of other countries, there remains a continued risk of further outbreaks and rapid community transmission of COVID-19 within Queensland unless measures remain in place to mitigate these risks for a further period of time. This presents a significant risk to the health and wellbeing of Queenslanders, particularly vulnerable persons including the elderly and immunocompromised.

There is therefore a continued need for clear legislative authority to make the health-related interventions necessary to prevent COVID-19 spreading throughout the community, and to mitigate potential adverse economic and social consequences associated with the disruption that will inevitably follow.

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

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

The limitations are incidental to the grant of emergency powers to the Chief Health Officer and emergency officers appointed under the Public Health Act to implement social distancing measures, including regulating gatherings, isolating or quarantining a person suspected or known to have been exposed to COVID-19 and protecting vulnerable populations such as the elderly. If these measures are not implemented and an outbreak of COVID-19 occurs in Queensland, demand for emergency and life-sustaining treatment could exceed capacity and overwhelm the State's public health infrastructure. In addition to loss of life and serious adverse health impacts, this could potentially cause widespread economic disruption, further jeopardising the safety and wellbeing of the community.

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

The purpose of the Bill, to extend the various amendments made to the Public Health Act to support the Queensland Government's health response to COVID-19, cannot be achieved through any other reasonably available and less restrictive means. Extensive campaigns by the Queensland and Commonwealth Governments are in place to educate members of the public about the risks of COVID-19 and how to minimise their potential exposure to infection. Experience abroad underscores that voluntary containment measures are inadequate prevent the spread of COVID-19 and that governments must proactively pursue more prescriptive approaches to respond effectively to this unprecedented public health emergency.

The extension of the amendments made to the Public Health Act, until 30 April 2022, is considered to be the least restrictive and reasonably available way to achieve the purpose of the Bill. The situation relating to COVID-19 continues to evolve across Australia and internationally, making it difficult to determine with certainty how long the emergency response measures, particularly the emergency powers provided to the Chief Health Officer and emergency officers appointed under the Public Health Act, will be required. However, an extension of the amendments for a further seven months is considered the most appropriate approach to allow for the continuation of the Queensland Government's health response to respond to any emerging threats of COVID-19 in Queensland while also considering the impact that a vaccine becoming available may have on limiting the public health risks of COVID-19 in Queensland.

Queensland Health has been monitoring these matters as they develop and will continue to advise the Queensland Government, as required. If it is considered necessary to extend these amendments for a further period, another Bill will be introduced to the Legislative Assembly for consideration of the appropriateness of a further extension of these emergency response measures provided by the amendments to the Public Health Act.

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

- the Chief Health Officer is a public entity for the purposes of the Human Rights Act and when making public health directions under section 362B of the Public Health Act is required to consider the human rights impacts and act compatibly with human rights.
- the emergency powers provided to the chief health officer and emergency officers appointed under the Public Health Act are conferred for the COVID-19 public health emergency declared by the Minister on 29 January 2020 and may only be used to assist in containing or responding to the spread of COVID-19 within the community.
- the emergency powers may only be exercised by, as applicable, the Chief Health Officer and emergency officers appointed under the Public Health Act.
- before issuing a direction, the Chief Health Officer or emergency officer must have a reasonable belief that the direction is necessary to assist in limiting, or responding to, the spread of COVID-19 within the community.
- if at any time the Chief Health Officer or an emergency officer is satisfied that a direction is no longer necessary to contain the spread of COVID-19 within the community, the direction must be revoked.
- directions to self-isolate or quarantine must be time-limited and may not apply for more than 14 days unless a further lawful direction is made.
- directions must state the period during which they apply and that non-compliance with the direction is an offence.
- a person who fails to comply with a direction does not commit an offence if they have a reasonable excuse for not complying.
- directions may include exceptions and safeguards to minimise adverse impacts on human rights and other interests. For example, a person who is required to self-isolate may be permitted to obtain medical supplies or to engage in activities that do not involve close contact with other persons.

The most significant human rights limitations relate to the right to freedom of movement, particularly for persons who are subject to a self-isolation direction. To a lesser extent, restrictions on movement will also limit rights to freedom of thought, conscience, religion and belief; freedom of expression; peaceful assembly and freedom of association; and cultural rights. These limitations are unavoidable and have been mitigated to the greatest extent possible. As noted above, persons may only be directed to self-isolate if an emergency officer reasonably believes that self-isolation is necessary to contain the spread of COVID-19 within the community. The period of self-isolation will not exceed 14 days, unless a further lawful direction is issued, and the direction must be revoked immediately if at any time the officer is satisfied that the direction is no longer required. In addition, directions may include conditions to minimise interference with persons' freedom of movement and other human rights, such as by providing that persons who are under self-isolation may leave their home or other accommodation to obtain medical care or supplies or to engage in activities that do not involve close contact with other persons.

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

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.

Failure to impose these measures may result in Queensland's health infrastructure becoming overwhelmed, with the result that decisions will need to be made as to who receives lifesaving treatment and otherwise preventable deaths occurring. This is not an abstract threat; there are several countries which have been unable to mount an effective public health response that are now experiencing deaths at a higher rate than in countries that have implemented stronger containment and social distancing measures.

Although the continuation of the amendments made to the Public Health Act to support the Queensland Government's health response to COVID-19 potentially limits many rights, in many instances the limitations are minor in nature and frequently consistent with internal limitations in the Human Rights Act. It should also be noted that many Queenslanders are already taking voluntary precautions to limit their potential exposure to COVID-19 and avoid spreading this disease to family members, friends and the broader community. The fact that many individuals are already undertaking these measures voluntarily suggests they are unlikely to impose an unjustified burden on human rights.

As described in detail above, a number of safeguards exist in the amendments to the Public Health Act to ensure that any limitations on human rights are no more onerous than is required to slow the spread of COVID-19. Importantly, the continuation of the amendments to the Public Health Act will only apply for a further 7 months, until 30 April 2022 and the powers of public health officials will return to the status quo. The additional powers are also only available to address the current COVID-19 pandemic. On balance, any limitations on human rights are reasonable and justified to ensure the preservation of life and protection of the community from the most severe impacts of a pandemic.

(f) any other relevant factors

Not applicable.

Public Health Act amendments – Amendments to delegate powers to authorise the disclosure of confidential information

(a) the nature of the right

Right to privacy and reputation

The continuation of the amendments to the Public Health Act also engages the right to privacy, which is broadly construed and includes a specific right against interference with a person's physical integrity as well as a person's personal information.

This right is engaged by the extension of to the amendments to sections 81 and 109 of the Public Health Act. These amendments permit the chief executive officer to delegate their powers relating to the disclosure of confidential information under these sections to other persons.

The Public Health Act contains specific protections for privacy. Sections 81(3) and 109(3) provide that information disclosed under these provisions must not directly or indirectly identify the person to whom the confidential information relates. Accordingly, these amendments do not limit the right to privacy under section 25 of the Human Rights Act. However, in the event that there is an alternative view that the right to privacy and reputation is limited, the limitation is considered reasonable and justifiable.

(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 potential limitation on the right to privacy is to reduce the administrative burden on the chief executive and Chief Health Officer during the COVID-19 emergency. It is not practical for the chief executive and Chief Health Officer to authorise every disclosure of confidential information relating to notifiable conditions in the public interest.

The continuation of the amendments is consistent with a free and democratic society based on human dignity, equality and freedom because it facilitates the disclosure of the information in the public interest where the chief executive or Chief Health Officer need to focus on leading the State's response to the COVID-19 emergency.

(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 potential limitation achieves the purpose by allowing additional persons to authorise the disclosure of confidential information. This will reduce the administrative burden of the chief executive and Chief Health Officer during the COVID-19 emergency.

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

The continuation of the amendment is considered the best way to reduce the administrative burden of the chief executive and Chief Health Officer during the COVID-19 emergency. If the amendments are not continued, the chief executive or Chief Health Officer would need to authorise every instance of a disclosure of confidential information relating to a notifiable condition where the disclosure is in the public interest. Importantly, the delegation power is appropriately restricted to one other person in addition to the Chief Health Officer.

- (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

To the extent that there is any limit on the right to privacy and reputation, this limitation is substantially outweighed by the benefits of enabling the chief executive and Chief Health Officer to focus on the important work of leading the State's response to the COVID-19 emergency.

- (f) any other relevant factors

Not applicable.

Public Health Act amendments – Amendments to the *Public Health Act 2005* to allow an emergency officer to give a direction to a parent of a child to keep the child isolated

- (a) the nature of the right

Freedom of movement

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

The continuation of the amendments to the Public Health Act will limit the right to freedom of movement of children by continuing to authorise emergency officers to give a direction to a parent of a child to keep the child isolated for not more than 14 days. This is consistent with the limitation on the freedom of movement for all people generally, as discussed above.

Right to protection of families and children

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

The exercise of emergency powers has the potential to impact children through, for example, temporarily restricting their movement, restricting the movement of family or other contacts, or restricting their access to certain facilities or events. Also, directions may not consider the child's views or give their views due weight, which does not respect their capacity to influence the determination of their best interests. However, there are other aspects of the child's best interests which weigh in favour of the amendments, such as their right to life and their health and wellbeing.

(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 potential limitation on human rights is to ensure compliance with a direction given to a child to isolate for not more than 14 days, especially where the child does not have capacity to understand the direction. This is necessary to assist in containing, or responding to, the spread of COVID-19 within the community.

Protecting the health, safety and wellbeing of people in the Queensland community from the risk posed by COVID-19 and its spread promotes the right to life in the context of the positive obligations that right places on the State in relation to protecting the health and safety of its citizens. This is a proper purpose 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

Containing the spread of COVID-19 within the community may be achieved through a direction to quarantine or isolate. This is because COVID-19 is a communicable disease that may be easily transmitted between people. Quarantine and isolation are proven to slow the transmission of COVID-19 and are indispensable to the State's ability to effectively contain and limit the spread of the disease, manage and respond to outbreaks and ensure that the health system has the capacity to provide treatment to vulnerable and other persons who require urgent medical care. The continuation of the amendments achieves the purpose by allowing an emergency officer to give a direction to a parent of a child to keep the child isolated for not more than 14 days. This is the only practicable way to ensure that children comply with quarantine and isolation requirements.

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

The only practicable way to ensure compliance with a direction given to a child to quarantine or isolate is to impose a corresponding legal obligation on the child's parent. Ensuring compliance with these directions is essential to slowing the transmission of COVID-19 and protecting the health of the community.

A direction issued by an emergency officer will be for a period of not more than 14 days. Further, the power can only be exercised by emergency officers who are appointed by the chief executive and have the necessary expertise and experience to fulfil the role. The direction can only be given if an emergency officer reasonably believes that it is necessary to assist in containing, or responding to, the spread of COVID-19. The power to give the direction also applies to a limited class of persons (that is, it can only be given to a parent of a child).

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

The benefits of reducing exposure to COVID-19 in Queensland and preserving access to emergency and life-saving treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitation on human rights.

Children have particular vulnerabilities due to their age and may not have the maturity to understand the nature of the emergency or the requirement to self-isolate. Failure to impose an obligation on a child's parent or guardian to ensure compliance with a notice to isolate may result in children failing to self-isolate and potentially exposing others to COVID-19.

As noted above, the Bill continues a number of safeguards to ensure the potential interference with human rights is minimal and no greater than necessary to respond to the COVID-19 pandemic.

Relevantly, a child may only be directed to self-isolate if an emergency officer reasonably believes that self-isolation is necessary to contain the spread of COVID-19 within the community. The period of self-isolation will not exceed 14 days, unless a further lawful direction is issued, and the direction must be revoked immediately if at any time the officer is satisfied that the direction is no longer required. In addition, directions may include conditions to minimise interference with persons' freedom of movement and other human rights, such as by providing that persons who are under self-isolation may leave their home or other accommodation to obtain medical care or supplies or to engage in activities that do not involve close contact with other persons.

(f) any other relevant factors

Not applicable.

Other COVID-19 related amendments – Amendments to the *Mental Health Act 2016* allowing mental health patients to be granted leave to comply with public health directions

(a) the nature of the right

Right to equality; right to health services

Every person has the right to enjoy the person's human rights without discrimination. The part of the right that provides that a person is equal before the law and is entitled to the equal protection of the law without discrimination requires public entities, as well as courts and tribunals in undertaking certain functions, to treat people equally when applying the law and to not apply the law in a discriminatory or arbitrary way.

Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment.

The Bill continues amendments to the Mental Health Act to allow the Chief Psychiatrist to grant leave from an Authorised Mental Health Service during the COVID-19 emergency. The amendment allows a patient to comply with a detention order or public health direction given under the Public Health Act, potentially reducing the risk to the person of contracting COVID-19 or the risk to others in an authorised mental health service in the event that a person is diagnosed with COVID-19. Essentially, the movement of a patient will be to ensure the health and safety from the risk of transmission of COVID-19 as a direct result of detention order or public health direction, which apply restrictions broadly to every person.

The right to equality before the law may be engaged as the provision allows for a person who is receiving treatment under a mental health order to be moved to another place for the purpose of complying with a detention order or public health direction issued under the Public Health Act. This may impact the mental healthcare treatment of a person if required to move to another place.

Right to privacy

The Bill continues amendments to information-sharing provisions in the Mental Health Act to permit the disclosure of information relating to classified patients. A classified patient is a person in custody in a prison, watch-house or youth detention centre who has become acutely unwell and requires treatment and care in an authorised mental health service.

A patient's right to privacy may be limited as a patient's personal information may be released under section 783(1) of the Mental Health Act as modified by section 800N.

However, the right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. This internal limitation applies here because the Bill only continues the existing framework which authorises specific disclosures about a classified patient to a victim of an unlawful act committed by the classified patient, a close relative of a victim, or another individual who has suffered harm because of an unlawful act committed by the classified patient.

During the COVID-19 emergency period, the amendment will provide for the Chief Psychiatrist to disclose the fact that a classified patient is absent from an authorised mental health service under new section 800I. The chief psychiatrist may make such disclosure if they consider the information is relevant to the safety and welfare of the person to whom the information is disclosed. The person must give a written undertaking to preserve the confidentiality of the information. The Bill does not limit the right to privacy.

- (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 potential limitations on human rights by the continuation of the amendments made to the Mental Health Act will ensure that a person can comply with a detention order or public health direction relating to the COVID-19 emergency. The Chief Health Officer makes a public health direction to contain, or respond to, the spread of COVID-19 within the community. A detention order for a person having or suspected of having COVID-19 is made to contain the spread of the disease. Containing the spread of COVID-19 provides a direct health benefit to the broader community.

Protecting the health, safety and wellbeing of people in the Queensland community, including those in the State's care, from the risk posed by COVID-19 and its spread promotes the right to life in the context of the positive obligations that right places on the State in relation to protecting the health and safety of its citizens. This is a proper purpose 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

Containing the spread of COVID-19 within the community may be achieved through detention orders and public health directions. This is because COVID-19 is a communicable disease that may be easily transmitted between people. Quarantine and self-isolation are proven ways to slow the transmission of COVID-19, particularly to vulnerable persons who may develop complications or otherwise require emergency or life-sustaining treatment. The continuation of the amendments achieves the purpose by facilitating a requirement of a detention order or public health direction under the Public Health Act.

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

If the amendments are not continued, a person who is detained at an authorised mental health service may be unable to comply with a requirement of a detention order or a public health direction under the Public Health Act.

While a person who ordinarily receives inpatient mental health care may receive a lower standard of health care in the community where the person is directed to stay at a place other than an authorised mental health service because of a detention order or public health direction, any difference in the standard of medical care is likely to be minimal and the benefit of protecting the health of the person and broader community outweighs any reduction in standard of care. The Bill contains protections against a person being inappropriately transferred by providing that the Chief Psychiatrist may only approve an absence of certain patients from an authorised mental health service if satisfied that the treatment and care needs of the person can be met for the period of absence and the absence will not result in an unacceptable risk to the person's safety and welfare or to the safety of the community.

Further, the power to authorise a person to leave an authorised mental health service will only be used as a last resort where the person cannot be transferred to another authorised mental health service.

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

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.

Failure to continue these measures would mean the Queensland Government's power to respond to the ongoing risks of COVID-19 is incomplete, as a person who is detained at an authorised mental health service may be unable to comply with a requirement of a detention order or a public health direction under the Public Health Act. It is essential that all Queenslanders are able to undertake quarantine and isolation as directed under the Public Health Act in order to effectively slow the transmission of COVID-19 and contain the spread of the disease.

- (f) any other relevant factors

Not applicable.

Other COVID-19 related amendments – Extension of extraordinary regulation-making powers in the ER Act and other statutory instruments

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 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](#) – Family Responsibilities Commission (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—Documents and Oaths) Amendment Regulation 2021
- Human Rights Certificate – Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Amendment Regulation 2021
- [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 2021
- [Human Rights Certificate](#) – Youth Justice (COVID-19 Emergency Response) Regulation 2020

The Bill also extends the operation of statutory instruments made under temporary amendments to the *Gaming Machine Act 1991*. The human rights that are relevant to these instruments are set out in the following human rights certificates:

- [Human Rights Certificate](#) – *Gaming Tax Notice 2020*
- [Human Rights Certificate](#) – *Gaming Tax Notice (No. 2) 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.

Other COVID-19 related amendments – Extension of power for extraordinary regulations to deal with transitional arrangements

The ER Amendment Act introduced an appropriate transitional framework which enables regulations to be made, where required, to return to normal operations in the most effective and efficient way.

The transitional arrangements do not limit human rights to any greater extent than what was identified in the human rights certificates that accompanied each secondary instrument, as listed above. 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.

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 *COVID-19 Emergency Response and Other Legislation Amendment Act 2020*. 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.

Other COVID-19 related amendments – Extension of amendments to Acts and subordinate legislation

Amendments to Body Corporate regulations enabling body corporate committees to make decisions regarding common property

The Bill continues temporary amendments to the following regulations allowing body corporate committees to make decisions regarding common property, if the committee considers the change is reasonably necessary to ensure compliance with a public health direction.

- *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*

(a) the nature of the right

A person has the right to own property alone or in association with others and must not be arbitrarily deprived of that property. The right includes the protection from the deprivation of property. The term ‘deprived’ is not defined by the Human Rights 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).

Relevantly, property has been held as including the right to use common property equally with other lot owners. However, it is said to be a ‘lesser right’ than that of the right to property.¹⁰

Under the Body Corporate and Community Management Act, owners of lots in a community titles scheme own the common property for the scheme as tenants in common and have a right to use and enjoy the common property for the scheme. If the occupier of a lot is not the lot’s owner, a legislative right the owner has to the occupation or use of common property is enjoyed by the occupier. In relation to body corporate assets, the body corporate for a community titles scheme holds the body corporate assets beneficially. Owners and occupiers of lots in a community titles scheme are permitted under the Body Corporate and Community Management Act to use and enjoy body corporate assets.

The Bill limits property rights by continuing amendments to permit a body corporate committee to make decisions to change the rights, privileges or obligations of lot owners about access to, or the use of, common property or body corporate assets.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of any limitation on property rights is to ensure body corporate committees are able to make decisions to change the rights, privileges or obligations of owners of lots relating to the access or use of common property or body corporate assets for a community titles scheme, if the committee considers the change is reasonably necessary to ensure compliance with relevant public health directions.

For example, a committee may decide to prevent owners and occupiers of lots in the community titles scheme from accessing or using a common property indoor swimming pool to ensure owners and occupiers comply with a relevant public health direction. The temporary capacity for committees to make decisions about access to, or the use of, common property and body corporate assets is also aimed at ensuring bodies corporate (via their committees) may make decisions that promote the right to life by supporting the public health response to COVID-19, by ensuring compliance with public health directions.

As the purpose of the limitation on property rights promotes the right to life by ensuring compliance with public health directions, the purpose of the limitation is considered to be consistent with a free and democratic society based on human dignity, equality and freedom.

¹⁰ *Owners Corporation No. 1 SP37133 v J and Investments Pty Ltd & Ors (Owners Corporation)* [2012] VCAT 1164.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation on property rights achieves its purpose by ensuring body corporate committees have capacity to make decisions to change the rights, privileges or obligations of owners of lots about access to, or the use of, common property and body corporate assets to support the public health response to COVID-19, by ensuring compliance with public health directions.

The limitation also achieves its purpose by ensuring committees may make decisions that are aimed at protecting the health and safety of owners and occupiers of lots in a community titles scheme, by changing rights, privileges or obligations of owners of lots in relation to access to, or use of, common property and body corporate assets if the committee considers the change is reasonably necessary to ensure compliance with public health directions. Overall, the limitation imposed on the property rights of owners and occupiers of lots is intended to promote the right to life, by ensuring body corporate committees are able to make decisions to support the public health response to COVID-19.

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

A less restrictive way to achieve the purpose would be to revert to the usual approach under the regulations, which requires decisions to change rights, privileges or obligations of owners of lots about access to, or the use of, common property and body corporate assets to be made at a body corporate general meeting.

However, this is not considered to be an optimal option, given body corporate general meetings are subject to particular procedural requirements that may limit the capacity of bodies corporate to respond rapidly to support the public health response to COVID-19 and ensure compliance with public health directions. For example, owners must be given at least 21 days' notice of a general meeting.

Decisions to change the rights, privileges or obligations of owners of lots about access to, and the use of, common property and body corporate assets to ensure compliance with public health directions may require bodies corporate to respond rapidly, particularly in light of the urgent nature of some public health directions made under the Public Health Act.

Allowing decisions to change the rights, obligations or privileges of owners of lots to be made by the committee ensures bodies corporate may make timely decisions about access to, and use of, common property and body corporate assets if the committee considers it reasonably necessary to ensure compliance with public health directions.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The Bill strikes an appropriate balance between the rights of owners and occupiers to enjoy common property and body corporate assets with the ability of body corporate committees to make urgent decisions to support the public health response to COVID-19.

Any limitation of property rights is further mitigated by the ability of a lot owner or occupier to apply under the dispute resolution provisions of the Body Corporate and Community Management Act if the owner or occupier considers the committee has acted unreasonably in making a decision.

Amendments to facilitate the holding of COVID-safe local government by-elections, local government fresh elections and State government by-elections

The Bill provides flexibility to facilitate the holding of certain by-elections and fresh elections in a timely way that helps minimise the health and safety risks associated with COVID-19 by continuing amendments to the:

- *Electoral Act 1992* regarding State by-elections; and
- *City of Brisbane Act 2010, Local Government Act 2009, and Local Government Electoral Act 2011* regarding local government by-elections and fresh elections.

(a) the nature of the right

Right to take part in public life; freedom of expression

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 Bill limits these rights by continuing amendments:

- to enable the Electoral Commission of Queensland (ECQ) to alter the period during which a person may update the electoral roll, nominate as a candidate for the local government by-election or fresh election or cast their vote on polling day;
- that may make it more challenging for certain voters to exercise their right to vote by, for example, allowing the ECQ to declare that electoral visitor voting is not available for a by-election or fresh election. However, alternative arrangements are required to be made to enable electors affected by a relevant declaration or direction to vote; and
- that impact on the ability of candidates, political parties, third parties and other individuals to communicate with voters by allowing the ECQ to issue directions regarding the display or distribution of how-to-vote cards, with an offence applying to persons who contravene such a direction without a reasonable excuse.

Right to privacy; freedom of movement

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. 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 Human Rights 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).

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. 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'.

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 on 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 Bill continues amendments to 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 otherwise entitled to be present, or prohibiting a scrutineer from being present at a polling booth or other place at which a scrutineer is otherwise entitled to be present, 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 a polling booth, and areas where they may be, with an offence applying for contravening 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.

In my opinion, the right to privacy is relevant to, but not necessarily limited by, the amendments to allow for counting of votes to be filmed by a member of ECQ's staff. This is because personal information is not recorded on a ballot to ensure secrecy of the voting process. In an unusual case a voter may record their name on the ballot and this personal information may be captured by the filming. To the extent this may occur, this is not considered to be a limitation on the right to privacy, as the person has not been required or requested to provide such information. However, in the event that there is an alternative view that the right to privacy is limited, I consider the limitation to be reasonable and demonstrably justified to support the purpose of the amendments to facilitate vote counting without interference with the secrecy of the ballot or limitations on the right to take part in public life, as discussed below.

(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, 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 as protected under section 16 of the Human Rights Act. The right to life places positive obligations on the State Government to protect 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 by-elections or fresh elections which may be required as a result of COVID-19. For example, they 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 across the State or in a local government area or division it would be inappropriate to hold an election where large groups of people gather at a single place. The conduct of any by-election or fresh election gives rise to certain challenges if social distancing requirements are in place.

Accordingly, the extension of the amendments is required to support possible alternative arrangements for the conduct of a by-election or fresh election to reduce the risk of COVID-19 transmission by:

- providing flexibility around the statutory processes and timeframes to account for delays that may be caused by COVID-19 and to allow for alternative arrangements to be made;
- facilitating the increased use of postal voting, postal ballots and electronically assisted voting to reduce the need for persons to attend to vote at a polling booth. This will in turn reduce person-to-person contact and protect the health and safety of individuals and the public more generally;

- enabling the ECQ to decline to offer electoral visitor voting in order to reduce 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 to 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, in order to limit person-to-person contact and the risk of super-spreading events.

Any limitation on human rights supports the proper purpose of protecting public health. While the amendments allow for voting rights to be deferred by the adjournment of a poll for up to two months, they are proportionate to the threat posed by the COVID-19 pandemic, and the need to safeguard public health and safety.

Although a poll can already be adjourned for emergencies under existing provisions, the returning officer may only adjourn a polling day for up to 34 days after the day the poll is adjourned. Due to the unprecedented nature of COVID-19 it was considered that this may not provide the ECQ and the returning officer with sufficient time and flexibility to make alternative arrangements to voting at a polling booth, if required, if there was an outbreak of COVID-19. These amendments will provide temporary provisions to enable the returning officer to adjourn a polling day for up to two months after the stated date for the polling day in the election notice. This will provide the ECQ with greater flexibility in holding a by-election or fresh election where there is an actual or potential outbreak of COVID-19.

The amendments also enable the Minister for Local Government to postpone a polling day for longer than two months after the stated date on the election notice to facilitate holding a by-election or fresh election in a timely way that helps minimise serious risks to the health and safety of persons caused by COVID-19. However, before making a decision to postpone, the Minister must consult the ECQ and be satisfied that it would not be in the public interest to hold an election in the two months after the original polling day. If a decision to postpone is made, the Minister must notify the ECQ and ECQ must publish on its website a notice about the day on which the polling day is postponed to.

There are a number of safeguards for particular measures in the Bill to ensure that any limitations on human rights are no greater than necessary to respond to the COVID-19 emergency.

For example, the Bill permits the ECQ to fix a time and day by which an elector may apply to cast a postal vote in an election which may be earlier or later than the existing period of 12 days in the Local Government Electoral Act. To offset any impacts that may be caused by fixing a shorter period, the ECQ can declare that electors of a 'stated class' may cast a postal vote without having made an application. A person who is not within a 'stated class' is not precluded from voting, as they may still apply for a postal vote within the fixed period or attend a polling booth to cast their vote. If the circumstances of COVID-19 prevents votes being taken at a polling booth, the amendments provide ECQ with the powers to make alternative arrangements to enable voters to vote, such as facilitating electronically assisted votes.

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

The right to vote and right to seek election is central to Australia's legal system and the individual right to take part in public life. Consistent with this, the amendments support the purpose of ensuring the electoral process is inclusive, and that eligible voters have an appropriate opportunity to register and exercise their vote, to the extent possible in the COVID-19 emergency.

There are no less restrictive and reasonably available ways to achieve the purpose of the amendments. The amendments are confined to:

- a by-election under the Electoral Act, where the writ was issued on or before the COVID-19 expiry day; and
- a local government by-election and fresh election under the Local Government Electoral Act, where a notice for a by-election is issued or a regulation to provide for a fresh election is made on or before the COVID-19 legislation expiry day.

In addition, the amendments do not affect a local government 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.

Further, the Minister, ECQ, or any other person capable of exercising a power under the amendments, must exercise that power 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 Human Rights 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, the purpose of protecting public health when holding a local government by-election, fresh local government election or State by-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 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 Bill continues amendments to the City of Brisbane Regulation and the Local Government Regulation to enable local government and committee meetings to be held by audio or audio-visual link, for persons to participate in meetings by audio or audio visual link and for meetings to be closed to the public for health and safety reasons associated with COVID-19.

Right to take part in public life; Freedom of expression

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 right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds. It protects almost all kinds of expression, if it conveys or attempts to convey a meaning. Ideas and opinions can be expressed in various ways, including in writing, through art, or orally. Relevantly, this right includes the right to receive information.

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 and the right to freedom of expression 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 risk 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 and freedom of expression 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 and freedom of expression 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.

The amendments to the City of Brisbane Regulation and the Local Government Regulation facilitate a range of alternative methods for holding meetings to respond to social distancing requirements and other measures that may be required in response to the COVID-19 emergency. This includes holding meetings via audio or audio-visual link with real-time viewing requirements to enable interested members of the public to listen to meetings.

However, local governments vary in technical capacity and particularly smaller remote and regional councils may not have the technology or reliability of internet access to support the live streaming of meetings. It is essential that local governments have the ability to hold meetings while still limiting gatherings of people in enclosed spaces. Continuing the amendments to allow closed meetings is the least restrictive way to achieve this purpose.

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 rights.

- (f) any other relevant factors

Not applicable.

Amendment to the Corrective Services Act 2006 to amend the definition of ‘prison’ to ‘corrective services facility’

- (a) the nature of the right

Section 268 of the Corrective Services Act empowers the chief executive to declare that an emergency exists in relation to a prison for a stated period of not more than three days, if a situation threatens the security or good order of a prison or the safety of a prisoner or another person in a prison.

The Bill continues amendments to section 268 to change ‘prison’ to ‘corrective services facility’ to enable an emergency to be declared at any corrective services facility to ensure the safety of facilities and to mitigate the risk of contagion in response to COVID-19. This expanded definition captures facilities such as the Helana Jones Centre and work camps, which are currently not included in the definition of ‘prison’.

Protection from torture and cruel, inhuman and degrading treatment

The amendment limits the right not to be treated or punished in a cruel, inhuman or degrading way to the extent that isolating prisoners to reduce the risks of COVID-19 transmission may be considered inhuman or degrading in a custodial environment.

Freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. This means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place. The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers, like requiring permission before entering a public park or participating in a public demonstration in a public place. It also protects the rights of individuals to enter and leave Queensland.

The amendment limits the freedom of movement where a corrective services facility is forced to cease or restrict movement of staff, visitors, or prisoners in response to the COVID-19 emergency, such as through quarantine periods.

Freedom of association

The amendment limits the freedom of association to the extent a prisoner may be unable to receive visits in circumstances where movement is restricted in a corrective services facility to manage COVID-19. The amendment may also limit the rights of a visitor whose association with a person detained in a corrective services facility will be impacted. This is consistent with the restrictions that may be imposed to protect prisoners, staff, and visitors during the current COVID-19 emergency, including in corrective services facilities that are not currently gazetted as a prison under the Corrective Services Act. It is also consistent with existing COVID-19 restrictions and social distancing requirements imposed in the community.

Property rights

The amendment limits the property rights of prisoners in corrective services facilities (other than prisons) to the extent that the ability to receive property from outside the facility, including mail and other items, may necessarily be limited or delayed due to the risk of COVID-19 transmission.

Right to privacy and reputation

The amendment limits the right to privacy to the extent that it may restrict a prisoner's private relationships through visits where a corrective services facility is required to restrict access and contact to manage the risks of COVID-19. This restriction is consistent with the restrictions that may be imposed to protect prisoners, staff, and visitors during a declaration of emergency currently, including where an incident necessitates visitors be removed from a facility. It is also consistent with existing COVID-19 restrictions and social distancing requirements imposed in the community.

Protection of families and children

The amendment limits the protection of families and children to the extent that it may restrict a prisoner's relationship with a family member to the extent the prisoner may be unable to receive visits where a corrective services facility is required to restrict access and contact to manage the risks of COVID-19. The amendment may also limit the right for the family of a prisoner if they are prevented from accessing visits. This restriction is consistent with the restrictions that may be imposed to protect prisoners, staff, and visitors during a declaration of emergency currently, including where an incident necessitates visitors be removed from a facility. It is also consistent with existing COVID-19 restrictions and social distancing requirements imposed in the community.

Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

The amendment limits the cultural rights of Aboriginal peoples and Torres Strait Islander peoples to the extent that, in responding to the COVID-19 emergency, a prisoner's access to cultural visits or the ability to transfer Aboriginal prisoners or Torres Strait Islander prisoners to a corrective services facility closer to their family may be restricted to manage the risk of COVID-19 transmission.

Humane treatment when deprived of liberty

The amendment limits the right to humane treatment when deprived of liberty to the extent that isolating prisoners to reduce the risk of COVID-19 transmission may be considered inhumane in a corrective services facility.

Right to education

The amendment may limit the right to education where a corrective services facility is required to restrict movement and contact between prisoners in response to COVID-19 risks and these requirements may impact the availability of educational services to prisoners.

(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 proposal is to ensure that the emergency declaration powers under section 268 of the Corrective Services Act are available in all corrective services facilities, not just prisons, to address the specific risks associated with COVID-19, including managing transmissibility and the anticipated length of the pandemic. The amendment ensures that prisoners, staff, and essential visitors remain safe during the COVID-19 emergency by empowering the chief executive to declare an emergency in all corrective services facilities.

Protecting the health, safety and wellbeing of people in the Queensland community, including those in the State's custody, from the risk posed by COVID-19 and its spread promotes the right to life as protected under section 16 of the Human Rights Act in the context of the positive obligations that right places on the State in relation to protecting the health and safety of its citizens. This is a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.

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

Extending the application of the declaration of emergency powers to all corrective services facilities is essential to preventing loss of life, ensuring Queensland Corrective Services can respond to the unique risks surrounding COVID-19, and ensuring the safety of prisoners, staff, and essential visitors. The emergency powers enable measures to be taken to prevent the introduction and spread of COVID-19 into correctional centres, including restricting and limiting movement throughout the correctional system.

These powers also enable Queensland Corrective Services to operationalise the '*Managing vulnerable prisoner COVID-19 policy*' which has been implemented to preserve the integrity of the correctional environment and to limit the risk of COVID-19 infection amongst prisoners within QCS facilities. The policy was made based on contemporary public health advice received from Queensland Health to ensure the health and safety of all prisoners, but especially those prisoners who are identified as vulnerable to COVID-19. A vulnerable prisoner is a prisoner who falls within the category of people identified in the statement published by the Australian Health Protection Principal Committee on 30 March 2020 as being at, or likely to be at, a higher risk or serious illness if infected with COVID-19. These categories are: Aboriginal and Torres Strait Islander people aged 50 or over with one or more chronic medical conditions; people aged 65 or over with chronic medical conditions; people aged 70 or over; and people with compromised immune systems.

Under the policy, and through the emergency powers, identified vulnerable prisoners will continue to be accommodated and managed by Queensland Corrective Services and Queensland Health to best prevent infection. Dependent on advice from Queensland Health, this may include placement into single cell secure accommodation isolation, isolation within an existing residential unit, or daily temperature and health checks.

The extension of these emergency powers ensures that Queensland Corrective Services is able to ensure the health and safety of prisoners in all correctional environments.

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

No less restrictive and reasonably available ways of achieving the purpose have been identified. The ability to rapidly respond to the risks associated with COVID-19 is necessary to mitigate the spread of COVID-19, prevent loss of life, and ensure the safety of prisoners, staff, and essential visitors. Ensuring a declaration of emergency can be made for any corrective services facility ensures that prisoners in facilities not otherwise gazetted as prisons are afforded the same protection and level of responsiveness.

(e) the balance between the importance of the proposed amendment, 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 purpose of the proposed amendment outweighs the potential limitations on the identified rights, noting the limitations on human rights of this amendment will be restricted to responding to the current COVID-19 pandemic and are for the purpose of protecting the health, safety and wellbeing of prisoners, staff, and essential visitors.

(f) any other relevant factors

Not applicable.

Amendment to the Disaster Management Act 2003 to set aside the existing compensation provisions that apply to loss or damage suffered in relation to the exercise of powers in response to the COVID-19 emergency

(a) the nature of the right

Right to property

The right to property protects the right of all persons to own property alone or in association others and provides that people have a right not be arbitrarily deprived of their property.

The right to property does not provide an explicit right to compensation for the deprivation of property, the right may encompass situations such as this where an existing right to compensation is being removed, particularly where an existing right to compensation is removed with retrospective effect.

This right is limited by the extension of amendments to remove the right to compensation for damage or loss suffered as a result of the exercise of specified powers under the Disaster Management Act, where these powers are exercised as a result of the COVID-19 emergency.

The powers available to disaster officers under a declared disaster and in other specific circumstances are broad and include destroying or removing property, vehicles, structures or animals, which can cause damage or loss and have financial impacts for the owner. The amendment provides that the usual rights to compensation which are provided for under section 119 of the Disaster Management Act for damage or loss because of the exercise, or purported exercise, of powers under that Act, will not apply in these circumstances.

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

The purpose of the amendment and the limitation on the right to property is to avoid liability for compensation payments where relevant officers cause loss or damage to property when exercising powers under the Disaster Management Act for COVID-19 purposes. Avoiding such payments will serve to mitigate the economic impacts of the COVID-19 emergency on the Queensland Government, and will also support the Government's ability to provide economic stimulus packages to uphold fundamental entitlements and services for Queenslanders.

International human rights law indicates that economic considerations *alone* are insufficient to justify a limit on human rights. However, 'financial considerations wrapped up with other public policy considerations could qualify as sufficiently important objectives [to justify a limitation on human rights]'¹¹ and could be justified where measures to reduce expenditure were undertaken to 'promote other values of a free and democratic society'.¹² Restricting compensation payments under the Disaster Management Act is a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.

¹¹ *Newfoundland (Treasury Board) v NAPE* [2004] 3 SCR 381, 411 [69] (Binnie J, for the Court).

¹² *Newfoundland (Treasury Board) v NAPE* [2004] 3 SCR 381, 411 [75] (Binnie J, for the Court), citing *Egan v Canada* [1995] 2 SCR 513.

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

The limitation on the right to property helps to achieve the purpose by limiting the economic impacts of the COVID-19 emergency on the Government. There is the potential for a significant proportion of the population to be affected by the exercise of powers under the declared disaster situation. In this environment, uncapped and unpredictable compensation claims for damage or loss suffered may place further economic pressure on the State and diminish the Government's ability to provide stimulus measures. Avoiding compensation payments will directly support the Government to implement various economic resilience measures for Queenslanders.

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

No less restrictive and reasonably available ways of achieving the purpose have been identified. The COVID-19 emergency has had, and continues to have, economic impacts on Queensland and relevant officers need to be able to exercise the relevant powers during the declared disaster without placing the Government at risk of unknown and unpredictable compensation claims.

The amendment is limited to the exercise of powers for the purposes of the declared disaster, and various protections contained in the Disaster Management Act ensure that the relevant powers are exercised appropriately. For example, these powers may only be exercised by authorised officers in certain circumstances, such as where they are necessary for public safety and the protection of life or property. Authorised officers are limited to those with the necessary expertise or experience to exercise the powers, and authorisations may be limited or given on conditions specific to the particular circumstances of the officer or event.

Operational practice also ensures that powers are exercised appropriately. In regard to emergency and disaster situations, any assessment of expertise or experience would take into account the training framework that applies to both paid and volunteer officers. Emergency and disaster response practices include limiting potential damage where possible in the context of operational requirements and the safety of individuals (including employees, volunteers and the community).

Further, the Disaster Management Act provides specific protections where it is proposed to give directions to the owner of any property. If the property is residential or business premises, directions may only be given with the written approval of the relevant district disaster coordinator. There are also protections for the power to enter places to exercise rescue powers, specifying that where the occupier is present a reasonable attempt must be made to seek the consent of the occupier to the entry.

Finally, having regard to the fact that the amendment is removing an existing entitlement to compensation for property damage or loss, the amendment is appropriately limited only to the exercise of powers that are for the purpose of the declared public health emergency for COVID-19.

- (e) the balance between the importance of the proposed amendment, 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

Considering the state-wide and long-term scale of the COVID-19 emergency, imposing this potential limitation on the right to property is considered reasonable and justified to limit the potential economic impacts on Queensland. On balance, minimising the potential economic impacts on the State of unpredictable compensation payouts arising from actions of officers during the declared disaster outweighs any potential limitation imposed on property rights.

- (f) any other relevant factors

Not applicable.

Amendment to the Disaster Management Act 2003 to increase the period by which a regulation may extend the COVID-19 disaster situation from 14 days to 90 days

- (a) the nature of the right

The Bill continues amendments to the Disaster Management Act that limit the right to freedom of movement, the right to peaceful assembly and freedom of association, the right to privacy and reputation, and the right to liberty and security.

Freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. This means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place.

The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers, like requiring permission before entering a public park or participating in a public demonstration in a public place. It also protects the rights of individuals to enter and leave Queensland.

The amendment to provide for the extension of a disaster situation limits a person's rights to freedom of movement because the COVID-19 declared disaster allows for powers to be exercised that include controlling the movement of persons into, out of, or around the declared area for the disaster situation. The exercise of these powers may result in persons being prevented from entering particular areas or the dispersal of groups of persons.

Peaceful assembly and freedom of association

The right to peaceful assembly upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The right entitles persons to gather intentionally and temporarily for a specific purpose and is considered essential for the public expression of a person's views and opinions. The protection of the right is limited to peaceful assemblies (and does not protect violent assemblies such as riots).

The freedom of association protects the rights of individuals to join together with others to formally pursue a common interest, such as political groups, sporting groups, professional clubs, non-government organisations and trade unions. It includes the freedom to choose between existing organisations or to form new ones.

The amendment to provide for the extension of a disaster situation limits a person's rights to peaceful assembly and freedom of association because the COVID-19 declared disaster allows for powers to be exercised that include controlling the movement of persons into, out of, or around the declared area for the disaster situation. The exercise of these powers may result in persons being prevented from entering particular areas or the dispersal of groups of persons.

Privacy and reputation

The amendment to provide for the extension of a disaster situation limits a person's rights to liberty and security because the COVID-19 declared disaster allows for powers to be exercised that include controlling the movement of persons into, out of, or around the declared area for the disaster situation. The exercise of these powers may result in being deprived of their liberty for a period of time.

(b) the nature of the purpose of the limitation to be imposed under the proposed amendment 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 identified rights through the amendment to extend the disaster declaration regulation period is to give declared disaster officers and the Queensland community greater certainty about the anticipated need for the declared disaster situation to continue.

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

By extending the period by which a regulation may extend the disaster declaration in relation to the COVID-19 emergency from 14 days to 90 days, the Queensland Government and declared disaster officers will have greater certainty as to the anticipated length of the declared disaster situation, and will enable communication about disaster situation arrangements up to 90 days in advance. This will also ensure the government has the adequate powers it requires to respond as necessary to the disaster situation.

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

No less restrictive and reasonably available ways to achieve the purpose have been identified. Due to the human to human transfer of COVID-19, restrictions need to be imposed on the movement of persons to reduce the risks of transmission. In particular the movement of persons who are identified with or suspected of having COVID-19 needs to be limited in order to prevent them from circulating freely amongst the general public and spreading the virus.

The amendment will extend the possible length of a declaration to up to 90 days, which is a significant increase from the current provision which only allows for declarations and then extensions of up to 14 days at a time. In determining the appropriate period of time for which the disaster declaration should last, consideration was given to the pandemic nature of COVID-19 and its public health implications. As it is likely that the COVID-19 virus will remain an ongoing threat for some time, a longer period of time is considered appropriate. Further, 90 days is consistent with the length of time for which a public health emergency can be declared under the Public Health Act.

Consistent with public health emergency declarations, the amendment will give declared disaster officers and the Queensland community greater certainty about the anticipated need for the declared disaster situation to continue. It will also allow the Queensland Government to communicate with certainty about disaster situation arrangements up to 90 days in advance. In accordance with section 73 of the Disaster Management Act, if the need for the declaration of a disaster situation is no longer required, the Minister for Fire and Emergency Services and the Premier will declare the end of the disaster situation and the ability to exercise the suite of disaster powers will cease on the day the declaration ends.

The amendment is limited to the exercise of powers for the purposes of the declared disaster, and various protections contained in the Disaster Management Act ensure that the relevant powers are exercised appropriately. For example, these powers may only be exercised by a relevant district disaster coordinator or declared disaster officer in certain circumstances, such as where they are necessary for public safety and the protection of life or property.

Authorised officers are limited to those with the necessary expertise or experience to exercise the powers, and authorisations may be limited or given on conditions specific to the particular circumstances of the officer or event.

Operational practice also ensures that powers are exercised appropriately. In regard to emergency and disaster situations, any assessment of expertise or experience would take into account the training framework that applies to both paid and volunteer officers. Emergency and disaster response practices include limiting potential damage where possible in the context of operational requirements and the safety of individuals (including employees, volunteers and the community). Further, the Disaster Management Act provides specific protections where it is proposed to give directions to the owner of any property. If the property is residential or business premises, directions may only be given with the written approval of the relevant district disaster coordinator.

The power to make a regulation and the exercise of that power must be compatible with human rights under section 58 of the Human Rights Act. Any regulation must also be accompanied by a human rights certificate under section 41 of the Human Rights Act which details whether and how, in the responsible Minister's opinion, the subordinate legislation is compatible with human rights.

- (e) the balance between the importance of the proposed amendment, 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 providing the Queensland Government, declared disaster officers and the Queensland community with greater certainty about the anticipated need for the COVID-19 declared disaster situation, which in turn ensures the government has the adequate powers it requires to respond as necessary to the disaster situation, outweighs the limitation on a person's human rights, including their rights to freedom of movement, peaceful assembly and freedom of association, privacy and reputation, and liberty and security.

- (f) any other relevant factors

Not applicable.

Amendments to the Environmental Protection Act 1994 relating to the granting of environmental authorities and compliance exemptions

The Bill continues amendments providing the Minister with the power to make a declaration waiving compliance of certain conditions of an environmental approval, and to allow the administering authority to issue temporary environmental authorities, where these actions are deemed reasonable because of the COVID-19 emergency. This amendment engages the right to life, in the context of the positive obligations the right places on the State in relation to the environment.

- (a) the nature of the right

The right to life protects the lives of all persons and includes the right not to be arbitrarily deprived of life. The right imposes both negative and positive obligations on the State which can never be derogated under any circumstances, even in a state of emergency which threatens the life of the nation.

One of the positive obligations imposed on the State under the right to life is to take appropriate steps and adopt positive measures to protect life. The UNHRC has said that this extends to taking appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity, including measures relating to the environment. The UNHRC has said, in particular, that 'environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life'. Implementation of this protective obligation under the right to life requires the State to 'develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, ... provide appropriate access to information on environmental hazards and pay due regard to the precautionary approach'.

The extension of the amendments to the Environmental Protection Act could be said to limit the right to life in relation to these positive obligations on the State in relation to the environment under the right.

Currently, all activities deemed an environmentally relevant activity must hold an environmental authority in order to operate in Queensland. The environmental authority is obtained through an application process and, if approved, the administering authority may require annual fees to be paid for the environmental authority. The Bill extends amendments to the Environmental Protection Act to enable the administering authority to approve temporary environmental authorities, or temporary increases to thresholds of existing environmental authorities, without requiring that an application be made or that fees be paid. This allows the administering authority to approve temporary authorities may thereby make an activity causing environmental harm or nuisance done under a temporary authority lawful.

The amendments to the Environmental Protection Act also empower the Minister to make a declaration that exempts environmental authority holder from having to comply with certain conditions on their environmental authority. For example, conditions relating to monitoring and reporting requirements. This may result in the Minister exempting a person from complying with particular conditions of their approvals that may result in environmental harm or nuisance.

In both cases, the amendments to the Environmental Protection Act could be seen to give rise to a potential impact on environmental protections and standards, which may therefore be seen to limit the right to life.

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

The purpose of the amendments is to enable the State to provide greater flexibility to environmental authority holders who are impacted by the COVID-19 emergency, while still maintaining other existing protections to ensure any environmental harm can be adequately managed.

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

The amendments achieve the purpose by providing greater flexibility to environmental authority holders who are impacted by the COVID-19 emergency by reducing the process elements for an environmental authority application under the Environmental Protection Act and by enabling exemptions to be granted by the Minister to persons from complying with particular conditions of their approvals that are impacted by the COVID-19 emergency.

An example of how these amendments will achieve the purpose can be seen in relation to sewage treatment plants. Different thresholds are prescribed for sewage treatment plants in Queensland based on their environmental impacts (such as design capacity). Environmental operating conditions are placed on environmental authorities based on impact to ensure environmental harm is adequately managed. For example, to ensure that contaminants from the activity cannot be released to land or water. The annual fees for environmental authorities are also determined by the 'threshold' the activity falls within. In this example, there may be an instance where a sewage treatment plant is receiving increased volumes of sewage due to the COVID-19 measures in place, such as increased working from home arrangements and other social distancing requirements. However, a sewage treatment plant's operation (namely, the quantity of waste processes) is constrained by their environmental authority.

The amendments to the Environmental Protection Act to allow these temporary measures to take effect will ensure that the operator is not operating unlawfully, and that sewage is not released untreated while the authority holder waits for the administering authority to approve their application for a higher threshold. These amendments therefore provide the necessary flexibility in the environmental authority application process and are therefore considered to protect against possible environmental harm that could occur should the amendments not be made.

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

No less restrictive and reasonably available ways to achieve the purpose of the amendments have been identified.

A number of important environmental safeguards and protections remain in place to mitigate against any potential environmental harm that may occur as a result of these amendments. Importantly, the amendments to the Environmental Protection Act will not remove the obligation of decision makers to comply with the overarching purpose of the Environmental Protection Act to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends. They will also not remove the strict environmental conditions placed on environmentally relevant activities to minimise environmental harm.

Further, the amendments will only provide for a temporary compliance exemption with certain conditions of an environmental authority, for example, monitoring and reporting requirements. Any compliance exemption would only be granted if it could be demonstrated that circumstances caused by COVID-19 meant it was impractical to comply with current requirements.

An environmental authority would typically include conditions limiting the quantity and quality of contaminants or pollutants that can be released. For example, an environmental authority for a sewage treatment plant would have conditions that limit the quantity of effluent released and the quality, meaning the concentrations of nutrients, suspended solids and potential pathogens. These conditions are applied to prevent or minimise environmental harm from any discharges. In addition to the contaminant release conditions, environmental authorities will also typically include conditions requiring monitoring of the effluent or the environment at a varying frequencies.

It is anticipated that suspending the requirement to comply with these monitoring conditions in the short-term will not cause environmental harm, as all other environmental conditions in place to prevent the environmental harm will still apply.

Additionally, a relaxation of the monitoring requirements will not limit the ability of the State to investigate and take action in relation to any report of unlawful environmental harm. If the other conditions of the environmental authority are not complied with, the operator cannot avail itself of the relevant defence to a charge of unlawful environmental harm.

- (e) the balance between the importance of the proposed amendment, 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, having regard to the information above and in particular the safeguards and protections that will remain in place to mitigate against any potential environmental harm that may occur as a result of these amendments, the importance of enabling the State to provide greater flexibility to environmental authority holders who are impacted by the COVID-19 emergency, outweighs the limitations on the right to life to the extent that it places positive obligations on the State in relation to the environment.

- (f) any other relevant factors

Not applicable

Amendments to the Manufactured Homes (Residential Parks) Act 2003 to regulate how site rent increases or decreases may occur in residential parks during the COVID-19 emergency

The Bill continues amendments to the *Manufactured Homes (Residential Parks) Act 2003* (Manufactured Homes Act) to establish a regulation-making power to regulate how site rent increases and decreases may occur in residential parks, during the COVID-19 emergency.

- (a) the nature of the right

Right to property

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 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 Human Rights 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’¹³.

¹³ *WBM v Chief Commissioner of Police* (2012) 43 VR 466, 472 (Warren CJ, Hansen JA agreeing).

The amendments to the Manufactured Homes Act facilitate a regulation-making power that may limit the right to property by restricting a park owner's ability to derive profit from their property through the payment of site rent. This will not prevent a park owner from deriving profit from their property but may temporarily limit the extent of the profit or the timing for receiving it.

This limitation on property rights has now crystallised through the *Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020* (Manufactured Homes Regulation). The human rights implications are addressed in the [Human Rights Certificate](#) that accompanied that regulation.

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

The purpose of the amendment is to continue the head of power enabling the Manufactured Homes Regulation to make modifications to the processes for increasing site rent and disputing a proposed increase in site rent.

The COVID-19 emergency has created a range of financial and logistical issues for manufactured homeowners and park owners which potentially makes the ordinary processes for site rent increases and decreases under the Manufactured Homes Act difficult to apply. Social distancing requirements restrict the ability of homeowners to engage appropriately in a market review process and may cause disadvantage and stress if the ordinary processes were to be followed during COVID-19.

The limitation on the property rights is intended to strike a balance between the right of park owners to derive a profit from their property with the rights of park residents to use and enjoy their home without the imposition of unfair or unreasonable site rent increase during the COVID-19 emergency, noting that many residents are vulnerable and low-income.

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

The power to modify how site rent increases or decreases may occur will help to achieve the purpose of supporting older and potentially vulnerable Queenslanders and maintain a fair balance of rights and obligations during the COVID-19 emergency.

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

No less restrictive and reasonably available ways of achieving the purpose have been identified. While some park owners have implemented temporary 'work-around' processes in cooperation with their home owners to manage market rent reviews, it is recognised that other park owners and their home owners may not be able to achieve such an outcome.

The existing processes for changes to site rent are contained within the Manufactured Homes Act and the stakeholder concerns cannot be achieved through other mechanisms. The creation of a head of power allows for the progression of targeted, time-limited amendments made in consultation with industry and consumers. This method of making adjustments to the respective rights and obligations of park owners and manufactured homeowners in respect of their accommodation is the least restrictive and reasonably available way to achieve the purpose of the amendments.

If the amendments to the Manufactured Homes Act are not continued, the Manufactured Homes Regulation will cease. This will deprive homeowners of the benefit of the measures in the regulation to:

- access enhanced dispute resolution procedures for market rent reviews already undertaken;
- limit future site rent increases to an amount equal to the Consumer Price Index; and
- provide flexibility in the conduct of market review consultation and meetings required to be held under the Manufactured Homes Act.

(e) the balance between the importance of the proposed amendment, 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, allowing a regulation to be made to maintain fairness and equality for home owners and park owners in residential parks during a time of unprecedented disruption and uncertainty, outweighs the limitations on the park owner's right to property that has occurred and may occur in future under a regulation.

(f) any other relevant factors

Not applicable.

Amendment to section 264A of the Youth Justice Act 1992 to allow the chief executive to appoint temporary detention centre employees

The Bill continues amendments to section 264A of the Youth Justice Act to allow the chief executive to appoint appropriately qualified persons as temporary detention centre employees during the declared COVID-19 public health emergency.

However, section 312 of the Youth Justice Act only allows the chief executive to delegate functions and powers under the Act to appropriately qualified public service officers. This excludes a range of potential temporary detention centre employees, such as police officers and people who are not Queensland Government employees within the definition of 'public service officer' under the *Acts Interpretation Act 1954* and the *Public Service Act 2008*. For example, police officers are employed under the *Police Service Administration Act 1990* and therefore not able to be delegated powers under section 312.

The amendments to the Youth Justice Act allow delegation of the chief executive's powers to appropriately qualified temporary detention centre employees to ensure that critical decisions in relation to the security and management of detention centres and the safe custody and wellbeing of children can always be made in a timely way, consistent with the responsibilities on the chief executive under section 263 of the Youth Justice Act.

(a) the nature of the rights

Humane treatment

The right to humane treatment when deprived of liberty requires that all persons must be treated with humanity and with respect for their inherent human dignity, recognising the particular vulnerability of all persons deprived of their liberty. The right is informed by a number of United Nations standards, including the UN Standard Minimum Rules for the Treatment of Prisoners which covers matters such as accommodation conditions, adequate food, personal hygiene, clothing and bedding standards, exercise, medical services, and disciplinary procedures.

The right to humane treatment when deprived of liberty may be limited in the context of a youth detention centre environment through, for example, disciplinary measures such as separation or the use of force. This right may be limited by the delegation of powers to appropriately qualified temporary detention centre employees to the extent that the delegation potentially facilitates less experienced persons exercising the powers than is ordinarily the case.

Rights of children in the criminal process

The rights of children in the criminal process recognises that young persons who become involved in the criminal justice system deserve special protections because of their age. The right requires that an accused child who is detained, or a child detained without charge, must be segregated from all adults; that accused children must be brought to trial as quickly as possible; and that a child who is convicted of an offence must be treated in a way that is appropriate for the child's age.

The UN Convention on the Rights of the Child provides that children in the criminal process should be 'treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedom of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society'.

The rights of children in the criminal process may be limited in the context of a youth detention centre environment through, for example, treatment of a young person that is not consistent with their age or cognitive development. This right may be limited by the delegation of powers to appropriately qualified temporary detention centre employees to the extent that the delegation potentially facilitates less experienced persons exercising the powers than is ordinarily the case.

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

The purpose of the amendment is to ensure the safe operation of detention centres in the event that a large number of regular staff are unavailable for work due to an outbreak of COVID-19, and essential time-critical functions cannot be exercised by the temporary staff engaged to replace them. Without these powers, the safety of children and staff would be put at risk. Ensuring a safe environment for children and staff in detention is consistent with a free and democratic society based on human dignity, equality and freedom.

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

It is not possible to achieve the purpose in any way other than to allow the chief executive to delegate powers to temporary detention centre employees if required. The limitation therefore achieves its purpose.

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

There are no less restrictive or reasonably available ways to achieve the purpose. While the amendments may limit human rights, any limitation will not arise until a decision is made or an action is taken under the delegated powers by a temporary detention centre employee.

The limitation is minimised by only allowing the chief executive to delegate to appropriately qualified temporary detention centre employees, and also by the safeguard in section 27A(10A) of the *Acts Interpretation Act 1954* which provides that the delegation of a function or power does not relieve the delegator of the delegator's obligation to ensure that the function or power is properly performed or exercised.

Further, the provision is only available if the chief executive is satisfied the appointment of temporary detention centre employees is reasonably necessary for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres.

It is also relevant that the decision of the chief executive to delegate a power to a temporary detention centre employee must be exercised in a way that is compatible with human rights under section 58 of the Human Rights Act, and also that the use of the delegated powers by an appropriately qualified temporary detention centre employee in practice must also be compatible with human rights.

The amendments are supported by processes within the Department of Children, Youth Justice and Multicultural Affairs (DCYJMA) to ensure all youth detention staff, whether temporary or permanent, have the requisite skills to appropriately manage and address the needs of children in detention. The impact of the COVID-19 emergency in 2020 resulted in the development of sound processes for the care of young people and management of youth detention centres in emergency circumstances. The essential use of contracted staff has been managed closely with induction training provided that includes first aid, fire safety, suicide response, emergency response, physical intervention, restraints and searches and infection control and PPE application. In any future emergency, many individuals engaged would in the first instance be from other government agencies. This would mean that their existing training and experience could also be taken into account.

In addition, any safeguards applying to detention centre employees, such as the requirement to successfully complete physical intervention training before using reasonable force against a child,¹⁴ will also apply to temporary detention centre employees. DCYJMA will ensure any temporary detention centre employees to whom delegations are made receive the necessary extra training and support.

¹⁴ *Youth Justice Regulation 2016*, section 16(5).

Casework focussed on addressing offending behaviour is delivered by case work staff who would continue to be engaged throughout these periods to ensure a continuum of care for young people. In the event of a future emergency, if it were necessary to engage additional case workers, they would be primarily sourced from within DCYJMA.

- (e) the balance between the importance of the amendment, 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, it is considered that the importance of the purpose of ensuring a safe environment for children and staff in detention, as well as ensuring the functional operation of detention centres, outweighs any limitations on human rights through the delegation.

- (f) any other relevant factors

Not applicable.

Electronic service of quarantine directions

- (a) the nature of the right

Right to privacy

The right to privacy protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally.

The right to privacy is engaged by the amendments, as it allows for an emergency officer to collect and use a person's private email address in order to issue a notice under section 362H of the Public Health Act.

However, the right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. 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.

This internal limitation applies here because the Bill clearly authorises the use of a person's personal information for the purpose of issuing a notice under section 362H. Additionally, the amendments are clear that a direction can only be provided by to a person electronically if the person gives their express consent and nominates a unique email address.

The right to privacy and reputation is not limited.

Fair Hearing; Rights in criminal proceedings

The right to a fair hearing affirms the right of all individuals to procedural fairness when coming before a court or tribunal. It applies to both criminal and civil proceedings, and guarantees that such matters must be heard and decided by a competent, impartial and independent court or tribunal.

Rights in criminal proceedings explicitly protects the right to be presumed innocent until proven guilty. This imposes on the prosecution the onus of proving the offence, guarantees that guilt cannot be determined until the offence has been proved beyond reasonable doubt, gives the accused the benefit of doubt, and requires that accused persons be treated in accordance with this principle.

The Bill may limit these right as it reverses the onus of proof by providing that, unless the contrary is proved, a direction given electronically is deemed to have been received by the person at the time the direction is sent to the person's nominated email address. A person who is given a direction under section 362H and does not comply with the direction commits an offence and is liable to a maximum penalty of 100 penalty units.

Retrospective criminal laws

The right to protection from retrospective criminal laws is both an absolute and non-derogable right at international law, meaning that it cannot be limited nor suspended, even in the case of an emergency.

The right recognises that the criminal law must be sufficiently accessible and precise to enable a person to know in advance whether his or her conduct is criminal. It is aimed at protecting people from being unfairly and harshly penalised in situations where there has been a change in the criminal law since the time they committed the offence. In these situations, a person is not liable to punishment that is more severe than that which existed at the time of the offence. It also protects people from being found guilty of an offence for an action which was not an offence at the time it was committed.

This right is engaged by the inclusion of an amendment to validate quarantine directions given by electronic communication before the commencement of the amendments.

The Public Health Act does not explicitly deal with the issue of how a quarantine direction notice may be given in writing. Also, the Act does not specify at what point in time a direction issued to a person via email or other electronic communication is deemed to have been received by the person. Given the heavy reliance on electronic communications by Queensland's contact tracing and quarantine systems, it is important that there be no doubt as to the validity or effect of directions given by emergency officers under the Public Health Act, including directions that were issued electronically before the commencement of the electronic service amendments in the Bill.

Accordingly, the Bill provides that a quarantine direction under section 362H that was sent by email or other electronic means before the commencement of the Bill was validly issued. This provision ensures there is certainty about the legal validity and effect of quarantine directions that have already been issued. It also ensures that any person who does not comply with a quarantine direction is subject to the penalties for non-compliance in section 362J of the Public Health Act. The amendment may be seen as retrospectively imposing criminal liability on a person.

The right to protection from retrospective criminal law does not extend to prevent retrospective changes that do not form part of the penalty or punishment of an offender, or to changes in procedural law (for example, shifts in trial practice or changes to the rules of evidence). The amendment is considered to fall within this exception, as it is simply a procedural clarification to remove any doubt that a quarantine direction may be issued electronically given the absence of explicit authorisation in the Public Health Act. Validating past quarantine directions does not change the obligations of a person given the direction, nor does it affect the penalty for non-compliance.

The amendment is also consistent with the overall purpose of this right, which recognises that the criminal law must be sufficiently accessible and precise to enable a person to know in advance whether his or her conduct is criminal. Nothing in the Bill criminalises conduct that was clearly lawful at the time the person committed the alleged offence. Queensland Health and the Queensland Police Service have well-established procedures to ensure a person's obligations are accessible and precise.

In practice, a person is first contacted by phone, email, or in person, to advise that they are being issued with a quarantine direction. The emergency officer will then read through the quarantine direction with the person and, before issuing the direction, will confirm that the person understands their obligations and that it is an offence to fail to comply with the direction without reasonable excuse. If necessary due to, for example, the person not speaking fluent English, the emergency officer may engage a translator or contact a family or friend of the person, to ensure the substance of the quarantine direction is communicated to the person in a way they understand.

Accordingly, the right to protection from retrospective criminal laws is not considered to be limited by the Bill.

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

Protecting the health and safety of the public is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom. The purpose of the limitations on human rights is to remove doubt as to how a quarantine direction notice may be given and at what point in time the direction is deemed to have been received by the person when issued via email. By deeming a quarantine direction notice to be received at the time it is sent to the person's email address, the Bill ensures that the notice has been 'given' under the Public Health Act and can be enforced. This supports effective containment and mitigation measures in response to the COVID-19 pandemic and protects Queenslanders from exposure to 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 of human rights is necessary to ensure legislative clarity about the process for issuing quarantine directions, which is heavily reliant on electronic communications to facilitate rapid contact tracing in response to potential outbreaks of COVID-19. This is particularly important for contact tracing, as the sheer volume of potential close contacts of confirmed COVID-19 cases and the size of the geographical area in which directions must be given makes personal service of orders infeasible in many cases. This also supports the efficient management of quarantine systems, including the Queensland Border Declaration Pass system that was recently upgraded to enable quarantine direction notices to be issued electronically.

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

The amendments are considered the best way to achieve the purpose of ensuring a responsive, efficient and clear system for issuing public health directions. For practical reasons, most quarantine directions are given electronically and, in many cases, no alternative method of service is practicable. There is a need to clarify this issue and provide certainty regarding the legal validity and effect of directions that have been or will be issued by email or other electronic communications.

The Bill contains safeguards to ensure that any potential interference with human rights is minimal and no greater than necessary to support the current arrangements. Importantly, a person must expressly consent to receive the direction electronically and nominate their preferred email or other unique electronic address to the emergency officer. This means the person will be aware that they must ensure they receive and comply with the direction, which mitigates any limitation of human rights caused by deeming the person to have received the quarantine direction. This enshrines existing practice, as emergency officers currently seek and record a person's consent to receiving a quarantine direction electronically.

Additionally, section 362J of the Public Health Act provides that a person who fails to comply with a direction does not commit an offence if they have a reasonable excuse for not complying. In this context, a reasonable excuse may include circumstances such as an emergency officer recording the person's email address incorrectly.

- (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

Any limitation on human rights is outweighed by the need to remove doubt and support the efficient operation of Queensland's contact tracing and quarantine systems through the use of electronic communication.

- (f) any other relevant factors

Not applicable.

Quarantine fees

(a) the nature of the right

Imposition of quarantine fee

Right to property

Every person has the right to own property alone or in association with others and must not be arbitrarily deprived of their property. 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 requirement to quarantine potentially limits the human right to property to the extent that the proposed policy will require payment of monies.

Prepayment of quarantine fees

It is difficult to assess the human rights implications that may arise from these amendments because the human rights implications will not crystallise until:

- a regulation has been made prescribing cohorts of travellers who are required to pay quarantine fees in advance of their arrival in Queensland; or
- the chief executive determines the amount that a person must prepay, the manner in which they must prepay the required amount, and/or the date and time by which the prepayment must be received.

To that end, it is possible that many of the human rights protected by the Human Rights Act may be engaged by these amendments and the secondary instruments that may be made or exercised under the empowering provisions.

The protected rights most likely to be limited by these amendments are:

- *Right to equality before the law*: This right may be limited by a regulation prescribing some classes of people that must pay quarantine fees in advance, as the law may apply differently to different people entering Queensland;
- *Freedom of movement*: The amendments to require certain traveller cohorts to prepay quarantine fees may limit the freedom to enter Queensland, if they have the practical effect of restricting someone from entering the State if they do not have the financial means to pay.

This is not intended to provide an exhaustive list of how human rights may be limited by the enactment of the empowering provisions.

The purpose of establishing a head of power to prescribe requirements for prepayment of quarantine fees is to improve the State's ability to recoup quarantine-related expenses and support Queensland's quarantine system to remain sustainable and responsive to changing public health and economic circumstances.

It is expected that the need for quarantine accommodation will remain until a large number of the Queensland population has been vaccinated and the risk of widespread outbreaks has subsided. Until that time, additional demands will be placed on the quarantine system as more people from a broader range of cohorts are permitted to enter Queensland following a period of mandatory quarantine.

The amendments will improve the financial sustainability of Queensland's mandatory quarantine system and enable the system to accommodate additional cohorts of travellers as public health risks improve and travel restrictions are eased in line with efforts to support Queensland's economic recovery.

It is anticipated that, initially, a regulation will prescribe cohorts of travellers who are well-defined, in a position to plan their travel to Queensland well in advance, and likely to have their travel paid for by an employer or other sponsoring third party.

Prescribing cohorts who must pay quarantine fees in advance would not involve a loss of rights for a person in this cohort. This is because the amendments expand the ways a person may enter Queensland by enabling the system to accommodate additional traveller cohorts. For example, a regulation may prescribe a cohort of certain foreign nationals who would not otherwise be able to enter Queensland, to facilitate their entry under a sponsorship agreement with an employer.

The Bill contains several protections for prescribed traveller cohorts by:

- enabling full or partial refunds to persons that have paid their quarantine in advance. This will allow for the reconciling of anticipated and actual fees where, for example, a person's travel arrangements change and they do not arrive in Australia, or they are required to quarantine for a shorter period than would ordinarily be required, such as if they are transferred to a hospital; and
- allowing a person in a prescribed cohort to apply for a waiver of fees, unless a regulation prescribes that a particular cohort of travellers is ineligible for a waiver.

Importantly, there are no specific penalties for failing to prepay quarantine fees under the Public Health Act. This requirement will instead be implemented through administrative means.

The specific impacts on human rights will be addressed in the human rights certificate accompanying any regulation made under the empowering provisions.

Electronic service of documents

Right to privacy

The right to privacy protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally.

The right to privacy is engaged by the amendments, as it allows for the chief executive to collect and use a person's private email address in order to give a person a document under Chapter 8, part 7AA of the Public Health Act.

However, the right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are ‘unlawful’ or ‘arbitrary’. 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.

This internal limitation applies here because the Bill clearly authorises the use of a person’s personal information for the purpose of giving a document under Chapter 8, part 7AA. Additionally, the amendments are clear that a direction can only be provided by to a person electronically if the person gives their express consent and nominates a unique email address.

The right to privacy and reputation is not limited.

Fair Hearing; Rights in criminal proceedings

The right to a fair hearing affirms the right of all individuals to procedural fairness when coming before a court or tribunal. It applies to both criminal and civil proceedings, and guarantees that such matters must be heard and decided by a competent, impartial and independent court or tribunal.

Rights in criminal proceedings explicitly protects the right to be presumed innocent until proven guilty. This imposes on the prosecution the onus of proving the offence, guarantees that guilt cannot be determined until the offence has been proved beyond reasonable doubt, gives the accused the benefit of doubt, and requires that accused persons be treated in accordance with this principle.

The Bill engages these rights by providing that, unless the contrary is proved, a document given electronically is deemed to have been received by the person at the time the direction is sent to the person’s nominated email address. There may also be implications if, for example, the person does not receive an invoice and is unable to make a timely application for waiver of quarantine fees.

These rights are not limited by the amendments. Failure to pay quarantine fees is not a criminal offence and there are penalties for a person who does not pay by the due date. Collection of quarantine fees, including consequences for non-payment, is managed through existing administrative process.

The Bill includes safeguards to ensure the process for invoicing and collecting quarantine fees is not unduly restrictive. For example, a person must pay within 30 days of being given the invoice, or a longer period agreed by the chief executive and the person. This provides flexibility to ensure a person is not disadvantaged due to issues in receiving an invoice or other document.

(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

International human rights law indicates that economic considerations *alone* are insufficient to justify a limit on human rights. However, ‘financial considerations wrapped up with other public policy considerations could qualify as sufficiently important objectives [to justify a limitation on human rights]’¹⁵ and could be justified where measures to reduce expenditure were undertaken to ‘promote other values of a free and democratic society’.¹⁶

The purpose of requiring persons travelling from overseas to pay a fee for quarantine is to support the Government’s ability to sustainably manage the COVID-19 emergency and ensure travellers into the State do not expose Queenslanders to the disease. The fee reflects the fact that they are receiving the benefit of the services provided by the hotels and locations in which they are quarantined, including food and cleaning services being provided. The government is providing these services because they are necessary to enable a person entering Queensland to comply with quarantine requirements and meet their responsibility to protect their families and the community from the spread of COVID-19. It is considered appropriate for those receiving the benefit of these services to contribute to these costs.

In cases where government services are provided, it is standard practice for cost recovery to apply in appropriate cases. In this instance, it is considered a fee should be charged to ensure that costs are born primarily by those receiving the benefits of the services provided rather than by the community as a whole. This will ensure that the costs of quarantine are equitably distributed and will encourage persons to carefully consider how and when they will travel to Queensland.

The requirement for specific cohorts to prepay quarantine fees will provide more flexibility for payment and collection arrangements and increase the proportion of quarantine fees that are paid. This ensures that sufficient resources are available to the State to guarantee the quality and sustainability of Queensland’s quarantine system and ultimately, its management of the significant public health risk caused by the COVID-19 emergency.

The fee is not being imposed arbitrarily. Case authority suggests that ‘arbitrary’ in the human rights context refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought.¹⁷ The fee cannot be considered capricious, unpredictable or unreasonable, as it is directly related and proportionate to the legitimate aim of ensuring that the costs of mandatory quarantine are distributed fairly and are payable primarily by those who receive the benefits of the government services provided.

There may be instances where charging a fee could be considered unjust because it would impose a hardship on certain classes of individuals. To mitigate this concern, the amendment to provide for a waiver from the payment of fees will also continue to provide for all or part of the fee to be waived in certain circumstances. As discussed further below, the chief executive will have the discretion to waive all or part of a fee for persons who are vulnerable or facing financial hardship. The hardship scheme will be applied in a way that is consistent, reasonable and proportionate.

¹⁵ *Newfoundland (Treasury Board) v NAPE* [2004] 3 SCR 381, 411 [69] (Binnie J, for the Court).

¹⁶ *Newfoundland (Treasury Board) v NAPE* [2004] 3 SCR 381, 411 [75] (Binnie J, for the Court), citing *Egan v Canada* [1995] 2 SCR 513.

¹⁷ See eg, *Swancom Pty Ltd v Yarra CC* [2009] VCAT 923; *R (Fisher) v English Nature* [2005] 1 WLR 147.

(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

Any limit on human rights arising from imposing a fee for mandatory quarantine is considered necessary to have a clear and equitable mechanism in place to sustainably manage the costs associated with increasing international arrivals to Australia. Given the continued growth of COVID-19 cases globally and advice that international border restrictions are likely to be one of the last restrictions to be lifted, it is considered necessary to require payment of a fee for mandatory quarantine.

Improving the financial sustainability of Queensland's mandatory quarantine system is essential as additional demands will be placed on the quarantine system as more people from a broader range of cohorts are permitted to enter Queensland following a period of mandatory quarantine. The Queensland Government has already resumed the return of seasonal workers to Queensland. On 1 December 2020, the Premier and Minister for Trade informed the Australian Government of Queensland's intention to submit the Queensland Student Arrival Plan in accordance with the *Protocols and preconditions for international student arrivals*. The return of particular cohorts, such as critical and skilled workers and persons who support service-related industries such as tourism and education, is seen as critical to the State's economic recovery.

The amendments to the Public Health Act to require upfront payment of quarantine fees support this purpose by ensuring that persons who are capable of paying fees in advance in appropriate circumstances do so. This improves cost-recovery and ensures the costs of quarantine are equitably distributed.

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

If the amendments to require that a person pay a quarantine fee are not continued, the Queensland Government will be unable to issue invoices to recover quarantine fees to contribute to the cost of government accommodation during mandatory quarantine. This would weaken the State's ability to respond to the COVID-19 emergency in a manner that is both effective and financial sustainable.

If the amendments to require prepayment of quarantine fees are not progressed, the only realistic alternative is to continue the current cost recovery process of seeking payment after a period of quarantine. Continuing the status quo would not achieve the purpose of ensuring the quality and sustainability of Queensland's quarantine system.

The amendments to the Public Health Act will continue to include a provision to allow the fee for quarantine, or part of the fee, to be waived by the chief executive. This will apply to cohorts who must prepay quarantine fees, unless specifically excluded by regulation. This will allow a hardship scheme to be available for vulnerable cohorts. The hardship scheme will consider two separate cohorts—those facing financial hardship and vulnerable persons. Vulnerable persons may include those with English as a second language, pregnant women, those with newborn babies, unaccompanied minors, those with no home in Australia and those with significant health issues. The inclusion of a hardship scheme is considered to be an appropriate way to ensure that human rights are not unreasonably limited.

In addition to offering a hardship scheme, payment plans will be offered so that persons can enter into an agreement to repay the quarantine fee over time. This will allow a person to pay the fee for quarantine over time, without having to pay the amount upfront, which is considered to also reduce any limitation on 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

The benefits of ensuring that sufficient resources are available to the State to guarantee the quality and sustainability of Queensland's quarantine system and, ultimately, its management of the significant public health risk caused by the COVID-19 emergency significantly outweigh the limitations on human rights.

- (f) any other relevant factors

Not applicable.

Conclusion

In my opinion, the Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021 is compatible with human rights under the Human Rights Act because it limits the identified human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

YVETTE D'ATH MP
MINISTER FOR HEALTH and AMBULANCE SERVICES
and LEADER OF THE HOUSE

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