



COMMUNITY SUPPORT AND SERVICES COMMITTEE

Members present:

Ms CP McMillan MP—Chair
Mr SA Bennett MP
Mr MC Berkman MP
Mr JM Krause MP
Ms CL Lui MP
Mr RCJ Skelton MP

Staff present:

Ms L Pretty—Acting Committee Secretary
Ms R Mills—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE PUBLIC HEALTH AND OTHER LEGISLATION (EXTENSION OF EXPIRING PROVISIONS) AMENDMENT BILL 2022

TRANSCRIPT OF PROCEEDINGS

MONDAY, 14 MARCH 2022

Brisbane

MONDAY, 14 MARCH 2022

The committee met at 10.30 am.

CHAIR: Good morning, everyone. I declare open this public hearing of the Community Support and Services Committee inquiry into the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022.

I respectfully acknowledge the traditional custodians of the land on which we meet this morning and pay our respects to elders past, present and emerging. I acknowledge our colleague the member for Cook, Ms Cynthia Lui, who is a First Nations woman. We are very privileged to have her as a member of our committee. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we are now all very fortunate to share.

On 22 February 2022, the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022 was referred to this committee for examination, with a reporting date of 25 March 2022. My name is Corrine McMillan. I am the member for Mansfield and chair of this committee. With me are: Stephen Bennett, the member for Burnett and deputy chair; Michael Berkman, the member for Maiwar; Jon Krause, the member for the Scenic Rim; Robert Skelton, the member for Nicklin; and Cynthia Lui, the member for Cook.

The purpose of today's hearing is to assist the committee with its inquiry into the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022. I ask that any responses to questions taken on notice today are provided to the committee by 5 pm on Monday, 21 March 2022.

The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. All those present today should note that it is possible you might be filmed or photographed during the proceedings by media and images may also appear on the parliament's website or on social media pages. The program for today has been published on the committee's webpage. There are hard copies available from the committee staff. I ask everyone present to turn mobile phones off or to silent mode. Those who are dialling in may wish to mute your devices until you choose to interact with the committee.

CARLSON, Mr Jason, Advocacy Director, Strata Community Association (Qld) (via videoconference)

CORKE, Mr Kerry, Policy Consultant, Australian Logistics Council (via videoconference)

IRONS, Mr Chris, Senior Vice-President (Advocacy), Strata Community Association (Qld) (via videoconference)

MARLOW, Mr Kristian, Policy Officer, Strata Community Association (Qld)

SMITH, Ms Rachel, Head of Government and Policy, Australian Logistics Council (via videoconference)

CHAIR: Welcome to you all and thank you for taking the time to dial in today. Thank you for your work as we debate this bill. I invite you to make a brief opening statement, after which committee members will have some questions for you.

Mr Irons: Strata Community Association (Qld) is the peak body for Queensland's body corporate and strata titles sector. Our large and growing industry affects the 1.2 million Queenslanders who live, work and play in strata title properties. Queensland's strata sector is comprised of over 50,000 schemes and more than 500,000 individual lots. That includes duplexes, townhouses, villas, high-rises, suburban sixpacks, short-term holiday letting, hotels and commercial complexes.

Public Hearing—Inquiry into the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022

SCA (Qld) represents strata managers, community title schemes with committee members acting as nominees, lot owners as individuals, and service providers to the strata industry including specialist insurers, painting suppliers, energy suppliers, solicitors, accountants, water and plumbing providers, banks, elevator maintenance professionals, cleaning providers, surveyors, valuers, glaziers, IT providers and pool servicing and maintenance providers. That really is a full breadth of our industry. The strata sector significantly underpins the tourism and property development industries. Increasingly, high-density housing as part of a body corporate is going to be the norm for property owners, investors and tenants.

SCA (Qld) welcomes the opportunity to speak today. We are grateful to see a degree of 'business as usual' returning to society and strata. It is our view that, whilst many of the powers granted under the emergency legislation were necessary to protect the health of Queenslanders, commerce has normalised, vaccination rates are high and employment numbers are strong. We note, as we did in our submission, that some of the flexibilities granted to bodies corporate via the COVID legislation were of benefit and seek ultimately to have these things made permanent through legislation or regulation. Those things include most particularly financial measures such as provisions around borrowing, deferral of debt recovery and increasing flexibility with respect to sinking fund budgets. We understand that it is not necessarily being considered as part of this legislation.

The potential for new variants may require committees to be granted the flexibility to close down common property facilities pursuant to a public health order. We suggest that consideration be given to the extension of this power in a limited discrete fashion. We do not believe that we can predict the future when it comes to this virus.

We also feel it is important to note, for the committee's consideration, that the increased time spent at home throughout the pandemic has made body corporate disputes more potent. The Office of the Commissioner for Body Corporate and Community Management—I was formerly commissioner—is the government agency tasked with providing information and dispute resolution to the strata sector. The SCA acknowledges the outstanding work of that office but emphasises that the office is already under a lot of pressure to meet increasing workloads. We believe that the increased workload driven by the growth of lots and COVID requires an expansion of resourcing. We thank the committee for the opportunity to attend today. We welcome any questions.

Ms Smith: Thank you for the opportunity to appear today before the committee to discuss the public health and other legislation amendment bill. ALC is the peak national body representing major companies participating in the freight and logistics sector. We represent the end-to-end supply chain. We represent operators, customers and infrastructure providers. ALC's focus is on delivering enhanced supply chain productivity, sustainability and efficiency.

Trade affects every Australian every day everywhere. Common goods purchased by Australians such as food, clothing, household appliances and medicine all need to be transported by freight operators. The COVID crisis and recent extreme weather events have highlighted the importance of a freight chain capable of efficiently moving things as basic as food, essential groceries and personal hygiene products to places such as supermarkets and emergency response points.

As natural disasters and supply chain challenges have demonstrated, there can be associated spikes in demand for essential groceries, fuel, medical supplies and pharmaceutical supplies. Under the temporary measures provided by public health orders, there was a relaxation of the curfew regulations. This enabled the supply chain to meet these spikes in demand. For almost two years, out-of-hours deliveries have been managed respectfully within neighbourhoods with few, if any, complaints. Freight and logistics operations in Australia are affected by local government planning regulations which relate to operating hours, vehicle size and noise limits. In Australia there are 537 local councils. This makes doing business incredibly complex for a national operator. Australia is, after all, a single national economy.

Recent research undertaken by the ALC in June 2021 showed that more than 72 per cent of over 2,500 respondents felt that the state government was best placed to manage the regulation of the freight and supply chain. The committee may be aware that the New South Wales government recently made the decision to adopt temporary planning measures triggered by COVID in perpetuity. This provides certainty to business and supports economic recovery in a post-COVID world.

ALC members are committed to working with communities and acknowledge that they have a social licence to operate. Members have been investing in cleaner, greener and quieter technology to assist in meeting neighbour and customer expectations. Some of these measures include: quiet pallet jacks and roll cages; electric vehicles; the training of staff, including drivers and loading dock

workers, to modulate behaviour; reversing technology such as cameras and proximity detectors, removing the need for reversing alarms; and acoustic technology in floors, ceilings and walls. Further, ongoing flexibility is required to maintain pace with the growth in online home delivery and ecommerce. This was initially accelerated by the pandemic and does not show any sign of slowing down. This is expected to be an enduring feature of this period.

As we transition to economic recovery and as Queensland recovers from the recent devastating weather events, ongoing flexibility with deliveries outside of peak hours enables more deliveries to be spread across the day. This is particularly important as people return to CBDs. Full retail shelves benefit all Queenslanders. The ability to efficiently move freight improves productivity outcomes and, in time, reduces prices without necessarily reducing residential amenity. ALC members request that, as is the case in New South Wales—the regulations pertaining to curfews are maintained at a state government level—the relaxations afforded due to COVID-19 be adopted in perpetuity. This will support an efficient supply chain and enable a productivity uplift that will benefit the Queensland economy. Thank you again for the opportunity to appear today.

Mr BENNETT: In the submission from Mr Irons, I noticed that the financial relief package—though not specifically named in this particular legislation—is something that you want to see considered in future legislation. I understand that it is about borrowing, debt deferral and so on, but is a return to normal not a better way of generating economies of scale and profitability for the people you represent?

Mr Marlow: We understand that returning to business as usual will engender more certainty in the sector. More broadly, some of the issues we have raised go to the idea that the current legislation for body corporate is perhaps a bit archaic. It is 25 years old this year. We are looking to reform that permanently to ensure community living is more flexible and becomes a first choice for many more Queenslanders.

Mr BENNETT: In essence, you are advocating for changes to the Body Corporate and Community Management Act but in your submission you talk about supporting the continuation of the current COVID laws. We talking about two different things, though, are we not?

Mr Marlow: We are talking about two different things. Our view is that there is a reform process underway. We hope that some of these flexibilities will be maintained for a few months, because we think they are good reforms. We think they are sensible. Hopefully they make their way into legislation or regulation in the near future.

Ms LUI: With regard to the waiving of penalty interest, what action does the SCA recommend that the committee support?

Mr Carlson: SCA supports lifting the freeze and the return to normal with respect to penalty interest being applied to overdue contributions. The reason SCA takes that position is that, under the legislation that applies in normal circumstances, the strata community retains the discretion to waive a member's liability for penalty interest having regard to the circumstances at hand and whether it is reasonable. Should there be an economic impact on a particular member of a strata community which makes it such that they cannot pay their levies in a normal way, a strata community can waive that liability for penalty interest.

Mr BENNETT: Rachel, you mention the research in your submission that 72 per cent of respondents feel that the state government is best placed to manage the regulations which lead to the logistics issues that you raise. Could you give us a bit more of an overview of how that research came about and other conclusions that may be drawn from that?

Ms Smith: Most definitely. Off the back of the national cabinet decision to lift curfews in response to the great toilet paper pandemic of March 2020, we commissioned some research with a broad range of respondents—regional, rural and metro—on their understanding of curfew regulations and whether they were managed by local or state governments and also who they thought was best placed to manage those regulations. There was an assumption that state government already managed those regulations. Part of the research results was that respondents felt it was unfair on businesses to have to manage so many different local government planning regulations when there could be a consistent state government approach.

Mr BENNETT: Are these outside COVID regulations? Are we talking about state planning issues?

Ms Smith: Yes, to some degree. Yes is the short answer to that question.

Mr BENNETT: Are the temporary planning measures that you mentioned in your contribution from the New South Wales government in separate legislative reforms?

Ms Smith: Yes, they are. They are temporary planning measures that were adopted due to COVID. They conducted some further investigations and a reform piece, and now they have made changes to the state government planning legislation that means the planning legislation pertaining to curfews now sits with the state government.

Mr SKELTON: My question is to the Strata Community Association. Your submission raises the issue of short-term accommodation schemes. It is presumed that you are referring to Airbnb and other operations. Are you able to elaborate on the issues that have occurred during COVID with regard to these?

Mr Marlow: Certainly. Earlier on there was a lack of clarity about what to do with regard to short-term accommodation, particularly with Airbnb because it is privately run. As the pandemic has gone on, the guidance has become clearer. We would like to get at the forefront of people's minds the issues and the nuances of strata, because they were ignored early on in the pandemic and there was a lot of confusion. As the pandemic went on, we were pleased to see greater clarity.

Mr Irons: One of the examples we might give is that, particularly when the pandemic was at its worst, there was a raft of uncertainties around things such as access to common property in a body corporate. By that I mean swimming pools, spas, gyms, saunas. I know that I—and I am sure Jason did as well—had many people come to me asking those questions: 'Can they be shut? Can we restrict access?' Then when the vaccine started to ramp up, they were asking, 'Can we restrict access to only people who are vaccinated?' That became a particular issue for guests of short-term letting as well. We had situations where the building manager or the onsite manager was not sure how to engage with those short-term guests. It is exactly as Kristian pointed out: the uncertainty that occurred in those situations can only lead to tensions and disputes.

Mr BENNETT: Rachel, I wish to ask about your recommendations at the back of your submission. For the committee's benefit, could you talk about delivery curfews and what currently exists in Queensland?

Ms Smith: Yes, certainly. It is a bit of a moving feast because there are different regulations in different areas. Currently, curfews restrict deliveries between certain times. That means that we have heavy vehicles on the road during peak times, during congestion times, when they could be taking advantage of shoulder periods to do those deliveries—when mums and dads are not dropping their kids off at school or picking them up or when people are not coming home from work at 5 pm. We are not necessarily saying 24-hour delivery, but being able to take advantage of those shoulder periods at, say, seven o'clock would make a huge difference in terms of productivity and efficiency of the supply chain and also reduce congestion and things like emissions.

Mr BENNETT: To be clear, there are currently delivery curfews in place. Is that around noise or road safety?

Ms Smith: The size and tare of vehicles is around road safety, but the curfews we are particularly talking about here are about noise. A lot of the regulations that are in place were implemented during the 1980s and have not been reviewed since then. Obviously vehicles are much quieter now compared to then. Also with the introduction of EV technology the delivery vehicles are going to be transitioning to quieter and quieter technology and they are significantly more costly to invest in. Therefore, in order to invest in that technology, industry needs to be able to take advantage of those shoulder periods for delivery.

Mr BENNETT: In essence, it is a good time to be a truck driver?

Ms Smith: They have been very busy for the past two years.

CHAIR: Ms Smith, obviously during COVID we witnessed a number of supply chain issues. What are your thoughts going forward as to what we can expect?

Ms Smith: For supply chain issues?

CHAIR: Yes.

Ms Smith: That is a really big question. In terms of supply chain issues, Australia is a very large and broad nation. We have quite an efficient supply chain. We have multiple modes of freight. In terms of supply chain issues, we have a lot of domestic supply for things like groceries, which is good, and toilet paper. I do not know if you are aware of this, but 80 per cent of our toilet paper stock comes from Australia. That is why we had some issues initially in the pandemic. Because there were closed borders, there were issues trying to move freight across them. There will be challenges, like with any sector moving forward, but industry is very committed to working with government to overcome some of those challenges. One of the areas that governments can help with is relaxing curfews so we can keep an efficient, moving supply chain and meet consumer demand. That is your local grocer right through to your Bunnings store.

Mr KRAUSE: I have a question for the Strata Community Association in relation to the issue around penalty interest. I assume that relates to issues of body corporate fees and other contributions to funds. Do you have any data or quantitative information around how many strata title schemes have encountered financial difficulties or gone into deficit during these past couple of years? Obviously the ability to charge penalty interest would be an incentive for people to contribute more quickly. Do you have any information about that? Has it been an issue?

Mr Irons: We do not have any quantitative data about that. Bodies corporate by definition cannot really go into deficit. Even though sometimes they do, they are not really supposed to. They are always supposed to be in the black. No, we do not really have any quantitative data on that. Jason, are you aware of anything?

Mr Carlson: I am sorry, my connection keeps dropping out every five minutes so I missed the question. I presume it might have been around figures about penalty interest?

Mr Marlow: We do not have any data, but I will say that bodies corporate are not allowed to conduct a business so they cannot return a profit. The debt recovery process is quite litigious and can be very expensive, so the ability to charge penalty interest is probably one of the few small kind of disincentives they have. Again, as Mr Carlson noted earlier, there is discretion to ignore that or not activate that provision if a person is in genuine need.

Mr SKELTON: The bill extends the emergency powers with regard to quarantine orders. Does the ALC support this?

Ms Smith: Do you mean quarantine measures in terms of employees, or are we talking about close or casual contacts?

Mr SKELTON: I would say broadly. In terms of employment, it would probably be more pertinent in the sense of how important logistics is. In terms of employment, how has that been affecting you?

Ms Smith: Close and casual contacts and quarantine periods are very important for industry. For example, at the height of Omicron we had up to 40 to 50 per cent of the workforce furloughed or stood down because they were a close or casual contact or in quarantine. That is actually quite detrimental to the movement of freight and just getting food and groceries and essential supplies out of distribution centres. For our industry it is very important.

Mr BENNETT: Kristian, this is a bit off-topic, but I am interested particularly around housing shortages and issues confronting us as a state. In relation to the proliferation of Airbnbs, do you have particular challenges about what that looks like in your sector?

Mr Marlow: Yes, absolutely. Airbnb is a major source of acrimony in strata schemes. It is a source of disputes. At present it is very difficult, or nigh on impossible, for a body corporate to ban Airbnb or short-term letting in a scheme. That is certainly something we would look at as part of any reform package in the longer term. We have had queries around potential liability with regard to Airbnb should an infected person rent that Airbnb and cause an outbreak. The time for that kind of issue being a big concern has probably passed; I think we are at a different phase of the pandemic. Yes, broadly speaking, Airbnb is a huge issue in the strata sector.

CHAIR: It being 11 am, we are out of time. There were no questions taken on notice. I thank those representatives from the Australian Logistics Council as well as the Strata Community Association (Qld). Thank you for the great work you do with your respective constituents and communities. We thank you immensely for your time today.

HOLMES, Ms Neroli, Deputy Commissioner, Queensland Human Rights Commission

McDOUGALL, Mr Scott, Commissioner, Queensland Human Rights Commission

CHAIR: Thank you for your time today and for the support you have shown our committee to date. I invite you to make a brief opening statement, after which committee members will have some questions for you.

Mr McDougall: Over the course of this pandemic, we have seen a raft of restrictions which have limited the rights of Queenslanders. Without being privy to the relevant evidence and expertise on which the government has based its pandemic decisions, it has not been possible, nor is it the role of the commission, to provide any sort of running public commentary on the reasonableness of the restrictions or their compatibility with human rights. Rather, the role of determining whether COVID restrictions on human rights are reasonable and proportionate ultimately, at the moment at least, rests with the Supreme Court.

However, it is clear from the high numbers of complaints and inquiries about pandemic response measures made to my commission over the previous two years that people are feeling the impact of ongoing restrictions. This impact could be significantly lessened by changes to the current framework, particularly those which would increase transparency and accountability in decision-making and give people appropriate rights of review to decisions among other things.

The commission is therefore opposed to the extension of emergency powers proposed by this bill, and it is my belief there may not be sufficient justification for continuing the limitations on human rights under the current framework. Instead, we strongly recommend the temporary measures be replaced by fit-for-purpose pandemic legislation which is transparent, accountable and more compatible with human rights. Our submission to this inquiry provides a comprehensive overview of the changes we recommend, including greater consultation before the introduction of some restrictions. The mask mandates are a good example of where this could have been beneficial, and I am happy to discuss this further today.

At a minimum, it is our position that the government must urgently through legislation clarify how the Human Rights Act applies to the decisions of the CHO and their power to make public health directions. At present, confusion over whether or not the CHO's public health directions are legislative or administrative in nature means that they exist in a potential vacuum of oversight, not subject to the requirement of preparing a statement of compatibility under the Human Rights Act and potentially not subject to judicial review.

The government have done an excellent job of keeping Queenslanders safe throughout this pandemic and, again, we acknowledge their work and commitment to protecting the right to life. Given that the emergency phase of the pandemic is arguably behind us—or at least that we are in between emergency phases—it is time to make sure some of the issues which have arisen in this time of crisis are resolved and that any future pandemic responses protect Queenslanders and protect both their rights and, to the greatest possible extent, their health.

CHAIR: Thank you for your considered opening statement.

Mr BENNETT: Thank you for joining us today and for your submission and the honesty in the way it is written. I refer to the 2020 bill and the 2021 bill, and we have just been looking at external providers who gave advice against some potential breaches of the Human Rights Act. You said in your statement that we have now moved to a different phase—and I am not trying to put words into your mouth so please correct me if I got that wrong. What are some of the more serious breaches of human rights that came to your attention during the last 12 months that the committee might not be aware of?

Mr McDougall: Right from the very start it was originally about the issue of being deprived of liberty in mandatory quarantine. There were significant rights obviously engaged in that, and the government was responding very quickly to something it did not really know a lot about so that applying that precautionary principle a lot of those limitations could be justified. The commission made very strong recommendations about ensuring that if people are being detained against their will they are being given access to fresh air and to balconies and windows. Clearly, all of the evidence was pointing to those as being really important and also consistent with international obligations.

Moving beyond quarantine when we saw some of the border closures, in retrospect the impact of some of that decision-making I do not think really took into account in an expansive way the rights of people to return to their houses. The real value of the Human Rights Act is that it requires decision-makers to look for reasonably available alternatives to imposing restrictions on people. That is the value of the act. I think in some of those decisions that were made about border closures the decision-makers really did not fully explore some of the reasonably available options.

There have been a multitude of restrictions on human rights imposed throughout the pandemic. Going through each one of them and analysing them with their human rights compatibility would require access to the expert evidence that was available at that time, and that is certainly beyond our capacity. I note that there are several Supreme Court proceedings currently underway where the Supreme Court is attempting to do that, and it is a moving feast because the pandemic keeps changing the whole time.

Mr SKELTON: Your submission notes the issue of people having been quarantined in conditions where there was not daily access to fresh air. I assume that is hotel quarantine. Is this still occurring? Approximately how many complaints have you had about this issue since 2020?

Mr McDougall: I do not have the exact figures for the number of quarantine complaints, I am sorry, but it would be well and truly in the hundreds. In terms of it being an ongoing issue, we obviously welcomed the introduction of the Wellcamp facility, which was purpose-built. Ideally, that would have been in place at the outset of the pandemic and would have saved a lot of grief. We recently had a complaint—it was probably about a month ago—where someone was complaining that they were being held in a hotel close to the airport that did not have access to a balcony. I think the arrangements that were in place at that particular time were covering people who were just coming off transitional flight arrangements. If it was the only stock available then it could possibly be justified, but ideally, after learning so much through the pandemic about the importance of access to fresh air, no quarantine stock should be sourced if it does not have opening windows and balconies.

Mr KRAUSE: Thank you for attending this morning. I take you back to the last point with the member for Burnett about the expert evidence. You said there were some Supreme Court proceedings on foot. Last week with the department we actually asked for evidence underpinning the request for these powers to be extended from the director-general, but we were basically told that the parliament could not receive that—that it was a decision of government not to give it, even though they are asking us for approval of that bill again. In your opening statement you referred to a vacuum of oversight. Were they your words?

Mr McDougall: Yes.

Mr KRAUSE: I would say not just in respect of Human Rights Act matters but more generally too. Could you elaborate about how you would like to see that oversight improved from the Human Rights Act perspective and more broadly as well?

Mr McDougall: In Victoria they have now introduced legislation that is pandemic-specific, fit-for-purpose legislation. The ACT has also introduced a bill that has not yet been passed. Under that Victorian model, the Premier makes the declaration of the emergency and then it is up to the minister to make the public directions. In making those directions, the minister has to consult with the CHO but may—and I emphasise ‘may’—also consult with other parties, for example human rights commissions. The minister also has to provide a statement of reasons, has to provide the advice given by the CHO and has to provide a statement of compatibility with human rights. That is a really effective, open and transparent model. We have been advocating for something similar to that right from the outset of this pandemic.

Mr KRAUSE: Are they regulations that are reviewable by parliament and also subject to judicial review?

Mr McDougall: They are disallowable so the parliament can vote them down.

Mr KRAUSE: Do you know about judicial review?

Mr McDougall: This is the issue at the moment where we are seeking clarification about the existing CHO’s powers—whether they are legislative or administrative in character. Interestingly, in Victoria prior to introducing this new model, the Victorian government argued that the Chief Health Officer’s directions were actually legislative, not administrative. They argued that in legal proceedings, but now they have clarified the position so that they are administrative. As we have said in our submission, we think we should follow the lead of those other human rights jurisdictions—Victoria and ACT—and introduce fit-for-purpose legislation and bolster the level of accountability and parliamentary oversight of the decision-making.

CHAIR: Do you know whether position of the federal CHO—that is not his correct title—is administrative or legislative?

Ms Holmes: I do not know if we have actually heard what the position is there—whether they view that as an administrative or a legislative decision.

CHAIR: I am just interested because I know that CHOs from all the different states and territories all work together.

Mr KRAUSE: It is a bit different though, Chair.

Mr McDougall: Under the national cabinet, it is the state bodies that actually implement the national cabinet directions.

Mr KRAUSE: They are the ones who exercise the actual powers. You mentioned also people who could not return to their homes and the fact that there was not adequate consideration of alternatives to that approach. All of us would have heard a lot of stories and accounts of that. Is your office engaged with any of those parties in terms of trying to seek redress against the government in relation to those decisions that were made? I am aware that people have suffered loss, financially and otherwise, as a result of those decisions. Do you have anything you can tell the committee around that?

Mr McDougall: I would have to come back to you if you are looking for information about complaints we received about border closure decisions. It is open to someone to make a complaint to the commission—and my overwhelmed complaints team will be distressed at hearing me say that—about a decision that they think unlawfully limited their human rights, and we have to assess those on a case-by-case basis. I could talk for hours giving you advice about the legal options—

Mr KRAUSE: We only have 14 minutes left so we best not.

Mr McDougall: I would have to get back to you on whether there are any outstanding current complaints, but there is certainly scope for a complaint to be made.

Ms Holmes: There are very limited options, though sometimes it is quite a legal analysis as to whether or not human rights have been engaged and if the person is covered by the act. Unfortunately for some people, we do not accept and deal with every complaint that comes in and people do feel sometimes a bit sad about that, but we do a very thorough analysis of each situation to see if it is covered by the Human Rights Act. I do have a figure here that, as of 10 March, we have had 876 COVID related complaints received by the commission since March 2020. That is 26 per cent of all the complaints we have received in the last period and some of those, unfortunately, will still be in our backlog.

CHAIR: There was a question from the member for Scenic Rim. Are you happy to take that question on notice and get back to the committee?

Mr McDougall: Just to clarify, it is the number of complaints about border closures that we have received?

Mr KRAUSE: Yes, that would be good.

Mr McDougall: Yes.

CHAIR: Thank you, Commissioner.

Ms LUI: Thank you, Commissioner, for your time here today. In your opening statement you mentioned that the urgent measures have now served their purpose and should be replaced with legislation that provides sufficient safeguards for human rights. I am just interested to know your thoughts on potential new variants into the future, especially given our track record over the past two years in meeting those human rights principles that you were talking about?

Mr McDougall: That is a good question, thank you. I think the success of Queensland to date in handling the pandemic has been about the public confidence that Queenslanders have had in decision-making. They have accepted extraordinary restrictions on their human rights. As we have progressed further and people have experienced a wave of COVID, I think it is going to be even more critical to address future waves where decisions are going to have to be made by government that are going to be very tough and the appetite of the public to forgo their rights is really going to be tested.

It is really important that there is an effective, transparent model in place that maintains public confidence in public health decision-making. That is why we think it needs to be as open and transparent as possible and, when decisions are made, that statements of reasons are provided, the evidence behind those decisions is provided, and the assessment of human rights impacts is also made public. That will continue public confidence in decision-making that is going to be essential in dealing with future waves of the pandemic.

CHAIR: I note that the Premier, the Minister for Health and the CHO have frequently, if not daily, stood up in front of the public to make statements. From my perspective there is a degree of transparency there. What is the information that you are suggesting is provided—what more information?

Mr McDougall: There is a level of detail that is required. In the course of the Supreme Court proceedings we are privy to some of the internal analysis that has been done by decision-makers to date and there has been some very good, robust human rights analysis done in the process of making those decisions. That is the sort of thing that we say should be made public. I do commend those public officials who have, on a daily basis throughout the pandemic, turned up to public conferences and faced the media, but that alone is not enough, particularly as we move into the further stages of the pandemic where the public's interest in those conferences wanes and they become less the focus. What we need is more transparent accountability of decision-making.

Mr BERKMAN: I appreciate your time this morning. Aside from the other features of the new Victorian model, you have touched on the Pandemic Declaration Accountability and Oversight Committee. I have previously explicitly advocated for a select committee of the Queensland parliament to oversee the exercise of these powers. It seems clear enough from your submission, but in the interests of clarity, is that a model that you would support in Queensland?

Mr McDougall: Yes, I think it would be a valuable addition. I guess one example where a committee like that would be useful is with the mask mandate, where we ended up receiving a lot of complaints. There were many people who were unable to wear a mask for various physiological or psychological reasons, yet the system that was rolled out for managing the exceptions left exposed individuals who had a valid reason for not wearing them but also left a vacuum that small business operators felt they had to fill—becoming de facto police for the mask mandate. I think the problems associated with that could have been avoided if there was just a little bit of consultation prior to that decision being rolled out and some sort of system put in place where at the very least someone could apply online for an exemption and then make a choice whether or not they were going to display something that would show that they at least asserted they had an exemption. You could have had something like a statutory declaration involved in that so you try to weed out those who would try to abuse that system. Something like that I think would have been a benefit that could flow if there was greater consultation at the time of making decisions.

There is absolutely a tension in a pandemic of making very quick decisions to save lives, and I have said numerous times throughout the pandemic that the last thing I think the Human Rights Commission should do is stand in the way of decision-makers trying to save lives, but as we move further and further down and we have more time—so this little interlude now between waves does give us the luxury of time to be looking at how we improve the system—I think something like a committee would be really useful.

Mr BERKMAN: I think you both, if I remember, had some experience before the committees that were set up in the last parliament. The health committee, separate from the Economics and Governance Committee, had oversight of the health and economic responses. Are there particular features of a select committee or an oversight committee that you think would allow us to improve that scrutiny? For example, I am interested in an independent or a non-government chair and a single committee with oversight of all facets of the response. Are there any suggestions or other features you could identify?

Mr McDougall: I think the Victorian committee has adopted quite a creative approach where they have people representing the community on the committee and also human rights advocates. I think a model that is inclusive would be helpful.

Mr BERKMAN: Stepping outside of just elected representatives?

Mr McDougall: Yes.

Mr SKELTON: Is the Human Rights Commission able to provide examples—you have touched on a few—of what it considers were the most egregious breaches of human rights in Queensland during the pandemic? What were the impacts on those impacted persons? You have touched on it around the edges.

Ms Holmes: Commissioner McDougall has talked about hotel quarantine. On the whole, where we felt that human rights were unreasonably impacted on we had a complaint process where we did do some very early intervention with the Queensland Department of Health and they were remedied very quickly. They were often things in the rush of what was going on and trying to sort things out between police and the health department and the hotel people who were looking after hotels. Sometimes there were things that were missed, like people with mental health conditions that were being kept in inappropriate facilities, or people who had children that might need to have different facilities, or food intolerances where people were getting inappropriate meals. On the whole, when we did notice there was a quarantine human rights potential breach, the commission, through its own Brisbane

complaint-handling mechanism, was able to resolve the issue to the satisfaction of the complainant while satisfying the health needs. They were probably some of the ones that you might say were egregious if they were not fixed up, but on the whole we did manage to sort those out quite quickly.

I think some of the ones with people trying to move interstate were quite complex. If it is people returning to Queensland or people from interstate wanting to move to Queensland, they all have different coverage under the Human Rights Act, but with the circumstances of people waiting at the borders for long periods of time who were homeless, people with young children who were needing emergency medical treatment or children returning from a visit to a grandparent—when there was a gap in the time frames when people were allowed to move around and then suddenly the borders had to shut again—where we had coverage of them we tried to sort those out. I do not think we were concerned the borders were shutting again, but it was just those exemptions when people needed to come through for emergency type situations or when very young people were involved. They were the sorts of things we were trying to deal with.

On the whole we can say that when we found that there was something really untoward happening we did get quite dramatic and quick responses about that. That was in the stage before there were vaccinations. I think, as Commissioner McDougall said, now that we have high vaccination coverage and there is a lessening of the seriousness of the current wave, we have more time to look at things in a more fulsome way to avoid those situations occurring.

Mr KRAUSE: Did you ever have words with the government or Queensland Health about issues where sporting people were allowed to come into Queensland but others were not, when they wanted to visit sick or dying relatives or were moving house, and the proportionality around those measures and directives?

Ms Holmes: I think we just deal with each case as it comes along. We generally do not do a compare and contrast, but obviously on those issues we will leave it to the commissioner to speak for the commission on how he sees it.

Mr KRAUSE: Answer as you see fit, Commissioner.

Mr McDougall: I think that issue was picked up in a particular edition of the *Courier-Mail*. We did make some public comment about the importance of consistency in decision-making.

Mr SKELTON: We have got to the point now where the Queensland Human Rights Commission says that the CHO's decisions are not accompanied by a reason or analysis of human rights limitations. Does the QHRC know why we have not been provided with those details? It is noted that this matter is currently before the court. Has the court indicated when it is likely to rule on the matter? Obviously the Victorian legislation that you have used as an example does provide that, but in this instance there is no requirement, or you are saying that it is not being broadcast publicly.

Mr McDougall: Under the existing law there is no requirement for the CHO to provide a statement of reasons for decisions. There is uncertainty, as I said before, about whether those CHO decisions currently are administrative or legislative in character. In terms of the question about the Supreme Court, obviously I am not going to speculate on Supreme Court proceedings. Does that answer the question?

Mr SKELTON: You did have your view that we should obviously clarify things similar to legislation in Victoria. I will take that as your answer.

Mr BERKMAN: If we leave to the side the more comprehensive changes that Victoria has made in its last round of legislation, is there scope within this framework to simply add a requirement that a statement of reasons and advice be provided by the CHO when new directions are made and to simply clarify the administrative nature of these decisions? Could those features effectively be tacked onto the bill we are looking at to resolve some of the concerns the commission has?

Mr McDougall: That is a technical question. I would probably defer to the Office of the Queensland Parliamentary Counsel, but I do not know why there would be any impediment to doing that.

CHAIR: Thank you, Commissioner and Deputy Commissioner, for your time today. The committee very much appreciates the work that you do to improve the legislation here in Queensland. We thank you sincerely for giving up your time. There was one question taken on notice. We have a deadline of 5 pm on Monday, 21 March 2022, if that suits you, to get the answer back to us. Thank you.

DUNN, Mr Matt, General Manager, Advocacy, Queensland Law Society

THOMPSON, Dr Brooke, Policy Solicitor, Queensland Law Society

CHAIR: Welcome. Our committee very much appreciates the time that you have given to attend and present to us on this very important bill. I invite you to make a brief opening statement, after which time our committee members will have some very important questions for you.

Mr Dunn: Thank you very much, Chair, for inviting the Queensland Law Society to appear at the public hearing on the Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2022. In opening, I respectfully acknowledge the traditional owners and custodians of the land on which this meeting is taking place. I recognise the country north and south of the Brisbane River as the home of the First Nations people to inhabit this land and pay my deep respects to their elders past, present and emerging.

Over the past two years the Queensland Law Society has welcomed the opportunity to work with government to draft legislative measures that have enabled Queensland to navigate and respond to the effects of the pandemic. We are extremely pleased that some of those changes in relation to document execution and a number of other things have proven to be of great benefit to our members and the community more broadly and that those measures have now been made permanent.

However, it is important to remember that those measures flow from extraordinary powers given to government through legislation which was originally urgently passed in the emergency period and that some of the measures have led to an abrogation of fundamental human rights. We accept that there is an ongoing need for some of the measures to continue as the effects of the pandemic continue. However, more needs to be done to ensure that the powers and decisions, and the arrangements flowing from them, remain justified and, critically, are reviewable appropriately.

In our previous appearance before a parliamentary committee, I believe in July 2021 when I appeared before a different committee on the previous extension, we called for better scrutiny and oversight of all COVID-19 related legislation and executive action by a parliamentary committee. A committee should be able to inquire into these matters without a specific referral from the government and should be able to receive public submissions. This has not yet happened but we repeat our call.

I am joined today by Dr Brooke Thompson, who is our policy solicitor and knowledgeable in all things. We are happy to take the committee's questions.

Mr BENNETT: Generally, it is really important that we get consistency. The committee is hearing about scrutiny and oversight issues. In particular, the Human Rights Commissioner was just talking about that at great length. You mentioned in your submission about a parliamentary committee. I think the member for Maiwar in particular fleshed out the structure of that committee. Obviously we would have an interest in how that looked. Do you have any thoughts about how you would see that operating effectively and the makeup of the membership of that parliamentary oversight committee?

Mr Dunn: The exact composition of the committee is not something that we have turned our minds to necessarily. Obviously it needs a balance of the different stakeholders in the parliament to be represented on that particular committee in order to be able to review. Issues such as who the chair should be and whether or not it should be a non-government member is something that we necessarily have not canvassed. We see the need for it to fit into the family of parliamentary committees in a way that is consistent with the other parliamentary committees so what you have, in effect, is just an exercise of parliamentary, legislative and executive action very much in the same way with the business that you conduct presently.

Mr BENNETT: You mentioned that you have some sympathy for the fact that some human rights may be breached but that we are in a pandemic. I am not trying to put words in your mouth but it was something to that effect, I guess. Are there any examples that the Law Society has of more serious breaches of human rights that you have come across?

Mr Dunn: There is a number of parts of the scheme set up in the emergency, and necessarily so. Probably the one that has been the most controversial and also the one that has garnered the most publicity is around quarantine and around isolation, which is in effect detention. That is a matter that has to be balanced in terms of what is justified and what is not, in terms of the circumstances and when it is done and the way that it is done to respond to the nature of the pandemic.

What we see in the Public Health Act generally is that when a public health officer gives a person a direction to isolate or do quarantine because of a public health issue, there are rights to review that to a magistrate because it is a matter of detention. In the nature of the pandemic that we
Brisbane

Public Hearing—Inquiry into the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022

have just faced, and are still in some way facing, those rights to review were not there because it was expected that the number of people who would be going into isolation, quarantine and detention would be so large that it would be physically impossible to work through all of the appeals.

There is a balance to be achieved in those things. There is liberty—the opportunity to not be deprived of your freedom—and, at the same time, there is a public health imperative and a public health outcome that needs to be achieved. That is not just a static thing. You cannot just assess that in March 2020 and say, ‘That is the way it is and, therefore, it applies in exactly the same way today.’ Having said that, today we are just coming off our first Omicron wave and we have a new Omicron subvariant, BA.2, starting out in New South Wales, as Omicron did. The nature of what is happening is changing very rapidly.

Interestingly, the chair of the parliamentary committee that looked at the last bill for extension thanked the QLS for their submission. He also noted—

... it seems extraordinarily fast moving that even since 7 July when the submission was submitted, the events we have seen in New South Wales with the new strain of the virus and how it has made such a big impact on Sydney has been quite profound even in that short time.

In that particular case, the chair was referring to Delta. Delta has come and Delta has gone and we have had another wave come since then. That was the last time we came together to look at the extension. Everything is moving very rapidly and constantly needs some reassessment in particular circumstances. There is a question there for how the balance is to be achieved with respect to those public health measures and what types of rights can and should be curtailed but also for how long.

Mr SKELTON: Your submission comments on the aged-care direction No. 13 and states that similar exemption is required under the equivalent hospital and disability accommodation directions to ensure equitable access to essential legal services in those settings. Are you able to provide some examples of issues that have arisen among your members and their clients in hospital and disability accommodation?

Dr Thompson: We have had a few of our members report that they have been unable to access hospitals and residential aged-care facilities to allow for the making of wills and enduring documents. A lot of the time when someone is in hospital those are time-sensitive documents. They need to be made quickly. There have been restrictions, I guess, on legal practitioners entering those facilities. I will say, though, that a new residential aged-care direction was issued on Saturday that removes from the definitions ‘restricted area’, so it does seem that there are no more restricted aged-care facilities and we do have unrestricted access to those facilities now.

Mr SKELTON: My partner is an aged-care nurse, which is why I am going down that path. I know that they have been in isolation because of the Omicron wave and the spike, and most of our fatalities are occurring there. You mentioned the legislative reforms around being able to do things online and being a bit more flexible in our legal matters. Is that something that could be considered if they go back to isolation and that type of thing?

Dr Thompson: What we are hearing from our members, again, is that it is not just people in hospitals and residential aged care. We now obviously have COVID-19 circulating more broadly in the community. There are significant numbers of people in isolation, whether that be lawyers or their clients. These documents that traditionally have to be made in person—such as wedding signatures—are no longer able to be executed at the time that the person is in isolation. Having those modified arrangements for wills and enduring documents just facilitates those documents to be made in times when large numbers of the population are not able to meet in person.

Mr BERKMAN: I want to touch on the part of your submission that speaks to the need for the right to review or appeal decisions made under these powers. We had some discussion a moment ago with the Human Rights Commission. They have made suggestions that when decisions are made using these extraordinary powers there should be statements of reasons available for those decisions and release of advice on which the decisions are made. They were also suggesting clarification that these are administrative decisions rather than decisions of a legislative nature. Can you give us any more guidance around what you think review and appeal of these decisions should look like—not necessarily appeal by individuals about the impacts of decisions on them but review in respect of health directions as a whole when an instrument is made?

Mr Dunn: We were actually just discussing this before we came in, because we thought it might be one of the issues that might arise. It is important to separate the framework into two aspects here—or potentially three, I guess, but at least two. Conceptually you have the legislation. The legislation empowers the Chief Health Officer to make directions and those directions are in the character of mandatory rules that need to be followed. That exercise of making the direction is itself

not really an administrative decision because it is not applying the law to a particular person's circumstances and making a decision about their rights and entitlements; it is more like a piece of rule making. Our concern is that that rule-making exercise is not itself subject to parliamentary disallowance, as regulations are, as subordinate legislation is. It is a new species of subordinate legislation that is not reviewable by the parliament, hence our argument that there should be review mechanisms for that.

Ordinarily when you make those types of rules and that function there should be consideration for human rights—there are requirements for the legislation to be brought with compatibility statements of human rights and such things—and there is review through the organs of the parliament through the committees, as we have suggested. You have that level there which is the structural level. Then below that you have how those rules are applied in circumstances, so you have particular cases. For example, you might have a PCR test and you return positive. You will be directed to isolate by Queensland Health or one of the metro health boards. That direction to isolate is itself a decision of an administrative character because that is the enforcement, the application of those rules that have been set by the Chief Health Officer. That is the administrative decision, in a very high level way, that should be reviewable for the particular person who is subject to that.

Under the Public Health Act, as I said before, when an emergency officer requires you to isolate or quarantine under the normal parts of the act there is a review mechanism to a magistrate for that isolation, whereas there is not when that is done under one of the existing health directions. Again, that was done in the beginning because it was uncertain as to how long it would go on and how many people would be involved in that and whether the system could cope necessarily. I presume the department could speak to that a lot more than I could. There is a real balance to be achieved in ensuring that people who have decisions made about how those directions apply to them can then seek some type of recourse.

I think probably the better way to look at it is as a two-tier structure. One is legislative or at least of a legislative character. At the Law Society we have rule-making power because we have a supervisory jurisdiction over the solicitors of Queensland as part of our regulatory function that we share with the Legal Services Commission. We make rules. Those rules are of that legislative character. They are a function of that kind of exercise. When we then come to apply those rules against individuals and have particular outcomes, that is a decision of an administrative character.

Mr BERKMAN: When the society makes those rules—that legislative function—what is the nature of any review rights that exist in respect of that rule-making role? How does that look?

Mr Dunn: Our conduct rules are probably the best ones to use as an example, where we set the standards of conduct expected of solicitors. Those conduct rules are not effective until a notice is issued by the Attorney-General as a piece of subordinate legislation. That brings the rules into effect. A parliament can disallow that notice, which means that the rules actually do not come into effect and are not actually dealt with. That leaves it at that legislative level, that oversight parliamentary level. Then in terms of the decisions we make—if we suggest that someone has not fulfilled their obligations and we take some action against them—that is an administrative decision and there is a review process to QCAT for a merits review of that. It is actionable in that particular way.

Mr BERKMAN: Would you similarly support health directions being disallowable instruments or is there a different way that we might approach that kind of review and appeal process?

Mr Dunn: If you consider those health directions to be of that legislative character, of that rule-making character, then really the appropriate mechanism is that there is parliamentary oversight because it is, in effect, a delegated piece of legislation. It is a delegated rule-making power. It seems a bit inconsistent or inappropriate to put the courts in the role of the parliament as a supervisory organ for legislation making. That is not the role of the courts. The role of the courts is to look at the law that has been created and whether it has been appropriately or not appropriately applied to an individual in a particular case. That is the essence of administrative decision-making.

Mr BERKMAN: That is very helpful, thank you.

Ms LUI: We heard from one of the previous witnesses about the temporary measures. They said that the temporary measures should be replaced with COVID measures that align with human rights. That aligns with what you have been saying this morning. With regard to the two tiers that you mentioned—the legislative and the administrative—and given that we are still going through this global pandemic, I am interested to know your thoughts around how we could find that good balance. We have had real success stories over the past two years, but then we are at a point now where we are moving into pretty much the unknown with multiple variants and potential variants into the future. I am interested in your thoughts on how we can tackle this and find that really good balance between the administrative and the legislative.

Mr Dunn: It is a constant exercise of weighing up as to where the balance is with respect to whether the measures that are being taken are the right measures: are they appropriate, are they justified, are they proportionate and are they the measures we need to take at a particular point in time? As I said before, they do not remain static. Something that you did two years ago is not necessarily still justified today, but it may be. That really depends on the nature of the circumstances.

At the legislative level, what we have seen is these bills come back to the parliament a number of times for parliamentary review, parliamentary scrutiny and parliamentary adoption, which is a healthy thing, rather than the bill being introduced at the beginning for five years and then it just exists through. It is a good thing. What we have not seen is those directions being subject to that parliamentary oversight, which is the issue we have talked about. I suspect the stakeholders are really talking about whether human rights are appropriately incorporated into those rules that we talk about—the directions—and whether the rule making is there. That is really something for parliament to have a view about.

I guess in terms of your question overall, though, we still have to listen to the advice of our health experts. Our public health experts are the people who really should have some of the loudest voices in this because they are the ones who really are the experts in the area. The voices of the lawyers are important too, to remind us that there is always a need for a balance of the rule of law, there is a balance of review, so that we do not forget about that. We have to always remember and we always have to take that into account in the balancing act. That is always a very important part. That is why our submission is that that process of the rule making needs to be lifted to a level where there is more scrutiny and a bit more debate.

One of the difficulties with it is that they make a lot of directions and they make them very quickly, as they have to, and things keep changing a lot. It is always going to be a difficult trade-off between the desires for human rights and the protection that we want and what we need from that public health perspective. We need not necessarily be driven by the lawyers, but also we need to listen to our public health experts about what is required. We always have that voice that we and others will give that we have to remember about human rights, we have to remember about balance and we have to remember about oversight, because these are the fundamental bedrocks of our system.

Mr BENNETT: It has been quite enlightening to hear about the levels of scrutiny and negotiations that we have been talking about this morning. You made a couple of points about the ever-moving feast that is the pandemic. With magistrates and the tribunals that sometimes get called into existence through disputes, whether it is quarantine or some other part of the COVID pandemic, for me that would seem incredibly clunky, with all due respect to the courts. Sometimes it takes months to get through that process. Is that a real problem? Are people getting caught up in the system? I guess the system could change around them before they get their hearing date.

Mr Dunn: Certainly that is a potential problem. I think what we are talking about here is more the funding and resourcing of our courts and judicial bodies. I thank you for the question because that is always one of our issues.

Mr BENNETT: We love QCAT.

Mr Dunn: We certainly would be grateful for any additional funding towards the courts and tribunals that could be sent their way.

Mr BENNETT: You make that point in your submission, and I think it is well made and appropriate because there is an ever-increasing demand on that sector. Through our electorate offices we hear of so many issues—not even COVID related—that end up before members.

Mr SKELTON: You say we need a dedicated committee, and we were talking earlier about it being a parliamentary committee. Previous submitters said that there exists in the Victorian framework a different type of committee, which has members of the community on it as well. I am not sure if you are aware of what Victoria has done in their pandemic response, in legislation. Would you support a measure such as that?

Mr Dunn: We have seen the summary that the Queensland Human Rights Commission has made in its comprehensive submission. It is an interesting approach that they have taken in Victoria—not necessarily a bad approach. The interesting thing to consider is: is that oversight committee a function of the executive government, in which case it is not a part of the parliament, or is it part of the parliamentary process because this is itself a legislative action? If parliament wanted to create such a committee and have it engaged with members of the public, so be it. Part of the rationale for the position we proposed was that this is in itself a legislative function so it should be overseen by parliament, because parliament is in charge of the legislation in Queensland. That may be a slightly

simplistic view. I certainly do not criticise the different approach they have taken in Victoria necessarily, but the interesting part of it is that one of the reasons for it to be a parliamentary committee is so that there is that independence of oversight, rather than necessarily being a part of executive government or an independent arm of executive government checking on executive government when you have a parliament with committees already existing.

Mr SKELTON: It is a bit complicated and ponderous?

Mr Dunn: It is a different approach. Perhaps time will tell whether or not that is the best approach.

Mr SKELTON: Of course, like any legislation.

Mr BERKMAN: I have one question related to the preamble to my last question. As I mentioned, the Human Rights Commissioner is interested in seeing statements of reasons for the directions and release of the advice on which they were based. Adding those two features and even the clarification that these are disallowable instruments, do you see any technical or other obstacles to including those features in the bill that is before the committee at the moment?

Mr Dunn: I would have thought that was a reasonably easy job for a parliamentary drafter, to add those elements in. It will be interesting to understand from the Department of Health administratively whether it can meet those requirements when producing that draft legislation. It may require significantly additional resources in their legislative drafting area and their public health drafting. Up to this point they have done a really great job through the pandemic to keep churning out an enormous number of new directions, amendments, changes and things through the process. They have done a really excellent job of that. There may well be a resourcing issue from the flow of that, but I do not think from a legislative point of view it is a particularly complicated task. Making it happen on the ground might be somewhat more challenging.

CHAIR: Our time together has expired. Mr Dunn and Dr Thompson, thank you for your time this morning. The committee appreciates the work of the Queensland Law Society on a number of bills that come before parliament. We certainly appreciate your advice to ensure that the legislation here in Queensland is the best it can possibly be.

Proceedings suspended from 12.03 pm to 12.30 pm.

COPE, Mr Michael, President, Queensland Council for Civil Liberties

CHAIR: Good afternoon, Mr Cope. It is good to see you again. The committee thanks you for appearing before us this afternoon. We will start with a brief opening statement, after which our committee will have some important questions to ask you.

Mr Cope: Thank you. I really only want to pick up on a couple of points that are made in other submissions. First of all, I note that the Law Society in its submission discusses the issue of the right of review for those who may be detained under the legislation. I note that the original justification for there being no right of review for those who were detained was that lots of people might be detained because of lockdowns. As they note, 'We are assured that is no longer going to be the case,' which reinforces the argument for a right of review. Similar comment might be made on the question—as is raised in our submission—of restoration of the right to compensation for people who suffer losses as a result of orders made under the directions.

Finally, I want to note with some concern the issue raised by the Human Rights Commission; that is, there is an argument that the Human Rights Act does not apply to the CHO's directions because they are legislative instruments. Whether or not that is correct I do not know, but the legislation should be amended to make it clear that all the directions of a chief health officer are subject to the Human Rights Act in all its aspects and not just in the obligation under 58(1)(b). That is all I have to say.

Mr BENNETT: In your submission you talk about these laws and you compare them to wartime. Some other issues crept in. Could you flesh that out for the committee so we can understand the society's concerns about the—these are your words—draconian powers?

Mr Cope: Yes.

Mr BENNETT: I am just interested in fleshing that out, because I guess you have your eyes on a lot of legislation and a lot of issues that confront vulnerable Queenslanders.

Mr Cope: From my historical research, the sorts of powers that the Chief Health Officer has and has exercised—locking down whole parts of the state—are unprecedented even in wartime. They certainly did not exist during the Spanish flu; I read a paper that was done by somebody at one of the universities who went through those powers. The capacity to do what the Chief Health Officer does is extraordinary and as we have described it. The Chief Health Officer effectively has become another legislative chamber. He or she has enormous powers to regulate the daily lives of Queenslanders.

As we said from the very beginning, we accept there were emergency situations which justified emergency powers. We always argued over the details of those emergency powers but we accepted they were needed. We always maintained that extraordinary powers need extraordinary supervision, which we would say has not happened. As I say, from my reading of Queensland history I cannot see at any point in time when these sorts of powers have been held by an individual. They are the personal powers of a chief health officer, in my view. No-one can tell the Chief Health Officer what to do, despite the fact that conversations appear in the media between the Premier and the Chief Health Officer in various guises. If the Premier were to tell the Chief Health Officer what to do, that would be an immediate ground for judicial review because they are personal powers of the Chief Health Officer, and they are extraordinary powers. Whilst, as I say, we have always accepted there was an emergency and some emergency powers were justified, the point is: when are they going to stop? When is the point in time at which they finish? That is the question we have raised repeatedly.

The last time the powers were reviewed there was a fairly clear indication that the powers would end when everybody who wanted to be vaccinated had an opportunity to be vaccinated. We have passed that now, and what do we have now? We have an extremely vague statement that we need them because we need flexibility. Well, as we say in our submission, when is that going to stop? Is it when the virus disappears? Is it when we get some new drugs? Well, maybe. At the moment we do not see when they finish, and we do not see the government articulating any understandable criteria by which they will finish.

Mr SKELTON: Your submission at page 4 speaks about the contact-tracing app and repeats your strenuous opposition to this 'most pernicious measure'. Does the council accept there were positives to the app, and did you support people who refused to use the app?

Mr Cope: The part of the app we did not support was it being used as a passport. Prior to that, when it was just being used for contact-tracing purposes, we accepted it once the government had passed the privacy legislation—which we accept was very comprehensive privacy legislation—but we do not support vaccine passports. That is the bit we objected to. We did not object to it being used as a contact-tracing mechanism; we objected to its being used as a passport. In other words, you

have to produce it—as you still do—in order to get into certain premises. We object to that. We never objected to it 100 per cent. We accepted it had some uses as a contact-tracing mechanism, but that is no longer being used. Contact tracing has stopped, so we see no further use for it. It should go.

Mr BERKMAN: There have been suggestions made by other witnesses and submitters that there should be requirements for health directions to be accompanied by a statement of reasons and the health advice on which the directions are based. Most recently the QLS talked about the possibility of these directions being designated disallowable instruments. Are those changes that you would support?

Mr Cope: Yes. I think our submission does say that the health advice should be published. The statement complying with 58(1)(b) that says they have gone through the Human Rights Act and they have considered all the relevant provisions should be published. We have obtained a copy of that under the right to information legislation, but it should be published. I wrote and asked for it, but we were not given it. We got it when we applied for it under the Right to Information Act. I do not understand why it should not be published.

Yes, something has to be done about controlling them, and a disallowable instrument would be one way of doing that. As I said in our submission, our position has been that really there should be a select committee, like there is in the Senate, supervising this. The whole thing of a committee looking after it is that there is no committee anymore with a specific reference in relation to this legislation. We would welcome any improved supervision of the legislation, and a disallowable instrument is certainly one way of doing it, yes.

Mr BERKMAN: If all of those measures were put in place, how far would they go to addressing the QCCL's concerns?

Mr Cope: Anything is an improvement, but we are still back to the question which there is no answer to, apart from the vague answer that these powers will end, essentially, when we no longer need them. That is not a good enough answer. That is an emergency which goes on forever. That is totally unacceptable on any level—liberal political theory, human rights or international human rights. You cannot have an emergency that does not stop. The government will not tell us when it is going to stop.

All of the things we suggested as amendments to the legislation to improve the level of accountability, to improve the rights of people who may be detained—all of those things will make life much better from our point of view, but it still does not answer the question. As I say, last time we had a very specific criteria; now we have none. All around the world, all these emergency powers are disappearing everywhere, including in democratic states in the United States, where it is a highly charged—it has also been here—political issue. As I was waiting to come in here I saw in the *Guardian* that Macron has announced he is removing almost all the controls in France, including his vaccine passport. We may be behind the eight ball again. If everybody else is doing it, why aren't we?

CHAIR: I am just interested in your last comment, 'If everyone else is doing it, why aren't we?' Who else other than President Macron are you aware of—

Mr Cope: The United Kingdom, Denmark—all of the states I linked to. There is some discussion in places like Sweden and Norway that I have read. It seems to me to be a coming thing in Europe, and they have had worse COVID problems than we have. That is where I get that from. It is not just France. Denmark has got rid of them completely; the UK has. I did not see France until I was sitting outside, but I have certainly seen discussions in places like Sweden. I think they are all gone. The Netherlands is going to go very shortly, if it has not already.

CHAIR: They are all countries that have experienced winter and are coming into summer. Are there any that are coming into winter that are removing those powers?

Mr Cope: No, but, as our submission says, have we not been repeatedly assured that our health system has been made robust to deal with these things? If you get a situation where you have another variant or something like that then the logic of the submission is that the emergency can be reinstated. But the government should be required to justify that, not just continually roll over an emergency which started in March 2020, when it was entirely justifiable, but which is now at the very least suspect. We would say it is more than suspect.

Mr BENNETT: I am just interested in examples that have come across your desk. Do you have examples of instances where Queenslanders have been adversely affected or have you represented people in that space?

Mr Cope: No, I personally have not represented people. The big issue we were repeatedly contacted about was hotel quarantine and those conditions. I think the work of Scott McDougall in particular seemed to result in a significant improvement in those things, and the new Wellcamp and Brisbane

all those sorts of things are an improvement. I have one colleague on the council—I just cannot remember the details—who was representing a woman. I think the charge has now been dropped. It was one of those lockdowns that came in at four o'clock on the day it was announced. She was outside her place of work waiting for an Uber to take her home and she was charged with breaching it. It was not as bad as Victoria; there were examples of police charging people right at the very start of the pandemic, but that was only sometime last year. One of the ones the Premier announced came into force at four o'clock in the afternoon. This woman was charged. She had been in her place of work all day, left at four o'clock and was outside waiting for an Uber to take her home. Eventually my colleague got the charge dropped, but it was around for a number of months. I remember asking her about it on a number of occasions and I was only recently told that it has been dropped.

This is the sort of thing—totally unnecessary. The police did not have to do it and the police could have dropped it. It took a long time to drop it. This is what happens when you give people these sorts of powers. They will inevitably be abused. That is why they have to stop. Once they become entrenched—once people get used to them, whether it be the governed or the governing—they will not go because people will say, 'Oh, you've been putting up with them for the last two years. What's wrong with them?'

Ms LUI: In your submission the QCCL notes that it accepted emergency powers were justified at the start of the pandemic. At what point did the council change its views?

Mr Cope: We changed our views the last time they were renewed, when our submission was that they should not be renewed past 31 December. As I said, at that point in time the indication from the government was—and in the material that we received from the Department of Health—that once everybody who wanted to get vaccinated had received an opportunity to do so the powers would no longer be necessary. The population is highly vaccinated. If people want to wear masks, they are perfectly entitled to do so. People are entitled to take measures to protect themselves. I notice that the TGA has on 20 February approved Evusheld, the AstraZeneca prophylactic, which you can take if you are immunocompromised as a preventive measure for COVID. We have Paxlovid, which is the Pfizer medication. They are available now in this country for people who are ill or immunocompromised and need protection which they cannot obtain from vaccines.

The steps in the process seem to be falling into place. This is not March 2020. It is not a situation where, to use the language, the life of the nation is threatened by a virus for which there is no cure and no vaccine. We are not in that place anymore. These powers have to come to an end. At least somebody needs to tell us clear criteria as to when they will come to an end. You had criteria which was articulated last time and which has now past—it has been complied with; now we have a criteria which is meaningless.

Mr BERKMAN: Mr Cope, you have just spoken to the vaccination targets—the availability of vaccines to everyone who wants and is able to receive one. I am interested in what other criteria you might have considered that could be the basis of that decision to end the state of emergency, the emergency powers.

Mr Cope: The principal defence mechanism against the virus is vaccination. There is all sorts of debate about mask mandates. I see that there was a book published in January in the United States by a journalist who has compared the data in masked and unmasked jurisdictions and found no statistically significant difference in the COVID rates between those places. Some other people say that there is a 20 per cent reduction. I do not know whether they think that is significant or not.

The world has moved on. Peer reviewed data now says that Paxlovid is 90 per cent effective in treating COVID. Then the other one from Merck—the name escapes me for the moment—is 30 per cent effective. Then you have all the other treatments that people are using—highly-effective treatments, vaccines. Now we have an AstraZeneca product. All of those things combine to a position where the world has moved on. Whilst COVID is obviously still an issue—it is still doing harm to people and still people are dying—we do not conduct society on the basis that every life is priceless. We make all sorts of compromises all over the place about that.

Now we have got to a point where reasonable things have been done—development of vaccines and all those other things I have just talked about—to protect immunocompromised people and those type of people. We have on the other side of it a state of emergency which—the longer it stays in, the more it tends to become a permanent thing. That is why we are very concerned that it should end as soon as is reasonably possible. Our view is that we have reached that point in time now because of all the developments, all of the changes, in the past two years.

CHAIR: I am interested to understand your thinking around ‘a permanent thing’. On what basis does your thinking lead to something like this becoming permanent? I am not sure why any government would be thinking about this being a permanent measure. What leads you to that thinking?

Mr Cope: There is our usual level of scepticism about what governments do once they get powers. They do not give them up very readily. Once governments get powers, they tend to keep them. That is just the nature of the beast. As I said, the government last year had one criteria which it did not meet. That criteria which it set last time has been met. Now they have moved the goalposts, and they will not specify any criteria which is anything other than translates as to, ‘We’ll get rid of them when we feel we don’t need them anymore.’ I am sorry: I am not going to cop this from this government as I would not have copped it from Joh Bjelke-Petersen. Governments keep powers when they get them. If the government is not prepared to articulate a specific criteria—as it did last time, to be fair to it—as to when it is going to get rid of them, why should I not be concerned that they are just going to linger?

Mr BENNETT: I am curious about your thoughts regarding the face mask issue. It is in your submission, but could you flesh that out a bit? You spoke at length about the vaccination levels—and I appreciate your comments on that—but can you say more about the masks?

Mr Cope: We never accepted the proposition that masks do not interfere with a right. They do interfere with a right: they interfere with the right to be able to communicate properly. I wore masks on many occasions. I wore masks, for the record, at times when there were no mandates for them. They interfere with your capacity to communicate with people. You go to a shop and people do not understand one another. People communicate with one another with their faces. The notion that they did not interfere with a right is in our view fundamentally flawed and wrong, but we accepted that, once again, when there was an emergency situation—and there were no vaccines and all those other things I have just listed—masks were appropriate in certain public situations. We had a whole list of them—hospitals, buses, supermarkets, places where people had to go to be protected. Once again, our view is that once the emergency stops then whether people wear a mask is a matter for their own choice.

Mr SKELTON: You are pretty positive on the efficacy of vaccines, yet you state—

Anyone who decides not to be vaccinated, is exercising their rights to bodily integrity and to control their own medical treatment. Unvaccinated persons have been unable to enter certain places or have risked their employment. Does the council support or oppose these measures?

Mr Cope: The answer to that is that the Council of Civil Liberties is not an anti-vax organisation. I am vaccinated. I do not know a member of the executive who is not. We have for many years—going back to the debate about childhood vaccination—taken the view that there should be an exception for people who have a conscientious objection to taking vaccines. That has remained our position ever since.

It is a bit like our position in relation to free speech. We oppose anti-race hatred laws although we obviously oppose racism. It is all about people having their own choice, their own rights, to be exercised. In terms of vaccines, the strongest cases for vaccine mandates as opposed to passports are caregivers and people over 60—or 50 or whatever number you want to pick—and in all those categories people are highly vaccinated. Outside of that, I think the case for vaccine mandates is pretty poor.

CHAIR: Thank you very much, Mr Cope. The committee very much appreciates hearing your perspectives and your point of view. We thank you for the time that you have taken—as well as your organisation—to provide the views that you have provided. There were no questions taken on notice this afternoon.

That concludes our hearing today. On behalf of the committee I thank all of the witnesses and stakeholders who have participated today. I also take this opportunity to thank the many submitters who have engaged with this inquiry. Thank you to our Hansard reporters, as always. A transcript of these proceedings will be available on the committee’s parliamentary webpage in due course. I now declare this public hearing closed.

The committee adjourned at 12.57 pm.