




Speech By  
**Hon. Shannon Fentiman**

**MEMBER FOR WATERFORD**

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Record of Proceedings, 2 December 2020

## **COVID-19 EMERGENCY RESPONSE AND OTHER LEGISLATION AMENDMENT BILL**

 **Hon. SM FENTIMAN** (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (6.25 pm), in reply: I thank members for their contributions to the debate on the COVID-19 Emergency Response and Other Legislation Amendment Bill 2020. The Palaszczuk government's swift and comprehensive response to the COVID-19 emergency has played a major role in a significant reduction in the rate of infection, protecting vulnerable Queenslanders and shielding Queensland businesses from the potentially devastating impacts of the global pandemic. However, now is not the time for complacency. COVID-19 is a highly volatile virus and we need only look to Victoria to see how quickly it can spread through the community. The government must remain agile and be in a position to act where necessary. The passage of this bill will facilitate that. Although Queensland is in the fortunate position to have very low levels of community transmission, we need to continue to be vigilant. This bill is a demonstration of the Palaszczuk government's unwavering commitment to the protection of all Queenslanders.

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

I will now address some of the matters raised by members during the course of this debate. I note that members of the opposition have raised concerns about this bill being declared urgent. It is abundantly clear that the very nature of the amendments contained in this bill are indeed urgent. Responding properly to a pandemic requires swift action by government that must necessitate truncated parliamentary processes. When the LNP were last in government they declared 25 bills urgent, including their failed VLAD laws, which were introduced and passed the same day, and also the Criminal

Law Amendment (Public Interest Declarations) Amendment Bill 2013, which the Queensland Court of Appeal declared constitutionally invalid. Nonetheless, I welcome the indication from the opposition that they intend to support this bill.

I turn to the member for Clayfield's contribution. First, in relation to the provisions in the bill concerning commercial leases, whilst accepting that the government had implemented decisions made at the national cabinet, the member for Clayfield expressed the view that government intervention in private property dealings is generally undesirable and the government should provide 'sufficient resources for the expeditious resolution of any disputes and the rapid end to a significant intrusion into private property rights'. I remind members that the decision to intervene in commercial leases was a decision of the national cabinet in response to the initial shock of COVID-19 restrictions.

The Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020 implemented the good faith leasing principles for non-residential leases agreed to by the national cabinet in respect of lease obligations during the initial period from 29 March 2020 to 30 September 2020 and provides for associated dispute resolution processes. Those protections were later extended to the end of this year. In many cases, the leases regulation has achieved its objective of encouraging good faith leasing negotiations and enabling rent relief and protection from eviction for lessees.

With COVID-19 related restrictions easing throughout Queensland, the bill does not further extend the period for which the rent relief provisions and lessee protections apply beyond 31 December 2020. This will mean that lessors will continue to be prevented from taking a prescribed action, such as eviction, for a lessee's failure to pay rent outgoings or to trade for the hours set out in the lease during the response and extension period unless the action is in accordance with a variation of the lease or settlement agreed to between the parties or an order of a court or tribunal; despite a genuine attempt by the lessor to negotiate rent payable, the lessee has substantially failed to comply with the lessee's obligations under the regulation; or the action is being taken on a ground that is not related to the effects of the COVID-19 emergency. Sensibly, this bill preserves the rights and obligations that have been accrued during the lease protection period up to 31 December 2020 and facilitates the conclusion of any lease disputes that may still be on foot.

Leaving lessees still recovering from the effects of the COVID-19 pandemic vulnerable to eviction from 1 January 2021 without the benefit of fair lease negotiations and dispute resolution procedures would be unconscionable. It is inevitable that disputes would arise, given the circumstances that gave rise to the implementation of the leases regulation. The quick resolution of a dispute is always preferable. However, the factors relevant to how long a dispute may take to resolve are many, and some of them are outside the control of government—for example, the willingness of parties to negotiate and the complexity of the dispute itself.

In the initial drafting of the lease regulation and in subsequent processes, my department, the Department of Justice and Attorney-General, consulted stakeholders, including the Property Council and the Queensland Law Society, and we took into account stakeholder views when providing advice. It is not possible to simply unscramble the egg, so to speak, overnight. As I indicated previously, providing for transitional arrangements is entirely appropriate.

Continuing on the issue of disputes and government support, the government is committed to continuing to support businesses in resolving small business lease and COVID-19 related commercial lease disputes through the extension of the temporary Queensland Small Business Commissioner beyond 30 April 2021 and the ongoing provision of information, advice and mediation services by the Office of the Queensland Small Business Commissioner.

It is important to note that, whilst the member for Clayfield in his contribution said that the government should provide sufficient resources for the timely resolution of disputes, when in government those opposite slashed the Office of the Small Business Commissioner and made it clear in their election commitments that they were not going to fund it.

Secondly, in relation to any proposed permanency of the temporary measures introduced in response to COVID-19, the Palaszczuk government stands ready to listen to stakeholders and those opposite and will be responsive to those measures that we have introduced during COVID that we want to keep moving forward. We look forward to those continued discussions. I say to those opposite that I am up for a constructive dialogue with members of the opposition and our stakeholders as to which measures should be made permanent.

I note the positive response from the community, legal and business sectors in relation to the modified arrangements for deeds, particular mortgages, affidavits and statutory declarations under the Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020. The

Palaszczuk government will ensure that if any of these measures are to be made permanent a fulsome consultation process will be undertaken to evaluate the arrangements from all perspectives and to identify potential improvements that could be made. The modified arrangements for deeds were, in part, based on a recommendation from the Property Law Act 1974 final report, prepared by the Queensland University of Technology as part of the government's property law review.

As noted by the member for Clayfield, the Queensland Law Society in particular is keen to see these reforms continue into the future. In its Call to Parties statement, the Law Society called on government to evaluate the measures introduced in response to the COVID-19 pandemic to ensure that those which have a lasting benefit for the community are retained and implemented on a permanent basis; and facilitate the use of electronic signatures by corporations and individuals by updating the Property Law Act 1974 requirements for signing documents, including maintaining the reforms introduced in response to the COVID-19 pandemic.

In the Palaszczuk government's response to the Call to Parties statement, we committed to working with stakeholders to examine which, if any, measures introduced during COVID may be made permanent. In particular, with respect to the reform of Queensland's property law system, we have committed to continuing with the progressive review and working with key stakeholders to develop a bill to modernise and replace the Property Law Act 1974 in this term of government.

Within my direct portfolio responsibility, I note that the bill extends the expiry date of four important regulations in my portfolio. We will be liaising with stakeholders about whether or not they can and should be made permanent. I will take a moment to outline some of those regulations.

First, the Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020 has enabled social distancing requirements to be adhered to for the execution of important legal documents during the COVID-19 pandemic. The modified arrangements under this regulation are proposed to continue to protect public health and safety and to safeguard human rights such as the right to health.

Second, the Justice Legislation (COVID-19 Emergency Response—Proceedings and Other Matters) Regulation 2020 will be extended. This regulation contains discrete amendments to ensure the continuance of the public administration of justice agencies and judicial process, and protect the health, safety and welfare of persons who are required to interact with the justice system and who are, or are likely to be, affected by COVID-19.

Third, the Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation will be extended to facilitate the safe continuance of court proceedings and ensure there are no barriers that may prevent victims of domestic and family violence seeking protection through an application for a civil order while COVID-19 related restrictions remain in place.

Fourth, the Justice Legislation (COVID-19 Emergency Response Justice Legislation (COVID-19 Emergency Response Community Titles Schemes and Other Matters) Regulation 2020—Community Titles Schemes and Other Matters) Regulation 2020 will also be extended. Provisions in the regulation relating to community titles schemes are designed to protect the health, safety and welfare of people in the community titles sector during the pandemic. Specifically, the regulation provides bodies corporate with flexibility to adopt modified arrangements for meetings, inspection of documents, and the use of common property and body corporate assets. The regulation also provides the Office of the Commissioner for Body Corporate and Community Management with increased flexibility to ensure public access to dispute resolution documents is conducted in a COVID-safe way and to waive certain dispute resolution fees where a person is experiencing financial hardship. Extending the operation of the regulation will assist bodies corporate and the commissioner's office to appropriately manage their affairs into 2021, including by adopting social distancing and other measures that reduce the risk of transmission of COVID-19.

I now turn to the extension of amendments to primary legislation within the liquor, gaming and fair trading responsibilities which are achieved by this bill. The emergency response amendment act included amendments to the Body Corporate and Community Management Act 1997, Building Units and Group Titles Act 1980, Casino Control Act 1982, Gaming Machine Act 1991, Keno Act 1996, Lotteries Act 1997 and Liquor Act 1992. All of these amendments were designed to provide particular measures to assist Queensland businesses and individuals suffering financial and operational stress caused by the COVID-19 emergency. For example, the amendments to the Body Corporate and Community Management Act and Building Units and Group Titles Act provided modified financial management arrangements and requirements primarily aimed at providing bodies corporate with increased flexibility to respond to financial stress being experienced by unit owners within the community titles scheme. Given unit owners who may have lost employment and/or suffered a loss of income during the pandemic to date may continue to experience financial stress, particularly in the early stages of the economic recovery, an extension of this legislation is warranted.

All of the amendments to justice legislation which were made as part of the emergency response amendment act allow the government to respond proportionately to the business and community impacts of public health directions. The legislation requires the relevant authority—be it the minister, the commissioner or the Governor in Council—to have significant regard to the objects of the act and the impacts of COVID-19 before using or relying on the relevant temporary powers for temporary regulatory responses for COVID related purposes. It would be detrimental to businesses and jobs were these temporary powers and measures required but unavailable early next year. As a result, they will be continued.

I now turn to the issue of transitional arrangements. There are currently no explicit transitional provisions in the emergency response act. This means that, upon expiry, there is only a limited mechanism through reliance on provisions in the Acts Interpretation Act to transition smoothly back to normal operations. While sections 20 and 20A of the Acts Interpretation Act do provide some limited protections if a right or liability has crystallised prior to expiry, we should not leave things to chance. Therefore, in order to provide greater commercial and legal certainty to stakeholders, the bill inserts a transitional regulation-making power which enables regulations to be made, where necessary, to return to normal operations in the most effective and efficient way once the COVID-19 related legislation is no longer needed. The modified arrangements affect a large number of stakeholders from many sectors and required considerable effort to implement.

It is intended that the arrangements are measured. It is a proportionate response. It is absolutely appropriate that these regulations continue into next year. We have to remain agile. I thank all members for their contributions during the debate. I commend the bill to the House.