

Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021

Explanatory Notes

Short title

The short title of the Bill is the Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021 (Bill).

Policy objectives and the reasons for them

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

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

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

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

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

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

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

The current global epidemiological situation, with sustained growth in new cases and the spread of highly transmissible COVID-19 variants, continues to present a very significant risk to Australia and Queensland. The ongoing circulation of the virus in countries with limited public health responses, overwhelmed public health systems and limited or inequitable access to vaccination continues to invite further and potentially vaccine-resistant variants. The B.1.6.1.7 variant, first detected in India has been newly designated by the World Health Organization as a variant of concern, joining the UK (B.1.1.7), South African (B.1351) and Brazilian (P.1) variants. Growing evidence around the variants of concern indicates that they spread more readily and can cause more severe disease.

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

COVID-19 legislative framework

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

Public Health Act amendments

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

- increase powers for emergency officers and the Chief Health Officer to limit, or respond to, the spread of COVID-19 in Queensland, including by issuing directions to require physical distancing, restrict movement and gatherings, require persons to quarantine or self-isolate and implement other containment measures;²
- authorise the sharing of confidential information for contact tracing;³
- encourage compliance with quarantine requirements, border restrictions and other public health directions by providing appropriate penalties for contraventions;⁴
- increase the period for which a regulation may extend a declared public health emergency from seven to 90 days;⁵ and

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

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

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

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

- enable fees to be charged for costs associated with the mandatory quarantine of persons in government-provided accommodation.⁶

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

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

Other COVID-19 legislative measures

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

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

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

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

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

The modification framework authorises the making of extraordinary regulations (or, in limited situations, statutory instruments) which modify the operation of an Act to the extent necessary

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

to achieve a purpose of the ER Act.⁷ A number of extraordinary regulations have been made pursuant to this power.

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

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

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

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

⁷ Sections 4, 5(5), 6(3) and 25(3) of the *COVID-19 Emergency Response Act 2020* provide that modifications to an Act may be inconsistent with that Act, and with any other Act or law, except the *Human Rights Act 2019*.

In March 2021, the *COVID-19 Emergency Response and Other Legislation Amendment Act 2021* further extended the temporary COVID-19 legislative measures until 30 September 2021 or an earlier date to be prescribed by regulation. This Bill also introduced amendments to—

- the *City of Brisbane Act 2010* and *Local Government Act 2009* to support the financial sustainability of local governments during the COVID-19 public health emergency by allowing local governments to decide, by resolution at a meeting other than a budget meeting, what rates and charges are to be levied for the 2021-22 financial year; and
- the *Local Government Electoral Act 2011*, the *City of Brisbane Act* and the *Local Government Act* to provide flexibility, if required, to facilitate the holding of a local government by-election or fresh election in a way that minimises serious risks to the health and safety of persons caused by the COVID-19 public health emergency.

Extension of expiring provisions

Unless extended, most of the emergency COVID-19 legislative amendments will expire on 30 September 2021. As the health response to COVID-19 is ongoing, it is expected that the declared public health emergency and COVID-19 related amendments to the Public Health Act will need to continue into early 2022 to manage international arrivals in hotel quarantine and respond to any localised outbreaks in Queensland while the vaccine rollout progresses. It is proposed to extend the amendments in the Public Health Act until 30 April 2022, which will also allow time for the effectiveness of the vaccine rollout to be assessed.

To minimise disruption to Queensland institutions and the economy, and to continue to support the public health response, it is also proposed to extend most of the additional COVID-19 legislative measures established under the *COVID-19 Emergency Response Act 2020*, *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020*, *COVID-19 Emergency Response and Other Legislation Amendment Act 2020* and *COVID-19 Emergency Response and Other Legislation Amendment Act 2021* until 30 April 2022 or an earlier date to be prescribed by regulation.

Electronic service of quarantine directions

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

The Public Health Act does not explicitly deal with the issue of how a quarantine direction notice may be given in writing. Also, the Act does not specify at what point in time a direction issued to a person via email or other electronic communication is deemed to have been received by the person. Clarifying these issues will remove doubt and is considered important given the heavy reliance on electronic communications by Queensland's contact tracing and quarantine systems.

Quarantine fees

From 1 July 2020, persons required to undertake hotel quarantine have been required to contribute to the costs of government accommodation by payment of a quarantine fee.⁸ As the rollout of COVID-19 vaccines progresses in Australia and overseas, additional demands will be placed on the quarantine system as more people from a broader range of cohorts are permitted to enter Queensland following a period of mandatory quarantine. The entry of particular cohorts, such as critical and skilled workers and persons who support service-related industries such as tourism and education, is critical to the State's economic recovery.

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

Achievement of policy objectives

The Bill achieves the policy objectives by extending essential measures supporting Queensland's response to the COVID-19 pandemic until 30 April 2022 and refining some of these measures given the changing nature of the pandemic and knowledge gained from implementation.

Extension of expiring provisions

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

The Bill also extends most of the temporary amendments and extraordinary measures put in place in other legislation to manage the broader impact of COVID-19 on businesses, institutions and the economy. The following table outlines the specific measures, in addition to the amendments to the Public Health Act, that will be extended by the Bill, and explains how extending these measures achieves the policy objectives of supporting institutions and the economy by allowing swift and flexible responses to a range of things disrupted, caused or affected by the COVID-19 emergency.

Legislation Extended	Achievement of Policy Objectives
<i>Corrective Services (COVID-19 Emergency Response) Regulation 2020</i>	Extending the Regulation enables the following measures to continue: <ul style="list-style-type: none"> • extending the length of time a declaration of emergency can be made under section 268 of the <i>Corrective Services Act 2006</i>, from three days to 90 days; • additional entry procedures for corrective services facilities when a declaration of emergency under section 268 is in force;

⁸ *Public Health Act 2005*, pt 7AA, inserted by Part 13, Division 5 of the *Community Services Industry (Portable Long Service Leave) Act 2020*.

Legislation Extended	Achievement of Policy Objectives
	<ul style="list-style-type: none"> • clarifications on the ability for offenders subject to relevant orders and managed in the community to be supervised by Queensland Corrective Services officers remotely; and • amendments to the Parole Board Queensland meeting quorum requirements under section 234 of the Corrective Services Act, clarifying that all parole matters can be heard by a quorum of three members, with the exception of prescribed prisoner parole applications which require a quorum of five members.
<i>Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020</i>	<p>Extending the Regulation provides flexibility for the Magistrates Court of Queensland by continuing to allow for:</p> <ul style="list-style-type: none"> • domestic and family violence proceedings to be conducted by audio or audio-visual link; • private applications for domestic violence orders and variations to domestic violence orders to be verified between an applicant and a Magistrate, as an alternative to verifying by statutory declaration; and • private applications for domestic violence orders and variations to domestic violence orders to be filed electronically.
<i>Economic Development (COVID-19 Emergency Response) Regulation 2020</i>	<p>Extending the Regulation allows the following measures to continue:</p> <ul style="list-style-type: none"> • modified requirements under the <i>Economic Development Act 2012</i> to provide alternative ways to notify the public of Priority Development Area development applications and amendment applications; and • modified requirements for public access to registers by allowing for documents to be inspected and purchased at an agreed time and place, in addition to access during office hours on business days and electronic access via the department's website.
<i>Education Legislation (COVID-19 Emergency Response) Regulation 2020</i>	<p>Extending the Regulation allows the following measures to continue:</p> <ul style="list-style-type: none"> • amendments regarding attendance at places or meetings and physical presence requirements to: <ul style="list-style-type: none"> - enable attendance at meetings conducted as part of investigations under the <i>Education (Queensland College of Teachers) Act 2005</i> to be held via communication technology (such as online meeting platforms) and allow a thing required at a meeting to be produced online or via post where necessary, rather than in person; and - clarify that Parents and Citizens' Associations can conduct meetings via communication technology • amendments to enable the chief executive and the Non-State Schools Accreditation Board to extend regulatory requirements for when things must be done by and when things expire.
<i>Family Responsibilities Commission (COVID-19 Emergency</i>	<p>Extending the Regulation facilitates the continued operation of the Family Responsibilities Commission and the Family Responsibilities Board during the COVID-19 emergency by:</p> <ul style="list-style-type: none"> • allowing conferences to be conducted and lawfully binding decisions made by the Family Responsibilities Commissioner (or

Legislation Extended	Achievement of Policy Objectives
<i>Response) Regulation 2020</i>	Deputy Commissioner) and one Local Commissioner for the relevant community, and <ul style="list-style-type: none"> enabling the Family Responsibilities Board to meet using communication technology, removing the requirement for the Family Responsibilities Board to meet in person at least once a year.
<i>Justice Legislation (COVID-19 Emergency Response— Community Titles Schemes and Other Matters) Regulation 2020</i>	Extending the Regulation continues the following measures: <ul style="list-style-type: none"> modifications to the <i>Collections Act 1966</i> to enable the chief executive to extend the deadline for annual financial reporting; modifications to the <i>Body Corporate and Community Management Act 1997</i> and <i>Building Units and Group Titles Act 1980</i> to allow committees to modify the way meetings are held, including to facilitate remote attendance and electronic voting, and allow requirements for in-person inspection of records to be met in alternative ways; and amendments to regulations under the <i>Body Corporate and Community Management Act</i> and <i>Building Units and Group Titles Act</i> to increase flexibility for certain fees related to dispute resolution to be waived.
<i>Justice Legislation (COVID-19 Emergency Response— Documents and Oaths) Regulation 2020</i>	Extending the Regulation allows the modified requirements or arrangements to continue to apply for the making, signing and witnessing of affidavits and statutory declarations, advance health directives, general powers of attorney, deeds and particular mortgages. <p>The Bill will also extend exceptions to the requirement for persons to be physically present when witnessing documents by permitting, in prescribed circumstances:</p> <ul style="list-style-type: none"> witnessing of various documents to occur over audio-visual link; and electronic transmission of signed versions of the document between parties.
<i>Justice Legislation (COVID-19 Emergency Response— Proceedings and Other Matters) Regulation 2020</i>	Extending the Regulation continues modifications relating to: <ul style="list-style-type: none"> the presentation of indictments and entering of a discontinuance (<i>nolle prosequi</i>); the availability of video-recorded evidence; the issuing of Crime and Corruption Commission (CCC) notices and the use of audio and audio-visual links for CCC hearings; appearances in response to a Notice to Appear; and the place of settlement in relation to contracts for the sale of land.
<i>Local Government (COVID-19 ER) Regulation 2020</i>	Extending the Regulation continues amendments to provisions in the <i>Local Government Act 2009</i> in relation to the investigation of councillor conduct and whether an offence has been committed against a ‘conduct provision’ of the Act. <p>The extension will continue to allow an investigator from the Office of the Independent Assessor to require a person to answer questions by:</p> <ul style="list-style-type: none"> attending via audio or audio-visual link; or providing answers to the questions by email or other electronic means.

Legislation Extended	Achievement of Policy Objectives
<i>Manufactured Homes ((Residential Parks) (COVID ER)) Regulation 2020</i>	<p>Extending the Regulation will enable meetings of manufactured home owners to continue to be done using audio or audio-visual links. The <i>Manufactured Homes (Residential Parks) Act 2003</i> otherwise requires a physical meeting.</p> <p>The extension in the Bill will also continue the following changes to the process for undertaking market reviews of site rent:</p> <ul style="list-style-type: none"> • providing enhanced dispute resolution rights to manufactured home owners who had a market review between 24 March and 24 May 2020; • imposing a limited moratorium which suspends market reviews in the period of 25 May 2020 and 31 December 2020 unless conditions for site rent increase continuation are met; • allowing a CPI increase to occur where a market review of site rent has been suspended; and • allowing for suspended market reviews to be undertaken in 2021.
<i>Planning (COVID-19 ER) Regulation 2020</i>	<p>Extension of the Regulation will grant relief from the statutory requirements under the <i>Planning Act 2016</i> by continuing to allow planning authorities to give a person a copy of a document, rather than keeping the document physically available for inspection to ensure planning and development assessment documents and information remains publicly accessible, despite any health and safety restrictions in place.</p>
<i>Residential Tenancies and Rooming Accommodation (COVID-19 ER) Regulation 2020</i>	<p>Extending the Regulation will continue amendments to:</p> <ul style="list-style-type: none"> • allow renters experiencing domestic and family violence to manage their interest in a residential lease quickly and safely, with limited liability for end of lease costs; • prevent renters who suffered excessive hardship because of COVID-19 from being listed in a tenancy database for COVID-19 rent arrears; • limit reletting costs that can be charged to eligible renters who end their residential lease early to the equivalent of one week's rent if their household has lost at least 75 per cent of their income and has less than \$5000 in savings; and • allow further short-term tenancy statement extensions for moveable dwelling agreements if necessary to manage COVID-19 restrictions.
<i>Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020</i>	<p>Extending the Regulation will continue the implementation of the National Cabinet decision to impose a set of good faith leasing principles set out in the National Cabinet Mandatory Code of Conduct for commercial leases during COVID-19 by:</p> <ul style="list-style-type: none"> • providing certain protections to a retail lessee under an 'affected lease'; • preventing a lessor from taking particular actions, such as eviction or termination of the lease; and

Legislation Extended	Achievement of Policy Objectives
	<ul style="list-style-type: none"> allowing parties to a dispute about an affected lease or a small business tenancy dispute to have the dispute mediated through the Office of the Queensland Small Business Commissioner.
<i>Youth Justice (COVID-19 Emergency Response) Regulation 2020</i>	<p>The Bill will extend the amendments to the requirements for restorative justice conference agreements made during the COVID-19 health emergency period by specifying that a requirement for:</p> <ul style="list-style-type: none"> conference participants to sign a conference agreement will be taken to have been complied with if the convenor of the conference notes on the agreement that the person has agreed to the agreement; and each person who signed the agreement to immediately be given a copy of it will be taken to have been complied with if the copy is given promptly after the conference.
Chapter 7, Part 3 and Chapter 8, Part 14, <i>Body Corporate and Community Management Act 1997</i>	<p>Extension of the amendments will continue to:</p> <ul style="list-style-type: none"> allow bodies corporate to reduce contributions payable by owners by adopting sinking fund budgets that do not meet the usual requirements for reserve funds; allow bodies corporate to defer commencing debt recovery action against lot owners experiencing financial distress due to COVID-19, by relaxing requirements for bodies corporate to initiate proceedings to recover lot owner contributions that have been outstanding for 2 years; allow committees to postpone the due date for contributions, to provide lot owners suffering financial hardship as a result of COVID-19 with additional time to pay their contributions; prevent bodies corporate from charging penalty interest on outstanding lot owner contributions; temporarily double the maximum amounts that bodies corporate can borrow when authorised by ordinary resolution (that is, for most schemes, allow the body corporate to borrow up to \$500 multiplied by the number of lots in the scheme, and double the upper limit for borrowing under the <i>Body Corporate and Community Management (Small Schemes Module) Regulation 2020</i> to \$6,000).
<i>Body Corporate and Community Management (Accommodation Module) Regulation 2020</i> <i>Body Corporate and Community Management (Commercial Module) Regulation 2020</i>	<p>Extension of the amendments will enable body corporate committees to continue to make decisions to change rights, privileges or obligations of lot owners in relation to access to, or the use of, common property and body corporate assets, if the committee considers a change is reasonably necessary to ensure compliance with a public health direction.</p>

Legislation Extended	Achievement of Policy Objectives
<p><i>Body Corporate and Community Management (Small Schemes Module) Regulation 2020</i></p> <p><i>Body Corporate and Community Management (Standard Module) Regulation 2020</i></p>	
<p>Part 6A and Part 7, Division 3 <i>Building Units and Group Titles Act 1980</i></p>	<p>Extending the amendments will permit body corporate committees to continue to postpone the due date for proprietor contributions for either:</p> <ul style="list-style-type: none"> • a particular proprietor if the committee is reasonably satisfied the proprietor is suffering financial hardship because of the COVID-19 emergency; or • all proprietors regardless of whether all of the proprietors are suffering financial hardship because of the COVID-19 emergency.
<p>Chapter 7, part 5B, <i>City of Brisbane Act 2010</i></p> <p>Chapter 7, part 5B, <i>Local Government Act 2009</i></p>	<p>Extension of the amendments provides flexibility in filling the vacant office of a councillor, if required, to account for a delay in holding a by-election or fresh election because of the COVID-19 emergency by:</p> <ul style="list-style-type: none"> • enabling the Minister to give a direction to a local government about whether or not a vacant office must be filled and to extend the statutory period within which the local government must fill the vacant office, if satisfied it is in the public interest to give the direction; and • providing that a regulation may make provision about a matter regarding local government elections affected by the COVID-19 emergency, if the <i>City of Brisbane Act 2010</i> or the <i>Local Government Act 2009</i> does not make provision or sufficient provision about the matter.
<p>Chapter 8, Part 2A, <i>City of Brisbane Regulation 2012</i></p> <p>Chapter 8, Part 2, Division 4, <i>Local Government Regulation 2012</i></p>	<p>Extension of the amendments provides continued flexibility, where required, for local government and committee meetings to be held in a way that minimises serious risks to the health and safety of persons caused by the COVID-19 emergency. In particular, the extension will continue to allow:</p> <ul style="list-style-type: none"> • local government and committee meetings to be held by audio or audio-visual link; • people to participate in meetings by audio or audio-visual link; • meetings to be closed to the public for health and safety reasons associated with COVID-19. <p>The Bill will also extend the amendments that require real-time public viewing or listening of meetings where audio or audio-visual link is</p>

Legislation Extended	Achievement of Policy Objectives
	used. No regular meeting requirements under the regulations are disapplied by the amendments.
Part 15A, <i>Corrective Services Act 2006</i>	<p>Extension of the amendments assists Queensland's adult correctional environment to continue to operate safely and effectively in the COVID-19 emergency by:</p> <ul style="list-style-type: none"> • expanding the chief executive's power to declare an emergency in relation to a prison under section 268 of the Act to cover all corrective services facilities, including the Helana Jones Centre and work camps; and • extend the duration of acting appointments for prescribed Parole Board Queensland Positions under section 228 of the Act from three months to one year.
Part 12A, <i>Disaster Management Act 2003</i>	<p>The Bill extends measures to:</p> <ul style="list-style-type: none"> • increase the period by which the declaration of the disaster situation in regard to the COVID-19 emergency can be extended, from 14 to 90 days; and • set aside the entitlement to compensation for loss or damage suffered as a result of the exercise of powers under the Disaster Management Act related to the COVID-19 emergency.
Part 12C, <i>Electoral Act 1992</i>	<p>The Bill extends amendments that facilitate the powers of the Government and the Electoral Commission of Queensland (ECQ) to intervene to mitigate the spread of COVID-19 in the community in the lead up to, and during, any future by-election.</p> <p>Measures that can continue be taken under this extension include:</p> <ul style="list-style-type: none"> • allowing the cut-off day for the electoral rolls and the nomination of candidates stated in the writ to be a day earlier than the day stated in section 84 of the Electoral Act; • allowing the Government or Speaker, as the case may be, to substitute later days than those stated in the writ, including changes to the by-election's polling day; • allowing alternative arrangements for voting, for example allowing the ECQ or a returning officer to direct an issuing officer not to visit an electoral visitor voter or provide that a regulation may be made, in consultation with the ECQ, to declare that all electors in the by-election or electors of a stated class are to vote in the by-election by way of postal vote; and • providing the ECQ with the ability to issue directions in relation to the display/distribution of how-to-vote cards in or near polling booths or the number and movement of scrutineers at a polling booth at a by-election, with an offence applying to persons who contravene such directions.
Chapter 11A, <i>Environmental</i>	The Bill extends amendments providing that, where reasonable to respond to the impacts of the COVID-19 emergency:

Legislation Extended	Achievement of Policy Objectives
<i>Protection Act 1994</i>	<ul style="list-style-type: none"> • the Minister may make a declaration waiving compliance of certain conditions of an environmental approval; and • the administering authority may issue temporary environmental authorities.
<p>Part 11A, <i>Gaming Machine Act 1991</i> and the <i>Gaming Tax Notice 2020</i> and <i>Gaming Tax Notice (No.2) 2020</i></p> <p>Section 57A, <i>Casino Control Act 1982</i></p> <p>Section 116A <i>Keno Act 1996</i></p> <p>Section 99A, <i>Lotteries Act 1997</i></p>	<p>The Bill extends amendments to the Gaming Machine Act providing that the Minister may make a gaming tax notice to defer or waive payment of a <i>gaming tax</i> payable under the Gaming Machine Act, Casino Control Act, Keno Act or Lotteries Act. The Minister may make a notice only:</p> <ul style="list-style-type: none"> • if satisfied it is necessary to alleviate the financial burden caused by the COVID-19 emergency on gaming operators; and • with the approval of the Treasurer. <p>The amendments to the Casino Control Act, Keno Act and Lotteries Act extended in this Bill refer back to Part 11A of the Gaming Machine Act.</p>
Part 10A, <i>Liquor Act 1992</i>	<p>The Bill extends the power for the Commissioner for Liquor and Gaming to issue a Takeaway Liquor Authority to:</p> <ul style="list-style-type: none"> • operators of licensed venues whose ordinary operations have been disrupted due to the public health directions; or • operators of licensed venues located in a restricted area or where the Commissioner for Liquor and Gaming is satisfied the venue is a source of liquor supply for residents of a restricted area; <p>to allow the licensee or permittee to sell takeaway liquor as specified in the authority, regardless of the limitations of their current licence or permit.</p>
Part 9B, <i>Local Government Electoral Act 2011</i>	<p>Extension of the amendments facilitates the holding of a local government by-election or fresh election in a way that minimises serious risks to the health and safety of persons caused by the COVID-19 emergency. The amendments align, where appropriate, with the temporary provisions in the <i>Electoral Act 1992</i> which facilitate the holding of State by-elections during the COVID-19 emergency.</p> <p>The measures ensure the Government and the Electoral Commission of Queensland (ECQ) can intervene, as necessary, to mitigate the spread of COVID-19 in the community in the lead up to, and during, any future by-elections or fresh elections, including by:</p> <ul style="list-style-type: none"> • allowing a different time/day for compiling voters' rolls, calling for the nomination of candidates and applying for postal votes;

Legislation Extended	Achievement of Policy Objectives
	<ul style="list-style-type: none"> • enabling a returning officer to adjourn a poll to a day not more than 2 months after the original polling day; • enabling the Minister, in consultation with the ECQ, to postpone a poll for more than 2 months after the original polling day; • enabling the Minister to direct that a poll be conducted by postal ballot; • allowing the ECQ to declare that a stated class of electors may cast a postal vote without application; • providing the ECQ with greater flexibility around electronically assisted voting and electoral visitor voting; and • providing the ECQ with the ability to issue directions in relation to the display/distribution of how-to-vote cards or other election material at polling booths, the movement of scrutineers/candidates at particular places and scrutineer numbers, with an offence applying to persons who contravene such directions.
Section 146A, <i>Manufactured Homes (Residential Parks) Act 2003</i>	<p>The Bill extends amendments creating a temporary regulation-making power for matters relating to:</p> <ul style="list-style-type: none"> • modifying or suspending the processes for increasing or reducing site rent; and • modifying the processes for disputing a proposed increase in site rent.
Section 264A, <i>Youth Justice Act 1992</i>	<p>The Bill extends an amendment providing that the chief executive may:</p> <ul style="list-style-type: none"> • appoint temporary non-public service employees as detention centre employees for only as long as reasonably required, and only if reasonably necessary for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres; and • delegate powers to those employees as appropriate.
Sections 800H, 800I, and 800K-P, <i>Mental Health Act 2016</i>	<p>The Bill extends amendments providing that the chief psychiatrist may approve absences from an authorised mental health service if satisfied the absence is necessary to comply with a detention order, quarantine notice or public health direction under the Public Health Act, and does not result in unacceptable risks to the person's safety and welfare, and the safety of the community. Other minor amendments were made to recognise any such approved leave for other purposes.</p>

Based on assessments of the ongoing risks posed by COVID-19, certain measures are not considered necessary beyond 30 September 2021. To ensure only those emergency measures that are essential to supporting Queensland's response to the COVID-19 emergency are extended, the Bill does not extend:

- the *Explosives Legislation (COVID-19 Emergency Response) Regulation 2020*, which provides short-term relief and flexibility for certain license-holders and the resource exploration industry;

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

This is consistent with previous amending legislation, which has either repealed measures that are no longer required or allowed these measures to lapse.⁹

Electronic service of quarantine directions

The Bill amends the Public Health Act to clarify that directions given by an emergency officer under section 362H of the Act may, with a person's consent, be provided to a person electronically via a unique email address nominated by the person. The amendments provide that, unless the contrary is proved, a direction given in this manner is deemed to have been received by the person on the day and at the time the direction is sent to the person's nominated email address.

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

Quarantine fees

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

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

⁹ For example, the *COVID-19 Emergency Response and Other Legislation Amendment Act 2021* amended the *Justice Legislation (COVID-19 Emergency Response – Proceedings and Other Matters) Regulation 2020* to remove modifications to the *Coroners Act 2003* that extended the period for providing the annual report of the Domestic and Family Violence Death Review Advisory Board. Similarly, the *COVID-19 Emergency Response and Other Legislation Amendment Act 2020*, which extended the expiry of most subordinate legislation made under the *COVID-19 Emergency Response Act 2020*, did not extend the *Transport Legislation (COVID-19 Emergency Response) Regulation (No. 2) 2020*. This regulation expired on 31 December 2020.

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

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

To minimise disruption and facilitate a smooth transition to a prepayment system, the approach in the Bill builds on the current framework for charging quarantine fees under the Public Health Act. Fees associated with the costs of a person's quarantine, such as for accommodation and meals, will continue to be prescribed by regulation, and an invoice will still need to be issued to persons before they legally incur any financial obligation or debt. Provisions will be retained to allow persons to apply for a waiver of fees. However, a regulation may prescribe that particular persons are ineligible to apply for a waiver. If a person is required to prepay their quarantine fees, any application for a fee waiver must be submitted prior to the person's arrival in Queensland, unless in the circumstances the chief executive considers it appropriate to accept a late application.

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

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

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

Alternative ways of achieving policy objectives

There is no alternative method of achieving the policy objective.

Estimated cost for government implementation

There are no significant costs to the State for implementation of the amendments. Any costs will be met from within existing budget allocations.

Consistency with fundamental legislative principles

Implications of fundamental legislative principles are addressed below.

Impacts on rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* provides that fundamental legislative principles include requiring that legislation has sufficient regard to rights and liberties of individuals. This includes, for example, whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; allows delegation of administrative power only in appropriate cases and to appropriate persons; and confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

The Bill contains several clauses that potentially implicate the fundamental legislative principle that legislation must have sufficient regard to the rights and liberties of individuals.

Extension of duration of detention powers for emergency officers (medical)

Extending the amendments to the Public Health Act which allow emergency officers (medical) to detain someone for a period of up to 14 days, instead of four days, may be considered to infringe on fundamental legislative principles due to the potential impacts on the rights and liberties of individuals. The powers provided to emergency officers are necessary to implement recommendations from the Commonwealth Government that all persons entering Australia, regardless of their country of origin, be required to enter quarantine for a period of 14 days upon arrival. This approach is being consistently applied across all Australian jurisdictions to ensure that people entering the country are temporarily quarantined to avoid the potential spread of COVID-19 in the community. The powers are also needed to require persons to enter quarantine who are arriving in Queensland from a place elsewhere in Australia experiencing local transmission of COVID-19.

It is expected that the need for quarantine will remain until a large number of the Queensland population has been vaccinated and the risk of widespread outbreaks has subsided.

Appropriate safeguards are in place to protect the rights of individuals. For example, under section 361 of the Public Health Act, a person may apply, through their lawyer or another nominated person, to a magistrate to order the end of the detention order made by the emergency officer.

Given the need to protect the health of the public, the limitations on the rights and liberties of individuals from the extension of the amendments regarding the duration of detention powers are considered appropriately justified.

Extension of emergency powers provided to the Chief Health Officer and emergency officers appointed under the Public Health Act

The Bill extends amendments to the Public Health Act that authorise the Chief Health Officer and emergency officers to issue directions that may restrict the ability of persons to leave their homes or other premises, to enter particular facilities, or to freely move about and engage in activities.

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals. The concept of liberty requires that an activity (including a business activity) should be lawful unless there is a sufficient reason to declare it unlawful by an appropriate authority.

Extending the expiry of the amendments to the Public Health Act may potentially breach this principle as the provisions authorise the Chief Health Officer and emergency officers to issue directions that may interfere with the rights and liberties of individuals by, for example, restricting movement and requiring closure of business premises.

It is considered that the impact that these emergency powers have upon the rights and liberties of individuals is justified, given the need to protect the health of the public by managing the outbreak of COVID-19, and in particular to ensure the latest health and medical advice about isolation and quarantine of suspected or confirmed cases of COVID-19 can be implemented. The amendments have contributed to Queensland's success at containing COVID-19 by allowing rapid and tailored responses to instances of local community transmission of COVID-19.

While they are broad, the emergency powers are clearly defined and subject to limits, including that the person giving the direction or order must reasonably believe that it is necessary to assist in containing or responding to the spread of COVID-19. Similarly, directions issued by both the Chief Health Officer and emergency officers must be revoked if the Chief Health Officer or emergency officer is satisfied the direction is no longer necessary.

Proportionality of penalties for breaches of the Public Health Act

The Legislative Standards Act does not explicitly provide a fundamental legislative principle for offence provisions. However, a new offence must be appropriate and reasonable in light of the conduct that constitutes the offence.

The Bill extends section 362D of the Public Health Act, which provides for the enforcement of public health directions issued by the Chief Health Officer. It is an offence, carrying a maximum penalty of 100 penalty units or six months imprisonment, if a person does not comply with a public health direction unless the person has a reasonable excuse. Comparably, section 351 of the Public Health Act, which is not impacted by the Bill, applies to the enforcement of a detention order issued by an emergency officer (medical). It carries a maximum penalty of 200 penalty units, to fail to comply with a detention order.

The penalty provision is considered reasonable and appropriate to protect the community from the risk of transmission of COVID-19 by those who violate public health directions and, thereby, put the community at risk.

Quarantine fees

The Bill extends and amends the Public Health Act provisions requiring persons who are directed to quarantine to contribute to their quarantine costs. Quarantine fees are prescribed in the *Public Health Regulation 2018*.

The charging of quarantine fees may be considered to infringe on the rights and liberties of individuals, in particular, with regard to whether the legislation provides for the compulsory acquisition of property only with fair compensation (section 4(3)(i) of the Legislative Standards Act). This aspect of the principle is also implicated by the amendments that will permit certain

people to be required to prepay their quarantine fees. The quarantine fees, including the prepayment provisions, are justified as it is necessary to charge fees for the services provided to a person to sustainably manage the costs associated with quarantine. Quarantine of people entering Queensland from outside Australia and from places where there is local transmission of COVID-19 is necessary to prevent the spread of the disease in the community. The prepayment requirements included in this Bill do not increase the amount of fees a person is required to pay, but only bring forward the point in time at which the person is required to pay those fees. There are also requirements for the chief executive to refund any potential payments over the amount of fees actually incurred. Safeguards are also included in the legislation, including opportunities for vulnerable people and people experiencing significant financial hardship to apply for a full or partial waiver of fees. Payment plans can also be agreed to limit the impact of the requirements on individuals.

The quarantine fee provisions also raise potential concerns regarding whether the Bill allows the delegation of administrative power only in appropriate cases and to appropriate persons (Legislative Standards Act section 4(3)(c)). Amendments in the Bill provide power to the chief executive to decide various matters relating to quarantine fees, such as the approval of persons wishing to accept third party liability for payment, requiring prescribed persons to prepay, decisions on applications for fee waivers, and decisions regarding whether to accept a late application for a fee waiver. The delegation of administrative powers is appropriately defined and limited. For example, the chief executive's discretion to require prepayment of quarantine fees is limited by the Act to persons who have been prescribed by regulation. The flexibility provided with this delegation of administrative power is also necessary given the frequently changing nature of border restrictions, the broadening range of cohorts permitted to enter Australia and Queensland, and the need to tailor arrangements for the particular circumstances of different cohorts.

There is also a potential infringement on the rights and liberties of individuals pertaining to the Bill's inclusion of a regulation-making power to exclude certain individuals from being able to apply for a fee waiver. The amendment is necessary given the additional demands that are expected to be placed on the quarantine system as more people from a broader range of cohorts are permitted to enter Queensland and required to quarantine. The regulation-making power will allow flexibility to exclude cohorts who would not be permitted to enter Queensland but for the fact that they are eligible for and will be supported through a specific program or arrangement. Assessment of these applications, in addition to the expected growth of applications expected as more travellers enter Queensland, would place considerable strain on the administration of the quarantine system.

The provisions also work in tandem with the amendments allowing third parties to accept liability for quarantine fees. It will allow, for example, a regulation to exclude persons entering Queensland under the Australian Government's Seasonal Worker Programme from applying for a fee waiver on the basis that the chief executive approves third party liability for the employers of those workers. Any regulation made pursuant to this power will also need to have sufficient regard to the rights and liberties of individuals and will have to be compatible with the *Human Rights Act 2019*.

Finally, the Bill allows notices and invoices relating to quarantine fees to be sent electronically to persons with their consent. Unless the contrary is proved, a document given electronically is deemed to have been received by the person at the time it is sent. This could be seen to be a potential departure from the legislative principle requiring legislation to have sufficient regard to the rights and liberties of individuals as there may be implications if, for example, the person

does not receive an invoice and is unable to make a timely application for waiver of quarantine fees. However, the amendments provide sufficient safeguards and limitations, including requiring the consent of the person to receive electronic documents and providing discretion for the chief executive to consider late applications for fee waivers. Further, the Bill does not provide a penalty for late payment of invoices or late applications for fee waivers.

Electronic service of quarantine directions

The Bill includes amendments to remove doubt that directions under section 362H of the Public Health Act may be given electronically, and that such a direction will be taken to have been received on the day and at the time it is sent. These amendments potentially depart from the fundamental legislative principle requiring legislation to have sufficient regard to the rights and liberties of individuals.

The ability to give quarantine directions electronically is critical to effectively responding to a potential outbreak of COVID-19 in the community. Under the amendments, electronic service can only be done with the express consent of the recipient, which provides an important safeguard for the rights of individuals. The amendments also align with current practice and established policies governing the issuance of directions by emergency officers. These policies contain robust safeguards, including the requirement that the contents of a quarantine direction are explained to a person and the person is requested to reply and acknowledge receipt of the direction.

The provision validating previous directions that have been issued through electronic communications may be considered to retrospectively and adversely affect rights and liberties of individuals (Legislative Standards Act, section 4(3)(g)). Quarantine directions have been served electronically with the consent of recipients and after the contents of the direction have been orally explained to confirm the person understands their obligations. This process has minimised any potentially adverse impacts from the validation provision.

Modification framework and regulation-making powers

The Bill extends the operation of the regulation-making powers and the modification framework under the ER Act to 30 April 2022. This extension represents a potential departure from the fundamental legislative principle requiring legislation to have sufficient regard to the rights and liberties of individuals in the sense that further amendments may:

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

The extension of the modification framework and regulation-making powers are appropriately defined and necessary to ensure swift and focussed measures can be put in place to protect the

public from the health risks of COVID-19 as well as to mitigate the secondary impacts from public health measures on the economy and continuity of institutions and services.

Consistency of the subordinate legislation made under or pursuant to the ER Act

The Bill has the effect of extending the operation of 14 principal regulations which have been made to date under or pursuant to powers provided for in the ER Act. Five of these regulations have been further amended. The extent to which these regulations impact on fundamental legislative principles is addressed in the Explanatory Notes accompanying each legislative instrument. The applicable principal and amendment regulations are:

- Corrective Services (COVID-19 Emergency Response) Regulation 2020
- Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020
- Economic Development (COVID-19 Emergency Response) Regulation 2020
- Education Legislation (COVID-19 Emergency Response) Regulation 2020
- Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020
- Justice Legislation (COVID-19 Emergency Response—Community Title Schemes and Other Matters) Regulation 2020
- Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Regulation 2020
- Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Amendment Regulation 2020
- Justice Legislation (COVID-19 Emergency Response)—Proceedings and Other Matters) Regulation 2020
- Local Government (COVID-19 Emergency Response) Regulation 2020
- Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020
- Planning (COVID-19 Emergency Response) Regulation 2020
- Planning Legislation (Economic Recovery Measures and Other Matters) Amendments Regulation 2020
- Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020
- Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020
- Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2021
- Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020
- Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Amendment Regulation 2021
- Youth Justice (COVID-19 Emergency Response) Regulation 2020

While the Bill extends the operation of the regulation-making powers and the modification framework, it is not reasonably foreseeable that further subordinate legislation will be made under or pursuant to the powers provided for under the ER Act that will depart substantially from the types of instruments that have already been made. Should the need arise for further secondary instruments to be enacted, any potential inconsistency with fundamental legislative principles will be addressed in the Explanatory Notes accompanying the instrument.

The Bill also extends the safeguard measures which accompany the regulation-making powers and the modification framework. This includes that any retrospective application is limited in nature, and that no regulations or statutory instruments enacted under the ER Act are able to be exercised so as to amend or override the *Human Rights Act 2019*, or any particular provision of the Human Rights Act, thereby preserving its important human rights protections.

Retrospectivity of regulation-making powers

Whether legislation has sufficient regard to rights and liberties of individuals depends, in part, on whether the legislation does not adversely affect the rights and liberties, or impose obligations, retrospectively (section 4(3)(g) of the Legislative Standards Act).

Some of the regulation-making powers extended by the Bill allow for a regulation to have retrospective operation. This is the case for the extension of amendments inserting section 240D of the *City of Brisbane Act 2010*, section 260AD of the *Local Government Act 2009* and section 200ZF of the *Local Government Electoral Act 2011*, which provide that a ‘regulation may have retrospective operation to a day not earlier than the day of commencement.’

The regulation-making powers are broad and could affect an individual’s rights and liberties in numerous ways, including impacting on freedom of movement and the ability to take part in public life. However, there are appropriate limitations in place, including that the regulations may only have retrospective effect to the date of commencement of the relevant sections. Section 200ZF of the Local Government Electoral Act, which permits a regulation to be made that may be inconsistent with the Act or with certain other Acts, has further limitations in that the Minister may only recommend the making of a regulation if satisfied that the regulation is necessary to achieve the purpose of Part 9B of that Act.

Flexibility to facilitate the holding of COVID-safe local government by-elections and fresh elections

Extension of the following amendments in relation to local government by-elections and fresh elections impact on the rights and liberties of individuals particularly in relation to political communication and human rights including the rights to freedom of expression, taking part in public life, freedom of movement and privacy and reputation:

- changing the cut-off dates for compiling the voters roll and nominating candidates;
- allowing the Minister, in consultation with the ECQ, to postpone the polling day by fixing a date that is more than two months after the original polling day;
- allowing the returning officer to fix a date for the taking of an adjourned poll that is not more than two months after the original polling day;
- providing for the Minister to direct that a poll be conducted by postal ballot and allowing the ECQ to declare that a stated class of electors may vote in a way approved by the ECQ where the Minister has made such a direction;

- modifying timeframes for making a postal vote request and providing for the ECQ to declare that a class of persons may cast a postal vote without applying;
- allowing the ECQ to declare by notice that electoral visitor voting is not available at the start of a by-election or fresh election and make alternative arrangements to enable an affected elector to vote; and if a declaration is not made allowing the ECQ or returning officer to direct an issuing officer not to visit an elector and ensure the issuing officer makes alternative arrangements to enable the affected elector to vote;
- allowing the ECQ to declare a class of electors who may cast an electronically assisted vote and to make procedures which potentially could impact how those electors cast electronically assisted votes;
- allowing the ECQ to issue directions in relation to the display or distribution of how-to-vote cards and other election material at a polling booth;
- allowing the ECQ to give directions to scrutineers and candidates about where they may be present and the number of scrutineers each candidate may have for a by election or fresh election;
- allowing a returning officer or presiding officer for a polling booth or a member of the ECQ's staff who has been given a direction under section 96A of the LGEA (Recounting of votes) to give a direction about the movement of scrutineers or candidates at a relevant place, areas where they may or may not be, and the number of scrutineers allowed in particular areas; and
- enabling the returning officer to direct ECQ staff to count votes at a stated place and arrange for the counting of votes to be filmed.

The impacts are justified on the basis that public health considerations may necessitate changes to the way a by-election or fresh election is conducted to reduce the spread of COVID-19. The extension of the amendments is temporary and will only apply, if necessary, to a by-election for which a notice of election is published on or before the COVID-19 legislation expiry day or to a fresh election if a regulation that provides for the election to be held is made on or before the COVID-19 legislation expiry day.

Offences related to local government by-elections and fresh elections - proportionality and reversal of the onus of proof

Whether legislation has sufficient regard to the rights and liberties of individuals includes whether consequences imposed by legislation are proportionate and relevant to the actions to which the consequences are applied by the legislation. Legislation must impose penalties which are proportionate to the offence.

The extension of COVID-19 related measures has the effect of extending the following offences:

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

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

The maximum penalties prescribed are commensurate with the penalties applying to similar offences in the LGEA, the *Local Government Electoral (2020 Quadrennial Election) Regulation 2020* and the *Electoral Act 1992*.

Penalties for these offences are significant to provide disincentive for non-compliance and in recognition of the serious public health risks involved.

Additionally, the extension of these offences may be seen to reverse the onus of proof in criminal proceedings without adequate justification (section 4(3)(d) of the Legislative Standards Act). Generally, in criminal proceedings the prosecution bears the legal onus of proof regarding the elements of the relevant offence and the accused must satisfy the evidential onus of proof for any defence or excuse raised.¹⁰ The Office of the Queensland Parliamentary Counsel has noted 'if legislation prohibits a person from doing something 'without reasonable excuse', it is generally appropriate for a defendant to provide the necessary evidence of the reasonable excuse if evidence of the reasonable excuse does not appear in the case for the prosecution.'¹¹ The reversal of the onus of proof in the offences being extended is justified as because the establishment of a defence of having a reasonable excuse in the circumstances would involve matters which would be within the accused's knowledge.

Extension of operation of COVID-related local government meeting provisions

Consideration of the effect of legislation on the rights and liberties of individuals often involves examining the balance between the rights of individuals and the rights of the community or more general rights (OQPC Notebook 3.15.1).

The Bill has the effect of extending certain temporary local government and committee meeting provisions in the *City of Brisbane Regulation 2012* and the *Local Government Regulation 2012* to enable the chairperson of a local government or committee meeting to restrict access to a meeting if they are satisfied that restricting access is in the public interest to minimise serious risks to the health and safety of persons caused by COVID-19. The measure is temporary in nature and allows flexibility to respond to potential COVID-19 outbreaks where social distancing and restrictions on gatherings are necessary.

¹⁰ OQPC, Principles of Good Legislation: Reversal of onus of proof, June 2013 (version 1), p 3, legislation.qld.gov.au/file/Leg_Info_publications_FLP_Reversal_of_Onus1.pdf.

¹¹ OQPC, FLP Notebook, January 2008, p 36.

While the amendments may result in the restriction of an individual's ability to observe or listen to discussions and decisions that would otherwise be conducted in an open meeting, the potential breach is justified on the basis of lessening public health risks during the ongoing COVID-19 public health emergency.

Extended period of declared disaster situation

The Bill has the effect of extending amendments in the *Disaster Management Act 2003* that provide for a longer period by which a declared disaster situation may be extended. These amendments raise considerations as to whether the legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the Legislative Standards Act). This includes, for example, whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; allows delegation of administrative power only in appropriate cases and to appropriate persons; and confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

The declaration of a disaster situation empowers authorised officers to undertake certain actions or compel others to undertake or refrain from certain actions. This includes controlling the movement of persons, entering places, removing or destroying animals, vegetation, vehicles and structures; and closing roads to traffic.

The powers of authorised officers are discretionary and, will only be exercised in circumstances associated with the COVID-19 disaster situation, where the powers are necessary for public safety and the protection of life or property. Authorised officers are limited to those with the necessary expertise or experience to exercise the powers, and authorisations may be limited or given on conditions specific to the circumstances of the officer or event. The power to give directions about property includes that, if the property is residential or business premises, directions may only be given with the written approval of the relevant district disaster coordinator (section 78 of the Disaster Management Act).

Extension of the period of a disaster situation by regulation is established under the Disaster Management Act in recognition of the emergent circumstances in which the extension may be required and that the exercise of powers may be urgently necessary to protect human life and community safety.

While the exercise of these disaster powers has the potential to impact on fundamental legislative principles, any breach is justified, given the emergent situation and the need to protect the health and wellbeing of the community by managing the potential spread of COVID-19.

The amendment to the Disaster Management Act to set aside the right to compensation raises whether the legislation has sufficient regard to a person's right to fair compensation for compulsory acquisition of property and, that rights and liberties should not be adversely affected, or obligations imposed, retrospectively (sections 4(3)(i) and 4(3)(g) of the Legislative Standards Act).

As noted above, emergency powers available under the Disaster Management Act include the power to direct the owner of any property to put the property under the control of a relevant person. Should such a power be exercised, the amendments will have the effect of setting aside the right to make a claim for fair compensation. This breach is considered justified as the COVID-19 emergency will have severe and long-lasting economic impacts for Queensland. In

this environment, uncapped and unpredictable compensation claims for damage and loss suffered may place further economic pressure on the State and diminish the stimulus measures being implemented by the Queensland Government. Any potential breach of the fundamental legislative principles is considered justified to balance the impacts on potential claimants with the interests of the wider community in the financial safeguards and stimulus measures delivered by the Queensland Government.

Approval of temporary authorities under the Environmental Protection Act 1994

The Bill has the effect of extending an amendment to the Environmental Protection Act that allows the administering authority to approve temporary authorities, thereby making an activity causing environmental harm or nuisance done under a temporary authority lawful. This amendment engages section 4(2)(a) of the Legislative Standards Act, and raises considerations as to whether the legislation has sufficient regard to the rights and liberties of individuals. While there is the potential for a temporary authority to result in environmental harm or nuisance, the amendments provide for the administering authority to include conditions on the authority that are necessary or desirable. These conditions are able to mitigate the potential for environmental harm or nuisance. The alternative to approving the activities is likely to be a greater level of harm (e.g. a temporary authority may allow a higher volume of sewage to be treated at the facility in order to stop the overflow of raw sewage). Noting the ability to include conditions that can minimise any harm, the need to respond to circumstances arising from the COVID-19 emergency that could cause greater environmental harm and the relatively short duration of the provisions, the potential breach of fundamental legislative principles is considered justified.

If the administering authority refuses a request from a person for a temporary authority, there is no ability for the person to appeal the decision or have the decision reviewed under the Environmental Protection Act. This engages section 4(3)(a) of the Legislative Standards Act and raises whether the legislation has sufficient regard to the rights and liberties of individuals, which is dependent on whether the administrative power is sufficiently defined and subject to the appropriate review. The amendments clearly outline the matters that the administering authority must be satisfied of in order to issue a temporary authority. If the administering authority refuses the application for a temporary authority, the person may apply for an environmental authority for the activity through the normal processes in the Environmental Protection Act. The normal process provides the person with appeal and review rights. Given the provisional nature of temporary authorities, the absence of an application fee and the option for a person to apply through the normal processes as an alternative, the potential breach of fundamental legislative principles is considered to be justified. In addition, where the administering authority refuses to issue a temporary authority to a person under the Environmental Protection Act, the person may still have the decision reviewed under the *Judicial Review Act 1991*.

The proposed amendment to allow a declaration to be made by the Minister exempting a person from complying with particular conditions of their approval may result in environmental harm or nuisance. This may, therefore, engage section 4(2)(a) of the Legislative Standards Act. Conditions on approvals are designed to minimise or prevent environmental harm, however, there may also be conditions that require monitoring, reporting or completion of an action by a particular time. An exemption from compliance with this latter type of condition may be given without resulting in any direct environmental harm. It should also be noted that the effect of the temporary exemption is to pause or postpone these conditions. As a result, any significant environmental harm or nuisance is unlikely given the short duration of a declaration and the requirement for approval holders to continue to comply with all other conditions of their

approval. The risk of environmental harm is further reduced due to the requirement for the Minister to exercise the power to grant an exemption in the way that best achieves the objects of the Environmental Protection Act.

Exempting compliance with certain conditions of approval under the Environmental Protection Act

The Bill has the effect of extending an amendment that to the Environmental Protection Act that empowers the Environment Minister to make a declaration exempting compliance with certain conditions of an approval. Exempting a person, or class of persons, from complying with a condition of an approval through a declaration engages section 4(3)(h) of the Legislative Standards Act, as the person will be granted a form of immunity from prosecution for the duration of the declaration. A declaration does not explicitly provide a person with immunity from a proceeding or prosecution generally, rather it stops or pauses a particular condition of an approval from applying for a short duration in order to respond to the impacts of the COVID-19 emergency. All other conditions of the approval must continue to be complied with and penalties are provided in the Environmental Protection Act for non-compliance. Further, where environmental harm is caused beyond the scope of the approval, the general offence provisions of the Environmental Protection Act continue to apply.

Exempting compliance with particular conditions of an approval in the short-term is considered necessary to ensure that the COVID-19 emergency measures currently in place are complied with, without breaching conditions of an approval. For example, a condition of an approval may require the approval holder to fly into a remote community to undertake groundwater monitoring, however, to prevent the spread of the virus this condition may be waived until it is safe to comply with. In this regard, the declaration is not considered to breach the fundamental legislative principles.

Takeaway Liquor Authority

The Bill has the effect of extending amendments to the *Liquor Act 1992* to allow the Commissioner for Liquor and Gaming (Commissioner) to issue a Takeaway Liquor Authority (TLA) to licensees or permittees to sell takeaway liquor in a specified amount. These amendments raise considerations as to whether the legislation has sufficient regard to the rights and liberties of individuals (s4(2)(a) of the Legislative Standards Act). Specifically, that legislative obligations may be dependent on an administrative power only if the power is sufficiently defined and subject to appropriate review, that legislation must be consistent with principles of natural justice, and that legislative changes must not adversely affect an individual's rights and liberties, or impose obligations, retrospectively (sections 4(3)(a), 4(3)(b), and 4(3)(g) of the Legislative Standards Act).

A TLA may take effect from the date of the public health emergency declaration. In effect, this will provide retrospective operation of the TLA to confirm actions that have already been undertaken to support businesses negatively impacted by the business closures as a result of the COVID-19 emergency. As a retrospective TLA will operate to provide additional liquor trading opportunities to affected businesses, it is considered it will not adversely affect rights and liberties retrospectively, and therefore the fundamental legislative principles are not breached.

The ability to immediately suspend a TLA issued in respect of an individual licensee or permittee, and the ability to amend or revoke the TLA, may breach subsection 4(3)(b) of the Legislative Standards Act. However, the potential breach is justified on the grounds of public

interest. Unlawful trading practices, if they involve the irresponsible supply of alcohol, could result in increased alcohol-related harm. The ability to immediately suspend a TLA will allow the Commissioner to take immediate short-term action against a licensee or permittee who contravenes a TLA, or operates a TLA, to prevent this harm and ensure public safety. It is also important to note that a TLA is an extraordinary, time-limited concession that provides authority well beyond the strict regulations that ordinarily apply to takeaway liquor sales. It is therefore appropriate that serious action be taken to address non-compliance (e.g. suspension), without ordinary natural justice processes applying. Further, amendment or revocation of a TLA will not impact on a licensee or permittee's ordinary licence provisions. Prior to revocation or amendment of the TLA on the grounds of contravention, licensees and permittees will be provided with a period of seven days to show cause as to why the Commissioner should not take further action to amend or revoke a TLA. This provides licensees and permittees with a level of procedural fairness and ensures a proportionate response will be taken to address the specific causes of non-compliance or harm.

Body corporate regulation modules

The Bill also extends provisions that allow body corporate committees to make decisions to change rights, privileges or obligations of lot owners in relation to attendance at meetings and provision of information, as well as in regard to access to, or the use of, common property and body corporate assets, in certain circumstances relevant to public health directions.

These provisions may potentially breach (or be inconsistent with) the fundamental legislative principle that legislation have sufficient regard to rights and liberties of individuals, as they provide for the suspension of a requirement or entitlement relating to holding a body corporate general meeting or committee meeting if the committee for a body corporate believes a public health direction would be contravened if the requirement is complied with or a person exercises an entitlement. These provisions may result in the rights of lot owners or the representatives of lot owners to attend and vote at body corporate general meetings or committee meetings in person being suspended, if it is reasonably necessary to suspend physical attendance to ensure the meeting is held in a way that does not contravene a public health direction made under the Public Health Act.

However, lot owners or representatives of lot owners will continue to be able to exercise their right to vote on motions to be determined at a general meeting or committee meeting by existing methods that do not require in-person attendance. For general meetings, existing voting methods that do not require in-person attendance include voting by completing a written voting paper and returning it to the secretary prior to the start of the meeting, or by casting a vote using an electronic voting system (if the use of electronic voting systems has been authorised by the body corporate prior to the commencement of the Regulation). For committee meetings, there is an existing capacity for committees to make decisions without conducting in-person meetings, as committees can vote on motions outside a committee meeting.

Also, the provisions provide body corporate committees with capacity to make arrangements to enable each person who is entitled to attend a meeting to attend remotely and to cast an electronic vote for motions to be decided at a general meeting or committee meeting, or for the choosing of committee members at a general meeting.

The measures are aimed at providing bodies corporate, via their committees, with flexibility to support the public health response to COVID-19 by enabling the body corporate to undertake its statutory functions, such as making decisions at body corporate general meetings and

committee meetings, in a way that complies with relevant public health directions and reduces the threat to public health during the COVID-19 emergency period. It is considered that any potential breach of the principle that legislation have sufficient regard to the rights and liberties of individuals, arising from the temporary suspension of requirements or entitlements relating to holding a body corporate general meeting or committee meeting, is justified to protect the health, safety and welfare of persons affected by the COVID-19 emergency in the community titles sector.

The provisions may also depart from the fundamental legislative principle that legislation have sufficient regard to the rights and liberties of individuals, as they temporarily allows body corporate committees to make decisions to change the rights, privileges or obligations of lot owners if the change is in relation to access to, or the use of, common property or body corporate assets, if necessary to ensure compliance with a public health direction. For example, these provisions will enable committees to place restrictions on access to, or the use of, common property facilities (such as a common property swimming pool) if a public health direction relevant to the use of, or access to, the facility is in force.

However, these provisions are designed to support the public health response to the COVID-19 emergency to ensure bodies corporate are able to manage the common property and body corporate assets in a way that complies with relevant public health directions and reduces the threat to public health during the COVID-19 emergency period. Accordingly, it is considered that any potential inconsistencies with fundamental legislative principles arising from these temporary measures are justified to protect the health, safety and welfare of persons affected by the COVID-19 emergency in the community titles sector.

Institution of Parliament

Section 4(2)(b) of the Legislative Standards Act provides that legislation must have sufficient regard to the institution of Parliament. Whether legislation has sufficient regard to the institution of Parliament depends on whether, for example—

- the delegation of legislative power is allowed only in appropriate cases and to appropriate persons;¹² and
- the exercise of the delegated power is sufficiently subjected to the scrutiny of the legislative assembly.¹³

The Act extends several provisions that may potentially impact on the fundamental legislative principle that legislation has sufficient regard to the institution of Parliament.

Declaring a public health emergency

The Bill continues the power of the Governor in Council to make a regulation to extend, or further extend, the period of a declared public health emergency for a period of up to 90 days. Extending the period of a declared public health emergency enlivens the powers of the Chief Health Officer and emergency officers under Chapter 8 of the Public Health Act. Given the extensive powers that come into effect when a public health emergency is declared or extended there is a potential inconsistency with the fundamental principle set out in sections 4(2)(b) and section 4(4) of the Legislative Standards Act.

¹² *Legislative Standards Act 1992*, s 4(4)(a).

¹³ *Ibid* s 4(4)(b).

It is appropriate that this power is contained in regulation, rather than in principle legislation, given the need to respond swiftly to manage the ongoing public health risks posed by COVID-19. The power to extend a declared public health emergency by regulation rather than an Act of Parliament allows the Government to fulfil its key responsibility of protecting the health and safety of the public.

A regulation extending the declared public health emergency may be made only if the Minister is satisfied it is necessary for a purpose of the Public Health Act. Having the ability to respond at short notice to an evolving epidemiological situation will continue to help ensure the public health objectives of the Public Health Act can be met.

The Bill includes safeguards on the regulation-making power. The expiry provision means the power to make a regulation to extend the public health emergency by up to 90 days will cease on 30 April 2022. Additionally, if the Minister becomes satisfied it is no longer necessary to exercise emergency powers to respond to COVID-19, the Minister must end the declared public health emergency and make a written record of the time and date that the declared public health emergency ends.¹⁴

Emergency powers provided to the Chief Health Officer and emergency officers

The Bill may potentially breach fundamental legislative principles as it delegates powers to make directions to the Chief Health Officer and emergency officers appointed under the Public Health Act. Such an approach may be considered a delegation of powers, the exercise of which has potentially significant effect on individuals' rights and liberties.

The Bill extends the powers provided under the Public Health Act that allow the Chief Health Officer to issue:

- a direction restricting the movement of persons;
- a direction requiring persons to stay at or in a stated place;
- a direction requiring persons not to enter or stay at or in a stated place;
- a direction restricting contact between persons;
- any other direction the Chief Health Officer considers necessary to protect public health.

The public health directions issued must be consistent with the requirements in the Bill and fall within the head of power. They are not, however, subordinate legislation. The remit for any other direction that can be issued is safeguarded by the requirement to be necessary to protect public health. The content of the directions that may be issued under these provisions are technical and detailed in nature and are subject to frequent change due to the rapidly changing COVID-19 pandemic, so are more appropriately prescribed by a public health direction than being included in the Public Health Act.

These provisions enable the Chief Health Officer to make public health directions that are likely to restrict the rights and liberties of individuals. Failure to comply with a public health direction is an offence with a maximum penalty of 100 penalty units or six months imprisonment (section 362D of the Public Health Act).

¹⁴ *Public Health Act 2005* s 324.

The delegation of powers to the Chief Health Officer is considered appropriate to allow for a rapid response to implement measures to limit, and respond to, the spread of COVID-19 in Queensland. The delegation of powers in this way allows for recommendations, such as those made by the Australian Health Protection Principal Committee which comprises several experts in infection control and communicable diseases, to be implemented in a timely manner to reduce the risk of an uncontrolled outbreak of COVID-19 in Queensland.

The delegation of powers to the Chief Health Officer is consistent with the approach taken in other jurisdictions across Australia, such as Victoria and the Australian Capital Territory. Other States, such as Western Australia and South Australia provide their powers to other senior public servants, such as the Commissioner of Police.

The Chief Health Officer is a statutory appointment and accountable in the existing government structures. The Chief Health Officer reports to the Director-General of Queensland Health and the Minister for Health. Therefore, the decision-maker is still within the existing structures of the Queensland Government and the legislation does not give powers to make directions to an external party or to anyone other than the Chief Health Officer. The Bill also continues the existing safeguards which require the Chief Health Officer to revoke a public health direction as soon as reasonably practicable after the Chief Health Officer is satisfied the direction is no longer necessary to assist in containing, or to respond to, the spread of COVID-19.

The Bill also extends the amendments which empower emergency officers to compel persons to do or refrain from certain activities. This includes requiring persons to stay at or in a stated place and requiring business owners or operators to restrict access to certain facilities. Emergency officers are appointed by the chief executive (Director-General of Queensland Health or their delegate) and must be public service officers or employees, health service employees, persons employed by a local government, State Emergency Service members or other persons prescribed by regulation, such as police officers. A public health direction issued by the Chief Health Officer takes precedence over a direction by an emergency officer in the case of any inconsistencies.

The delegation of administrative powers is appropriately limited and is necessary to ensure swift and targeted responses to the rapidly changing risks are possible.

Quarantine fees

The Bill extends and amends provisions in the Public Health Act that require persons required to quarantine to pay fees associated with their quarantine. These provisions potentially breach the principle that legislation must have sufficient regard to the institution of Parliament as legislation should only allow the delegation of legislative power in appropriate cases and to appropriate persons and sufficiently subject the exercise of legislative power to the scrutiny of the Legislative Assembly.

The provisions permit a regulation to prescribe a number of things, such as the quarantine fees to be paid, the cohorts of persons who are required to make prepayments, and the persons who are ineligible to apply for a fee waiver. Further, the provisions permit certain things to be determined by the chief executive and published on Queensland Health's website, including the form of notice that a third party must give to accept liability for payment of quarantine fees.

The implication of fundamental legislative principles with regard to the regulation-making power and chief executive discretion in relation to fees is justified as there is already a head of power to include fees in regulation, under section 461, and this is common practice to reflect

that fees may change over time to reflect changes in costs. The fees may need to be adjusted if advice on the period of quarantine required for COVID-19 is reassessed or there is another change in the operation of the quarantine program. As noted above, the delegation of administrative power to the chief executive will ensure sufficient flexibility to adapt arrangements for the particular circumstances of different cohorts.

With regard to the regulation-making powers to prescribe cohorts of persons who may be required to prepay quarantine fees and to prescribe persons who are ineligible to apply for a fee waiver, these are necessary to quickly and frequently make adjustments as the border eases and more travellers are permitted to enter Queensland. The Queensland Government has already resumed the return of seasonal workers to Queensland. The entry of particular cohorts, such as critical and skilled workers and persons who support service-related industries such as tourism and education, is seen as critical to the State's economic recovery. Flexibility to approve alternative quarantine arrangements and prepayment requirements for specific traveller cohorts will improve the State's ability to recoup quarantine-related expenses and support Queensland's quarantine system to remain sustainable and responsive to changing public health and economic circumstances. Further, any regulation made pursuant to these powers will be subject to Parliamentary scrutiny via the usual tabling and disallowance requirements and examination by the portfolio committee.

Modification framework and extension of regulation-making powers

The Bill extends the operation of regulation-making powers and the modification framework under the ER Act to 30 April 2022. This extension continues the ability for various Acts to be modified by subordinate legislation, should that be required. The use of secondary instruments to implement the modification framework ('Henry VIII clauses') represents a potential departure from the fundamental legislative principle requiring that legislation has sufficient regard to the institution of Parliament (section 4(2)(b) Legislative Standards Act).

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

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

As discussed under the assessment of the Bill's consistency with the fundamental legislative principle that legislation must have sufficient regard to rights and liberties of individuals, the modification framework and regulation-making powers are appropriately limited and necessary to ensure swift and targeted responses to the evolving COVID-19 emergency.

The consistency of the regulations made pursuant to the emergency powers in the ER Act with the fundamental legislative principle that legislation has sufficient regard to the institution of Parliament are addressed, as relevant, in the Explanatory Notes accompanying the legislation.

Application of transitional regulation-making power

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

The Bill further extends the transitional regulation-making power, which can be exercised by the Minister responsible for administering the substantive law affected by the COVID-19 related legislation. Further extending the application of the transitional regulation making power may be considered a breach of the fundamental legislative principle that legislation should have sufficient regard to the institution of Parliament.

This potential breach is justified as it ensures the power can be exercised by the Minister best able to identify the need for a regulation within the limited scope of the power. Existing limitations and safeguards on the transitional regulation-making power, as addressed in the Explanatory Notes to the Extension Act, will continue to apply.

Waiving or deferring gambling taxes or levies

The Bill has the effect of extending amendments in the *Gaming Machine Act 1991* that provide the responsible Minister with the ability to waive or defer gambling taxes or levies. The amendments provide that a gambling tax notice issued by the Minister (with the approval of the Treasurer) is subordinate legislation that has effect despite a provision of the enabling Act. The amendment therefore engages the fundamental legislative principle requiring legislation to have sufficient regard to the institution of Parliament, including by authorising the amendment of an Act only by another Act (section 4(4)(c) of the Legislative Standards Act).

The amendment, and its departure from the fundamental legislative principles, is considered to be justified in view of the potentially urgent need to assist licenced businesses in the recovery from COVID-19, the beneficial nature of the provision, and the time-limited nature of the amendments.

Application of a declaration of emergency to corrective services facilities

The Bill has the effect of extending amendments made to the *Corrective Services Act 2006* to expand the application of the chief executive's emergency declaration power under section 268 of the Corrective Services Act from prisons to all corrective services facilities.

These amendments are a delegation of legislative power in an appropriate case to an appropriate person (section 4(3)(c) of the Legislative Standards Act). While it may also potentially limit the rights and liberties of prisoners detained in locations other than prisons, the exercise of this power is subject to the Minister's approval, a specific time limit, and to instances where the chief executive reasonably believes a situation exists at a corrective services facility that threatens or is likely to threaten the security or good order of the prison or the safety of a prisoner or another person in the corrective services facility. Further, it is a temporary extension of power and for the specific purpose of responding to the COVID-19 emergency.

In the circumstances of the current COVID-19 emergency, it is necessary and appropriate that the chief executive can make such a declaration to ensure the safety of staff, prisoners and the community and to mitigate the potential spread of contagion during the pandemic.

Extended period of declared disaster situation

The Bill has the effect of extending amendments in the Disaster Management Act that provide for a longer period by which a declared disaster situation may be extended. The Act allows an extension of the period of a disaster situation to be made by regulation, which may be inconsistent with the fundamental legislative principle that legislation should have sufficient regard to the institution of Parliament.

The amendment is appropriate and necessary in recognition of the emergent circumstances in which the extension may be required and that the exercise of powers may be urgently necessary to protect human life and community safety.

Exempting compliance with certain conditions of approval under the Environmental Protection Act

The Bill extends an amendment that empowers the Environment Minister to make a declaration exempting compliance with certain conditions of an approval. This amendment allows the Minister to override the operation of the Environmental Protection Act and raises whether it has sufficient regard to the institution of Parliament (s4(2)(b) of the Legislative Standards Act).

The Environmental Protection Act already provides a power for the Administering Authority to amend the conditions of an environmental authority. However, given the number of parties potentially affected by the COVID-19 emergency, it is not considered practical to amend each individual environmental authority or other approval that may be affected. Instead, the amendment will allow the Environment Minister to make a declaration exempting compliance with certain conditions, which is considered justified in this circumstance.

Safeguards are in place to ensure that the power to make the abovementioned declaration cannot be delegated by the Minister and that any declared exemptions are temporary. In addition, section 5 of the Environmental Protection Act requires a person (upon whom a power or function is conferred) to perform the function or exercise the power in a way that best achieves the object of the Act (i.e. to achieve ecologically sustainable development).

Takeaway Liquor Authority

The Bill has the effect of extending an amendment to the Liquor Act to allow the Commissioner for Liquor and Gaming (Commissioner) to issue a Takeaway Liquor Authority (TLA) to licensees or permittees to sell takeaway liquor in a specified amount raises whether the legislation has sufficient regard to the institution of Parliament (s4(2)(b) of the Legislative Standards Act). Specifically, that the exercise of a delegated legislative power must be subject to the scrutiny of the Legislative Assembly (4(4)(b) of the Legislative Standards Act).

The amendments to the Liquor Act apply broad discretionary powers to the Commissioner to provide specific concessions to certain licensees and permittees, that are not contained in the Liquor Act, without direct oversight by Parliament or providing for any associated rights of administrative review.

However, the potential breaches are justified on the grounds of public interest. The COVID-19 emergency is an unprecedented situation, and it is intended that businesses affected by emergency closures be supported by allowing them to provide liquor services to the community in a different capacity. Given the temporary nature and the limited duration of the measures, requiring further Parliamentary scrutiny over such determinations would be impractical in these

extraordinary circumstances and making such determinations reviewable is not considered an appropriate imposition on the Queensland Civil and Administrative Tribunal's resources. The provisions specified in a TLA are of benefit to licensees and do not impose any burden. The provisions align with one of the main purposes of the Liquor Act; to facilitate and regulate the optimum development of the tourist, liquor and hospitality industries having regard to, amongst other things, the economic implication of change (section 3(b) of the Liquor Act). In relation to limits on takeaway sale amounts, the provisions will ensure another main purpose of the Liquor Act, to minimise harm from alcohol abuse, misuse and associated violence, is also met. Further, the amendments ensure that a TLA that has been granted, amended or revoked in respect of a class of licensee or permittee, applies as if it were subordinate legislation and must be tabled in the Legislative Assembly within 14 days. This ensures Parliament has some level of oversight over those TLAs that apply to licensees and permittees broadly and includes the ability for the Legislative Assembly to pass a resolution to disallow the TLA.

Regulation-making power pertaining to elections

Section 4(4) of the Legislative Standards Act provides that whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons; and sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and authorises the amendment of an Act only by another Act.

The Bill extends amendments providing broad regulation-making powers regarding elections held in Queensland. These amendments raise a potential inconsistency with the fundamental legislative principle that legislation must have sufficient regard to the institution of Parliament. However, it is in the public interest to include a regulation-making power to enable alternative arrangements to be put in place where there are legislative impediments or gaps that would otherwise prevent a by-election or fresh election proceeding in an appropriate way depending on the prevailing circumstances around the public health risks of COVID-19.

Under the amendments to the *Local Government Electoral Act 2011*, the Minister may only recommend that the Governor in Council make the regulation if the Minister is satisfied the regulation is necessary to achieve the purpose of minimising the risks to health and safety associated with COVID-19.

These amendments to the Local Government Electoral Act raise consideration as to whether the legislation has sufficient regard to the institution of Parliament to the extent that it will allow for regulations to be inconsistent with the authorising act, the City of Brisbane Act or the Local Government Act. However, the scope of these powers is limited to their respective purposes and any regulations made will be temporary. In addition, once approved by the Governor in Council, the regulations must be tabled in the Legislative Assembly and may be the subject of a disallowance motion.

The amendments also include new regulation-making powers in the *City of Brisbane Act 2010* and the *Local Government Act 2009* to facilitate the holding of a by-election or a fresh election.

Further, the amendments will allow certain legislative requirements or timeframes to be varied without further legislative amendment or a regulation being made. This raises a potential inconsistency with the fundamental legislative principle that legislation must have sufficient regard to the institution of Parliament.

The amendments will enable:

- the ECQ to vary the cut-off date for voters rolls and nominations;
- the Minister, in consultation with ECQ, to postpone the polling day by fixing a date that is longer than two months after the original polling day;
- the returning officer to fix a date for the taking of an adjourned poll that is not more than two months after the original polling day;
- the ECQ to vary the cut-off date for applications for a postal vote;
- the ECQ to declare additional classes of voters who may make an electronically assisted vote;
- the ECQ to issue directions about the display and distribution of how-to-vote cards; and
- the ECQ to issue directions relating to the number of scrutineers a candidate may have for a by-election or fresh election and the movement of scrutineers and candidates at a polling booth or other place they are entitled to be present.

These arrangements are justified on the basis that allowing such procedures to be made, and directions to be given, may be necessary depending on the prevailing circumstances at the time a by-election or fresh election is held so as to minimise risks to health and safety caused by the COVID-19 public health emergency. Further, the ECQ as an independent statutory body that conducts local government elections, in consultation with Queensland Health, is best placed to assess prevailing circumstances and manage these temporary measures. It is also appropriate to provide the Minister the ability to postpone polling day for an election for an extended period of time (longer than two months from the original polling day), as it may be necessary to coordinate and manage the Government's response to serious outbreaks of COVID-19.

Regulation-making power under the Manufactured Homes (Residential Parks) Act 2003

The Bill has the effect of extending amendments to the *Manufactured Homes (Residential Parks) Act 2003* to create a temporary regulation-making power about modifying or suspending the processes for increasing or reducing site rent and modifying the processes for disputing a proposed increase in site rent during the COVID-19 emergency period primarily engage the fundamental legislative principle that requires legislation have sufficient regard to the institution of Parliament (section 4(2)(b) of the Legislative Standards Act), including authorising the amendment of an Act only by another Act (section 4(4)(c) Legislative Standards Act). The proposed regulation-making power will allow for certain rights and obligations under the *Manufactured Homes (Residential Parks) Act* to be altered through the making of emergency regulations, which may be inconsistent with a provision of the relevant Act or a law, to the extent necessary to achieve the purpose of the regulations and this Act.

This regulation-making power is justified by the need to ensure fairness for manufactured home owners during the COVID-19 emergency. In particular, this will enable Government to address issues raised by industry groups and manufactured home owners about rigid processes applying to increases in site rent mandated in the *Manufactured Homes (Residential Parks) Act* and difficulties in applying these during the COVID-19 emergency. In this regard, the processes around 'market reviews' of site rent are a concern for both groups.

It is expensive for a manufactured home owner to move their home out of a residential park and relocate it. Further, manufactured home owners are typically seniors living on limited, fixed incomes. This is why management of increases to site rent is an important issue.

Home owners have identified that social distancing restrictions put them at a disadvantage when facing a market review of site rent by preventing them from properly engaging in the consultation process by meeting, planning and advocating as a group about any proposed site rent increases. Industry stakeholders have identified that market reviews have caused stress and uncertainty for home owners during COVID-19, however, some alternative methods (such as deferring the market rent review for one year) that could be implemented by park owners are not practical because of the strict processes for scheduling of site rent increases in the Manufactured Homes (Residential Parks) Act. The amendments will enable a regulation to temporarily change the process for increasing site rent to achieve balance and fairness during the various stages of COVID-19 restrictions. Further, the regulation will be targeted, appropriately limited and finalised in consultation with home owners and park owners.

The regulation may also have the potential to infringe on the rights and liberties of individuals under section 4(2)(a) of the Legislative Standards Act. However, any temporary changes to the processes for increasing or reducing site rent and modifying the processes for disputing a proposed increase in site rent will not affect underlying property rights. The requirement to pay site rent has not changed and it is only the processes relating to increases or decreases in the site rent that will be temporarily modified.

Inconsistency with fundamental legislative principles is mitigated by the time-limited nature of the amendments and the requirement for a direct link to an exceptional or emergency circumstance balancing community and individual interests related to health and the COVID-19 emergency. Further, the regulation will be subject to disallowance by the Legislative Assembly under section 50 of the *Statutory Instruments Act 1992*.

Other considerations

Existing powers of emergency officers under the Public Health Act

When a public health emergency is declared, emergency powers can be exercised by emergency officers under Chapter 8 of the Public Health Act. Emergency officers may enter a premises, seize items and exercise other powers which may be considered to breach fundamental legislative principles.

It is important to note that the Bill does not itself extend the declared public health emergency or amend the existing powers of emergency officers, such as those that exist under Chapter 8, Part 6 of the Public Health Act. The extension of the declared public health emergency can only be achieved through the Governor in Council making a regulation under section 323 of the Public Health Act.

Therefore, these Explanatory Notes to the Bill do not address any potential implication of fundamental legislative principles relating to the existing powers of emergency officers under Chapter 8, Part 6 of the Public Health Act.

Consultation

Targeted consultation was undertaken with key stakeholders on the policy proposals to further extend most of the COVID-19 emergency measures to 30 April 2022. Stakeholders consulted

included key representative bodies from the health, tourism, business, legal, hospitality, entertainment, gaming, aged care and disability sectors. Queensland Health received 31 submissions to its consultation summary paper.

In addition to the targeted consultation process undertaken by Queensland Health, the following departments undertook additional consultation on the extension of COVID-19 related measures within their respective legislative portfolios:

- the Department of Justice and Attorney-General;
- the Department of State Development, Infrastructure, Local Government and Planning;
- the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships; and
- the Department of Communities, Housing and Digital Economy.

Broader community consultation has not been possible given the need to ensure the amendments are introduced and passed before the expiry of the measures on 30 September 2021. However, further consultation will be part of the parliamentary scrutiny process for the Bill.

No community consultation was undertaken on the proposed amendments to the legislative framework for payment and collection of quarantine fees. While the Bill will establish a more flexible framework for the payment of quarantine fees, the scheme will be tailored to particular cohorts through the regulation and guidance material issued by Queensland Health. Impacted stakeholders will be consulted during the development of the implementing regulations and guidance materials.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with legislation of the Commonwealth or another state or territory. However, in developing the Bill, consideration has been given to legislative responses to the COVID-19 emergency in other jurisdictions and measures that have been taken by other jurisdictions to extend their legislative response.

Each state and territory across Australia has taken a different approach to managing and extending their respective emergency legislation in response to COVID-19. For example, there is a large variance in the timeframes and decision-maker for extending a declared public health emergency.

The extension of the measures to support Queensland's COVID-19 response is consistent with the approach taken by other jurisdictions across Australia to continue to exercise their emergency powers in some form into 2022 or until a large percentage of the population has been vaccinated and the risk of widespread outbreaks has subsided.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 provides that, when enacted, the Act may be cited as the *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021*.

Commencement

Clause 2 provides that part 11, division 3 of the Bill commences on 1 October 2021, and part 12, division 3 commences on a day to be fixed by proclamation. The remaining clauses of the Bill will commence on assent.

Part 2 Amendment of Body Corporate and Community Management Act 1997

Act amended

Clause 3 states that this part amends the *Body Corporate and Community Management Act 1997*.

Amendment of s 323F (Penalties for late payment)

Clause 4 amends the example in section 323F(1)(b) of the *Body Corporate and Community Management Act 1997* to replace the date of 1 November 2021 with 1 July 2022. The example shows that for a payment of a contribution instalment already in arrears at commencement of the provision, a lot owner is not liable for penalties during the relevant period, as defined in section 323C, but may be liable for penalties accrued before and after the relevant period.

Part 3 Amendment of Corrective Services Act 2006

Act amended

Clause 5 states that this part amends the *Corrective Services Act 2006*.

Omission of s 351D (Modification of s 272 (Engaging service provider))

Clause 6 omits section 351D of the *Corrective Services Act 2006*, which modifies section 272 of the Act to remove any doubt that the chief executive may direct corrective services officers to perform duties under the Act at the corrective services facility administered by an engaged service provider. This clause will commence on assent, at which time the modifications to section 272 will be repealed.

Part 4 Amendment of COVID-19 Emergency Response Act 2020

Act amended

Clause 7 states that this part amends the *COVID-19 Emergency Response Act 2020*.

Amendment of s 4A (Meaning of COVID-19 legislation expiry day)

Clause 8 amends section 4A(a) of the *COVID-19 Emergency Response Act 2020* to replace 30 September 2021 with 30 April 2022. The amended section provides that the ‘COVID-19 legislation expiry day’ means the earlier of 30 April 2022 or another day prescribed by regulation as the COVID-19 legislation expiry day.

Extension of the ‘COVID-19 legislation expiry day’ in the *COVID-19 Emergency Response Act 2020* will also have the effect of extending regulations made under that Act which expire on the COVID-19 legislation expiry day.

Part 5 Amendment of Economic Development (COVID-19 Emergency Response) Regulation 2020

Regulation amended

Clause 9 states that this part amends the *Economic Development (COVID-19 Emergency Response) Regulation 2020*.

Amendment of s 6 (Publicly notifying applications if no local newspaper)

Clause 10 amends section 6(2)(b)(ii) (Publicly notifying applications if no local newspaper) of the *Economic Development (COVID-19 Emergency Response) Regulation 2020* to replace 30 September 2021 with ‘the end of the response period.’ Under section 3 of the Regulation, the response period ends on the COVID-19 legislation expiry day.

Part 6 Amendment of Environmental Protection Act 1994

Act amended

Clause 11 states that this part amends the *Environmental Protection Act 1994*.

Amendment of s 547D (Form and content)

Clause 12 amends section 547D(2)(d)(ii) (Form and content) of the *Environmental Protection Act 1994* to replace 30 November 2021 with 30 June 2022. This is approximately two months after the COVID-19 legislation expiry day, which will allow a transition time for businesses to return to their previous operating environment.

Amendment of s 547I (Making of declaration)

Clause 13 amends section 547I(3)(a)(ii) (Making of declaration) of the *Environmental Protection Act 1994* to replace 30 November 2021 with 30 June 2022.

Part 7 Amendment of Explosives Legislation (COVID-19 Emergency Response) Regulation 2020

Regulation amended

Clause 14 states that this part amends the *Explosives Legislation (COVID-19 Emergency Response) Regulation 2020*.

Amendment of s 2A (Definition)

Clause 15 amends paragraph (b) of the definition of *COVID-19 response period* in section 2A of the *Explosives Legislation (COVID-19 Emergency Response) Regulation 2020* to replace ‘the COVID-19 legislation expiry day’ with 30 September 2021.

Amendment of s 3 (Modification of the Explosives Act 1999, s 19 (Term of Authority))

Clause 16 amends section 3(2) (Modification of the Explosives Act 1999, s 19 (Term of authority)) of the *Explosives Legislation (COVID-19 Emergency Response) Regulation 2020* to replace ‘the COVID-19 legislation expiry day’ with 30 September 2021.

Amendment of s 12 (Expiry)

Clause 17 amends section 12 (Expiry) of the *Explosives Legislation (COVID-19 Emergency Response) Regulation 2020* to replace ‘the COVID-19 legislation expiry day’ with 30 September 2021. The effect of this amendment will be that the regulation will not be extended by this Bill. The regulation will instead expire on 30 September 2021.

Part 8 Amendment of Gaming Machine Act 1991

Act amended

Clause 18 states that this part amends the *Gaming Machine Act 1991*.

Amendment of s 367C (Deferral or waiver of payment of gaming taxes)

Clause 19 amends section 367C (Deferral or waiver of payment of gaming taxes) of the *Gaming Machine Act 1991* to replace 30 September 2021 with 30 April 2022.

Part 9 Amendment of Health Legislation (COVID-19 Emergency Response) Regulation 2020

Regulation amended

Clause 20 states that this part amends the *Health Legislation (COVID-19 Emergency Response) Regulation 2020*.

Replacement of s 4 (Period not extended beyond the COVID-19 legislation expiry day)

Clause 21 replaces section 4 (Period not extended beyond the COVID-19 legislation expiry day) of the *Health Legislation (COVID-19 Emergency Response) Regulation 2020*. The

amendments ensure that the modified time limits enabled through the regulation only operate until 30 September 2021.

Amendment of s 15 (Expiry)

Clause 22 amends section 15 (Expiry) of the *Health Legislation (COVID-19 Emergency Response) Regulation 2020* to replace ‘the COVID-19 legislation expiry day’ with 30 September 2021. The effect of this amendment will be that the regulation will not be extended by this Bill. The regulation will instead expire on 30 September 2021.

Part 10 Amendment of Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020

Act amended

Clause 23 states that this part amends the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020*. The legislation ultimately amended is the *Public Health Act 2005*.

Amendment of s 2 (Commencement)

Clause 24 amends section 2 of the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* to change the commencement date for part 16, division 3 of that Act to 1 May 2022. These provisions will repeal amendments to sections 354 and 360 of the Public Health Act that were made by section 35 of the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020*. The amendments are required for consistency with an amendment to section 350 of the Public Health Act made by section 35 of the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* to extend the duration of a detention order to 14 days. The amendments provide that an emergency officer (medical) is not required to request that a person be medically examined if it is not possible to decide within 14 days whether they have been exposed to a serious disease or illness; and is not required to apply to a magistrate to extend the duration of a detention order until a person has been detained beyond 14 days.

Amendment of pt 16, div 3, hdg (Amendments commencing on 1 October 2021)

Clause 25 amends the heading of part 16, division 3 of the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* to change the date referred to in the heading to 1 May 2022.

Part 11 Amendment of Mental Health Act 2016

Act amended

Clause 26 states that this part amends the *Mental Health Act 2016*.

Amendment of s 800I (Power of chief psychiatrist to approve absences during COVID-19 emergency period)

Clause 27 amends section 800I(3)(b) of the Mental Health Act to allow the chief psychiatrist to approve a leave of absence until 30 April 2022. This will enable the chief psychiatrist to issue a leave of absence during the COVID-19 emergency period when the absence is necessary to comply with a detention order, quarantine direction or public health direction. The approved absence cannot be longer than the current expiry date of the provision.

Amendment of s 800P (Expiry of chapter)

Clause 28 amends section 800P of the Mental Health Act to extend the date that chapter 18B of that Act expires to 30 April 2022. Chapter 18B provides that, during the COVID-19 emergency period, the chief psychiatrist may approve an absence of certain patients from an authorised mental health service if satisfied that the absence is necessary to allow compliance with a detention order, quarantine direction or public health direction given under the Public Health Act. The chief psychiatrist must be satisfied that the treatment and care needs of the person can be met for the period of absence and the absence will not result in an unacceptable risk to the person's safety and welfare or to the safety of the community. The amendment allows compliance with a detention order, quarantine direction or public health direction given under the Public Health Act, potentially reducing the risk to the person of contracting COVID-19 or the risk to others in an authorised mental health service in the event of a diagnosed case of COVID-19 within the service.

Chapter 18B also modifies sections 329 and 332 of the Mental Health Act. Under clause 29 of the Bill, these modifications will not be extended.

Omission of s 800J (Modification of ss 329 and 332)

Clause 29 omits section 800J of the Mental Health Act, which modifies sections 329 and 332 of the Act to allow the chief psychiatrist to declare an authorised mental health service and appoint a person to be the administrator of an authorised mental health service by notice published on the Department's website instead of declaring or appointing by gazette notice. These modifications are no longer required and will be allowed to expire. In accordance with the commencement arrangements in clause 2 of the Bill, clause 29 will commence on 1 October 2021, meaning that section 800J will expire at the end of the day on 30 September 2021.

Part 12 Amendment of Public Health Act 2005

Act amended

Clause 30 states that this part amends the *Public Health Act 2005*.

Insertion of new s 362HA

Clause 31 inserts a new section 362HA (How directions may be given) into chapter 8, part 7A, division 3 of the Public Health Act. This division of the Public Health Act confers additional powers for the COVID-19 emergency on emergency officers.

New section 362HA provides that a quarantine direction may be given by an emergency officer to a person:

- as provided for under part 10 of the *Acts Interpretation Act 1954*, that is, by delivering it personally to the person or by leaving or sending it by post, facsimile or similar means to the residence or business of the person last known to the person serving the direction; or
- with consent of the recipient, electronically, such as by email.

New section 362H also provides that a direction given to a person electronically is taken to have been received on the day and at the time the direction is sent to the unique electronic address nominated by the person, unless the contrary is proved.

Amendment of s 362MG (Expiry of Part)

Clause 32 amends the expiry date in section 362MG of the Public Health Act, which provides for the expiry of the amendments made by the *Community Services Industry (Portable Long Service Leave) Act 2020* to insert part 7AA into chapter 8 of the Public Health Act. The expiry date will be extended until 30 April 2022.

Part 7AA of the Public Health Act provides for a person who is required to enter hotel quarantine to pay prescribed fees associated with the costs of the person's quarantine, such as accommodation and food costs.

Amendment of s 362Q (Expiry of Part)

Clause 33 amends the expiry date in section 362Q of the Public Health Act, which provides for the expiry of the amendments made by the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* to insert part 7B into chapter 8 of the Public Health Act. The expiry date will be extended until 30 April 2022.

Chapter 8, part 7B of the Public Health Act amends sections 81 and 109 of the Public Health Act that provide the chief executive, during the COVID-19 emergency, with the power to delegate their powers to the Chief Health Officer or another person who is a public service officer or employee or a health service employee, where the chief executive is satisfied that the person has the expertise or experience in public health issues necessary to exercise the powers.

The amendments also support the efficient disclosure of information relating to confirmed or suspected cases of COVID-19 in the public interest during the COVID-19 emergency.

Insertion of new ch 12, pt 8

Clause 34 inserts a new chapter 12, part 8 (Transitional and validation provisions for Public Health and Other Legislation (Further Extension of Expiring Provisions) Act 2021) into the Public Health Act.

New section 507 (Validation of particular directions given by emergency officers) validates quarantine or other directions under section 362H of the Public Health Act that were previously given to a person electronically, as if new section 362HA applied at the time the direction was given and the person had consented to electronic service. The provision validates both the service and the directions that have been previously given. This is intended to remove doubt as to the validity of quarantine directions previously sent by email, text or other electronic communication to those required to quarantine.

Amendment of sch 2 (Dictionary)

Clause 35 inserts definitions for the terms *communication network* and *unique electronic address* into the definitions at schedule 2 of the Public Health Act. A communication network is a network capable of electronic communication and designed to enable a user of the network to communicate with a specific person or group of people, such as a telephone or computer network. A unique electronic address is a fixed designation on a communication network assigned to a person, such as an email address or mobile phone number.

When considered with new sections 362HA and 362MO of the Public Health Act, quarantine directions and certain relevant documents in relation to quarantine fees may, with a person's consent, be sent to a person's nominated unique electronic address, and are validly given on the day and at the time sent.

Insertion of new ch 8, pt 7AA, div 1, hdg

Clause 36 inserts a new division 1 (Preliminary) into chapter 8, part 7AA of the Public Health Act. Part 7AA of chapter 8 contains provisions regarding quarantine fees during the COVID-19 emergency.

Amendment of s 362MA (Definitions for part)

Clause 37 amends section 362MA, which provides definitions for chapter 8, part 7AA of the Public Health Act. The clause removes the definition of *quarantine*, inserts definitions for the terms *affected person*, *approved way*, *prepayment notice*, *prescribed person*, *quarantine fees* and *required to quarantine*, and amends the reference to where the meaning of *relevant invoice* can be found.

Amendment of s 362MB (Meaning of quarantine)

Clause 38 amends section 362MB of the Public Health Act, which defines the meaning of the word *quarantine* in the context of the phrase 'required to quarantine', which has a defined meaning for the purposes of chapter 7AA. For clarity, the amended section no longer defines the word *quarantine* but rather defines the phrase *required to quarantine*. The amendment is intended to improve clarity and does not change the meaning of 'required to quarantine'.

Insertion of new ch 8, pt 7AA, div 2, hdg

Clause 39 inserts a division 2 (Liability for quarantine fees and other amounts) into chapter 8, part 7AA of the Public Health Act.

Amendment of s 362MC (Fees payable)

Clause 40 amends section 362MC of the Public Health Act. It replaces the heading *Fees payable* with *Quarantine fees* and establishes that the existing regulation-making power to prescribe quarantine fees applies to persons who are 'required to quarantine' within the meaning of section 362MB.

The clause also amends the examples of the types of costs that may be prescribed to add the cost of transport to the place of quarantine. The inclusion of this additional example is intended to clarify that the types of costs associated with a person's quarantine for which a regulation may prescribe fees is not limited to direct costs, such as accommodation and meals, and

includes indirect costs associated with a person's quarantine, such as costs associated with transporting persons to or from quarantine facilities.

Amendment of s 362MD (Persons liable to pay fees)

Clause 41 amends section 362MD of the Public Health Act. It amends the heading of that section to *Liability of persons to pay quarantine fees generally*. The references to 'fees prescribed by regulation' are replaced by references to *quarantine fees*, which is a defined term inserted by clause 37 of the Bill meaning the fees prescribed under section 362MC. The amendments also provide that section 362MD is subject to section 362ME, which is amended by clause 43 of the Bill.

The amendments in this clause also remove subsections (4) and (5) of section 362MD, which pertain to invoicing requirements for quarantine fees, including in circumstances in which two or more adults are jointly and severally liable to pay the fees. Under clause 43 of the Bill, these provisions are moved to a new section with further amendments.

Renumbering of s 362MG (Expiry of part)

Clause 42 renumbers existing section 362MG to section 362MP. The existing section provides the expiry date for chapter 8, part 7AA of the Public Health Act. The expiry date for this part is extended to 30 April 2022 under clause 32 of the Bill.

Replacement of ss 362ME and 362MF

Clause 43 removes and replaces existing sections 362ME and 362MF of the Public Health Act and inserts new sections 362MG–MO.

Replacement section 362ME enables third party liability for the payment of quarantine fees for which another person is or may become liable in certain circumstances. A person who wishes to accept liability for payment of the quarantine fees of another person can give notice to that effect to the chief executive. The way in which this notice is provided is to be determined by the chief executive and published on the department's website. The chief executive may approve the third party as liable for the quarantine fees by giving a notice to the third party or, if approval applies generally to third parties of a particular class, by publishing a notice on the department's website. Once third party liability is established, the person who would otherwise be liable for the quarantine fees under section 362MD will no longer be liable, and the third party will be liable to pay the fees. The approval of third party liability can occur either before or after a person is required to quarantine and incurs liability for quarantine fees. This enables a third party to assume liability for another person's quarantine fees before the person travels to Queensland.

Replacement section 362MF enables the chief executive to require certain persons to prepay their quarantine fees. The chief executive may only require prepayment in circumstances where—

- a person (traveller) proposes to travel to Queensland;
- the traveller is prescribed by regulation as someone for whom prepayment of quarantine fees may be required;
- it is likely that the traveller will be required to quarantine on arrival in Queensland;

- it is likely that quarantine fees will be payable for the traveller's quarantine; and
- the traveller or a third party is likely to be, or to become, liable to pay quarantine fees for the traveller's quarantine under amended sections 362MD or 362ME.

In these circumstances, the chief executive may, by notice, require a person to pay an amount estimated to be the likely quarantine fees charged. The notice must state the amount to be paid, or a way of working out that amount; the way the amount is to be paid; the date by which the amount is required to be paid, which must be before the traveller arrives in Queensland; and the day, or a way of working out the day, that any application for a fee waiver must be made. The notice may be given to the person or, if for a particular class of prescribed persons, published on the department's website.

New section 362MG (Chief executive must give invoice for quarantine fees) sets out requirements pertaining to quarantine fee invoices. Pursuant to this section, the chief executive must give an invoice to a person liable to pay quarantine fees under section 362MD or 362ME. The invoice must state the date it is issued, certain information about the person or persons to whom the invoice relates such as their name and the amount of quarantine fees payable and, if the invoice is for more than one person, the total amount owing. If two or more adults are jointly and severally liable to pay the quarantine fees under section 362MD(2) or (3), the chief executive may give any of the adults an invoice and this is taken to have been given to each of the adults.

Clause 43 also inserts a new division 3 (Waiver of payment of quarantine fees) into chapter 8, part 7AA of the Public Health Act. This new division includes sections 362MH-362MK.

New section 362MH (Application for waiver) covers waivers of payment of quarantine fees. Under this section, a person who is liable, or who may become liable, to pay quarantine fees under section 362MD, other than an *excluded person*, may apply to the chief executive for a waiver of all or part of their quarantine fees. Excluded persons are those who have been prescribed by regulation as being unable to apply for a waiver of quarantine fees. Also, persons who have agreed to third party liability for quarantine fees under section 362ME are also not eligible to apply for a waiver of fees. An application for a fee waiver may be made before an invoice is issued or within 30 days after the date of the invoice, or a longer period agreed by the chief executive. However, if the person is required to prepay their quarantine fees under section 362MF, an application for a fee waiver must generally be made before the person arrives in Queensland and by the date stated in the prepayment notice. The chief executive may accept and consider a late application if appropriate in the circumstances.

New section 362MI (Deciding application for waiver) provides that the chief executive, on receipt of a fee waiver application, must either decide to waive payment of all or part of the quarantine fees or refuse to waive payment of the fees. In making this decision, the chief executive may ask the applicant to give any further information reasonably needed to decide the application. Fees may only be waived where the chief executive considers it appropriate having regard to the circumstances of the person or another person to whom the fee relates, such as the person experiencing financial hardship or being a vulnerable person.

New section 362MJ (Notice of decision) provides that the chief executive must give an applicant for a fee waiver a notice of any decision on that application. If the decision is a refusal

to waive payment of the quarantine fees to the extent sought in the application, the notice must include the reasons for the decision.

New section 362MK (When prepayment notice ceases to have effect) applies if an application for a waiver of quarantine fees is made by a person who is required to prepay their quarantine fees. If the fee waiver application has not been decided, or if the applicant is not given notice of a decision on the application, at least one clear day before the day the relevant traveller proposes to travel to Queensland, the prepayment notice ceases to have effect and is taken never to have been given. Pursuant to the Acts Interpretation Act, a period of time that includes 'at least one clear day' is to be calculated by excluding the day of the act or event and the day on which the purpose is to be fulfilled. Thus, for example, if a traveller proposes to arrive in Queensland on a Friday and a decision on a fee waiver application is not made by the end of the previous Wednesday of that week, the prepayment notice ceases to have effect. This allows time for any required payment to occur prior to the traveller's arrival in Queensland, in circumstances in which a full waiver is not granted.

Clause 43 also inserts a new division 4 (Payment and recovery of quarantine fees and refunds) into chapter 8, part 7AA of the Public Health Act. This new division includes new sections 362ML and 362MM.

New section 362ML (Payment and recovery of quarantine fees) requires persons liable to pay quarantine fees to pay such fees by the due date. The due date is either 30 days after the date of the relevant invoice or, if the person has applied for a fee waiver, 14 days after receiving a notice of the decision on the application. Any amount not paid by the due date may be recovered from the person as a debt to the State.

New section 362MM (Refunds) applies in circumstances where a person prepays their estimated quarantine fees and either the person does not travel to Queensland or the amount of the quarantine fees is less than the amount paid under the prepayment notice because, for example, the person is moved from hotel quarantine to a hospital due to a COVID-19 diagnosis. In these circumstances, the chief executive must provide a refund to the person. If a person does not travel to Queensland, and thus does not incur any quarantine costs, the refund is to be the full amount paid under the prepayment notice. If the amount of the quarantine fees incurred is less than the amount paid under the prepayment notice, the refund must be the difference between fees incurred and fees paid. Under section 38(4) of the Acts Interpretation Act, the State must refund the amount to the person as soon as possible.

Clause 43 also inserts a new division 5 (Miscellaneous) into chapter 8, part 7AA of the Public Health Act. This new division includes new sections 362MN and 362MO.

New section 362MN (Chief executive may approve way of giving notices or making applications) applies if a provision of chapter 8, part 7AA of the Public Health Act authorises or requires a person to give notice or make an application to the chief executive in the approved way. The chief executive must, by notice published on the department's website, approve a way for giving the notice or making the application, for example, through a stated online portal or by email to a stated address. This notice may require stated information to be given with any relevant notice or application, but only if such information is reasonably necessary.

New section 362MO (How chief executive may give documents) applies if the chief executive is authorised or required under a provision of chapter 8, part 7AA of the Public Health Act to give a person a document, including a notice or invoice. Such a document may be given—

- as provided for under part 10 of the Acts Interpretation Act, that is, by delivering it personally to the person or by leaving or sending it by post, facsimile or similar means to the residence or business of the person last known to the person serving the direction; or
- with consent of the recipient, electronically, such as by email.

A document given electronically is taken to have been given on the day and at the time it is sent, unless the contrary is proven.

Clause 43 also inserts new division 6 (Expiry) into chapter 8, part 7AA of the Public Health Act. This new division will include renumbered section 362MP, as amended by clause 32. The section provides that this part will expire on 30 April 2022.

Amendment of ch 12, pt 7, hdg (Transitional provisions for Community Services Industry (Portable Long Service Leave) Act 2020)

Clause 44 amends the heading of chapter 12, part 7 of the Public Health Act. It replaces the word ‘provisions’ with ‘provision.’

Omission of ch 12, pt 7, div 1, hdg (Provision applying on commencement)

Clause 45 removes the heading of chapter 12, part 7, division 1 of the Public Health Act.

Amendment of s 499 (Application of s 362MD)

Clause 46 inserts a note to section 499. The note explains that the transitional provisions relating to the expiry of chapter 8, part 7AA are contained in chapter 12, part 8, division 3.

Omission of ch 12, pt 7, div 2 (Provisions applying on expiry of chapter 8, part 7AA).

Clause 47 removes chapter 12, part 7, division 2 of the Public Health Act. Clause 48 of the Bill instead includes provisions on expiry of chapter 8, part 7AA at new part 8, division 3.

Insertion of new ch 12, pt 8, divs 2 and 3

Clause 48 inserts new divisions 2 and 3 into chapter 12, part 8 of the Public Health Act, as inserted by clause 34. This new division sets out transitional and savings provisions for chapter 8, part 7AA.

New division 2 (Provision for amendments commencing by proclamation) includes new section 508 (Application of s 362ME). This section provides that section 362ME, as replaced by the Bill at clause 43, applies in relation to quarantine fees that a person is liable to pay whether the liability for those fees arose before or after the commencement of the provision.

New division 3 (Provisions applying on expiry of chapter 8, part 7AA) includes new sections 509-518.

New section 509 (Application of division) provides that this division applies on the expiry of chapter 8, part 7AA. It also clarifies that the division does not limit section 20 of the Acts Interpretation Act.

New section 510 (Interpretation) specifies how certain terms and references used in this division should be interpreted. The term ‘former’, for a provision of this Act, means the provision as in force from time to time before the expiry. In addition, a reference in a provision of this division to the expiry generally is a reference to the expiry of chapter 8, part 7AA. Words defined under former chapter 7AA and used in this division have the same meaning as they had under the former part.

New section 511 (Continuation of liability under former ss 362MD or 362ME arising before the expiry) applies if, immediately before the expiry of chapter 8, part 7AA, a person was liable under former section 362MD or 362ME to pay the quarantine fees for a person’s quarantine. In these circumstances, the expiry of former section 362MD or 362ME does not affect the person’s liability under either provision, and chapter 8, part 7AA continues to apply in relation to the person.

New section 512 (Liability under s 362ME arising on or after expiry) provides that, despite its expiry, section 362ME as in force immediately before the expiry of chapter 8, part 7AA continues to apply in relation to a third party who wishes to accept liability for payment of the quarantine fees another person was, immediately before the expiry, liable to pay under section 362MD. This means for example that, after expiry of the provisions, a third party may continue to give a notice accepting liability to pay quarantine fees that were incurred on or prior to the expiry, and the chief executive may approve a third party as being liable for quarantine fees that were incurred on or before the expiry of the provisions.

New section 512 also provides that despite its expiry, former chapter 8, part 7AA continues to apply in relation to a third party who, on or after the expiry, becomes liable under section 362ME (as applied under section 512) to pay the quarantine fees for a person’s quarantine.

New section 513 (Continued application of former s 362MM) applies in relation to a person who, before the expiry of chapter 8, part 7AA, was given a prepayment notice in relation to a prescribed person and paid the amount required under the notice. Despite its expiry, former section 362MM continues to apply in relation to the person. The continued application of section 362MM ensures that a person who paid an amount under a prepayment notice before the expiry of part 7AA, but did not actually incur any liability for the payment of quarantine fees before part 7AA expired, is still entitled to a refund of any overpayment. This may occur where fees are prepaid less than 120 days before the expiry of part 7AA and the person does not travel to Queensland until after part 7AA expires. In these circumstances, the person would not be required to quarantine and would not incur any quarantine fees. The person who prepaid the fees would be entitled to a refund of the fees despite not having incurred liability for the payment of any quarantine fees.

New section 513 further provides that former section 362MM applies as if the reference in former section 362MM(1)(b)(i) to the prescribed person not travelling to Queensland within 120 days after the amount is paid under the payment notice were a reference to the prescribed person not travelling to Queensland before the expiry. Removing the reference to 120 days will

allow refunds to be processed immediately. As noted above, a person for whom quarantine fees have been prepaid but who has yet to travel to Queensland when part 8, chapter 7AA expires will not incur any quarantine fees, so a refund can be processed immediately rather than waiting 120 days from when the fees were prepaid.

New section 514 (Continued application of ss 362MN and 362MO) provides that section 362MN will continue to apply, despite its expiry, for giving a notice, or making an application, in the approved way under, or for, a provision in chapter 8, part 7AA that is continued in effect under this division. Additionally, section 362MO will continue to apply for giving a person a relevant document under a provision of chapter 8, part 7AA that is continued in effect under this division.

Part 13 Amendment of Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021

Act amended

Clause 49 states that this part amends the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021*. The legislation ultimately amended is the *Public Health Act 2005*.

Amendment of s 2 (Commencement)

Clause 50 amends section 2 of the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* to change the commencement date for part 4, division 3 of that Act to 1 May 2022.

Amendment of pt 4, div 3, hdg (Amendment commencing 1 October 2021)

Clause 51 amends the heading of part 4, division 3 of the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* to change the date referred to in the heading to 1 May 2022.

Part 14 Amendment of Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020

Act amended

Clause 52 states that this part amends the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020*. The legislation ultimately amended is the *Public Health Act 2005*.

Amendment of s 2 (Commencement)

Clause 53 amends section 2 of the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* to change the commencement date for part 11, division 3 of that Act to 1 May 2022.

Amendment of pt 11, div 3, hdg (Amendments commencing 1 October 2021)

Clause 54 amends the heading of part 11, division 3 of the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* to change the date referred to in the heading to 1 May 2022.

© The State of Queensland 2021