

Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022

Explanatory Notes

Short title

The short title of the Bill is the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022 (the Bill).

Policy objectives and the reasons for them

On 29 January 2020, a public health emergency was declared for all of Queensland under section 319 of the *Public Health Act 2005* due to the outbreak of COVID-19, its pandemic potential and the public health implications of persons having recently travelled to Queensland from the epicentre of the outbreak (the COVID-19 emergency).

As at 16 February 2022, the World Health Organization reported a total of 414,525,183 confirmed positive COVID-19 cases reported globally. The Australian Government Department of Health reported 2,609,599 confirmed COVID-19 cases, including 4,732 deaths in Australia. In Queensland, there have been 507,746 confirmed cases of COVID-19, with 399 deaths relating to COVID-19 being Queensland residents.

While Queensland's management of COVID-19 has proven to be rapid and effective, the pandemic continues to be unpredictable, presenting significant challenges over the past two years to Queensland's health system, economy and community. Queensland's effective public health response has enabled high vaccination rates to be reached across the Queensland population. Although this high coverage provides protections, the risk of adverse impacts to the health system, economy and the community remains, as demonstrated recently by the high rate of transmission occurring from the Omicron variant (Omicron).

Overview of Queensland's temporary legislative framework to respond to COVID-19

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

- amendments to the Public Health Act to increase powers for emergency officers and the Chief Health Officer to limit, or respond to, the spread of COVID-19 in Queensland, support testing and quarantine requirements and authorise other public health measures;
- amendments and modifications to other legislation across a range of portfolios 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 institutions and the economy to the extent possible (associated COVID-19 measures). The associated

COVID-19 measures include amendments made by the *COVID-19 Emergency Response Act 2020* (COVID-19 ER Act), *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* and subsequent legislation.¹ The COVID-19 ER Act established a ‘modification framework’ of general applicability across the Queensland statute book, under which a number of extraordinary regulations and statutory instruments have been made that modify timeframes, procedures and requirements under a wide range of Acts; and

- a broad power in the COVID-19 ER Act to make regulations to facilitate transitional arrangements for the temporary framework.

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. The temporary legislative framework has been extended from expiry on a number of occasions, most recently by the *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021* until the COVID-19 legislation expiry day. This day is defined in the COVID-19 ER Act to be 30 April 2022 or an earlier day prescribed by regulation as the COVID-19 legislation expiry day. Some associated COVID-19 measures have had a different expiry day enacted in primary legislation through the temporary legislative framework.²

Extension of expiring provisions to support the public health response

Since late 2021, Queensland has been easing restrictions and moving away from a suppression approach toward living with COVID-19. On 18 October 2021, Queensland’s *COVID-19 Vaccine Plan to Unite Families* was released, which provided a roadmap for the relaxation of border restrictions and quarantine requirements, dependent on vaccination rates. From 13 December 2021, having reached 80 per cent two-dose vaccination, vaccinated individuals travelling from domestic hotspots, who met the relevant conditions, were able to enter Queensland without any quarantine requirements. From 15 January 2022, all domestic border restrictions were lifted, allowing vaccinated and unvaccinated people to enter Queensland without quarantine requirements. From 22 January 2022, vaccinated international arrivals have been permitted to enter Queensland with no requirement to quarantine. Unvaccinated international arrivals will continue to be required to quarantine at home or in dedicated quarantine accommodation or other government-nominated accommodation.

On 9 November 2021, Queensland released the *Public Health Measures linked to vaccination status – a plan for 80% and beyond*. This plan sets out different restrictions that apply for vaccinated and unvaccinated individuals in Queensland with a focus on reducing restrictions where possible. Many venues, including hospitality venues, have returned to full capacity, provided that only vaccinated people attend.

As Queensland transitions to living with COVID-19, some restrictions may still need to be maintained or activated, such as mask wearing in areas of increased community transmission and vaccination requirements for high-risk settings. Recent events like the emergence of Omicron, and the Delta variant before that, serve as a clear reminder of how rapidly COVID-19

¹ Additional amendments and modifications were made by the *COVID-19 Emergency Response and Other Legislation Amendment Act 2020* and the *COVID-19 Emergency Response and Other Legislation Amendment Act 2021*.

² For example, section 94B of the *Local Government Act 2009*, which provides that a local government may decide rates and charges for the 2021 -2022 financial year at a meeting other than the local government’s budget meeting, expires on 30 June 2022. This amendment, and a similar amendment to the *City of Brisbane Act 2010*, was made by the *COVID-19 Emergency Response and Other Legislation Amendment Act 2021*.

can spread, with the potential to significantly impact hospital systems. A rapid and flexible public health response is still required to protect the health, safety and welfare of Queenslanders and mitigate the spread of COVID-19 in the community. Ongoing COVID-19 responses are likely to be driven by local epidemiological conditions, vaccination rates and health system capacity, as well as any measures needed to respond to the emergence of vaccine resistant variants or other unforeseen circumstances.

It is critical that flexibility is retained to ensure that, as restrictions are eased and normal social and economic activity resume, appropriate public health measures can continue to be put in place where necessary to address ongoing public health risks and protect the health system. Extending legislative measures past 30 April 2022 to support the public health response to the COVID-19 emergency will ensure Queensland remains well placed to respond to the changing nature of the pandemic and to support the government's long-term objective of safeguarding the health of Queenslanders in the Statement of the Queensland Government's objectives for the community built around *Unite and Recover – Queensland's Economic Recovery Plan*.

Associated COVID-19 measures

As Queensland transitions towards more normal social and economic conditions there is no longer a compelling need or justification for continuing most of the associated COVID-19 measures. The *Public Health Measures linked to vaccination status – a plan for 80% and beyond* sets out measures to protect Queenslanders as the state reopens and restrictions ease for businesses and vaccinated individuals. The phased approach to less restrictive measures means that most of the temporary measures introduced to facilitate the continued functioning of Queensland institutions and the economy to the extent possible are not expected to be needed beyond 30 April 2022.

Accordingly, it is proposed that most of the associated COVID-19 measures, including extraordinary regulations and statutory instruments made pursuant to the modification framework under the COVID-19 ER Act, will not be extended from expiring, except for the limited savings and transitional arrangements necessary to facilitate the return to normal operations in the most efficient and effective way.

Achievement of policy objectives

Extension of expiring public health provisions

The Bill achieves the policy objectives by extending essential public health measures required to support Queensland's response to the COVID-19 pandemic until the *COVID-19 public health legislation expiry day*, which is defined as the day on which the COVID-19 emergency is ended by the Minister under section 324(1) of the Public Health Act or 31 October 2022, whichever is earlier. In particular, the Bill will extend all temporary amendments to the Public Health Act, including to:

- 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 people to quarantine or self-isolate and implement other containment measures;
- authorise the sharing of confidential information for contact tracing;
- encourage compliance with quarantine requirements and other public health directions by

- providing appropriate penalties for contraventions;
- increase the period for which a regulation may extend a declared public health emergency from seven to 90 days;
 - enable fees to be charged for costs associated with the mandatory quarantine of persons in government-arranged accommodation; and
 - protect personal information collected for contact tracing.

Extending the temporary legislative framework in the Public Health Act until the COVID-19 public health legislation expiry day will ensure the Chief Health Officer can continue to apply any of the existing public health measures that may be necessary beyond 30 April 2022. This may include measures in response to new variants that emerge and management of health system capacity. The discretionary nature of the Chief Health Officer's powers under the Public Health Act provides significant flexibility in relation to the public health responses appropriate to manage the COVID-19 pandemic, including not using the powers if the risk does not warrant a response.

The Bill also amends the *Acts Interpretation Act 1954* to include the new defined term *COVID-19 public health legislation expiry day*, as the term is used in a number of Acts extending COVID-19 public health measures. The *COVID-19 public health legislation expiry day* is defined by reference to section 315 of the Public Health Act, that is, to mean the day the COVID-19 emergency ends under section 324(1) of the Public Health Act or 31 October 2022, whichever is earlier. Under section 324(1) of the Public Health Act, the Minister must end the declared public health emergency if the Minister is satisfied the declaration is no longer necessary to prevent or minimise serious adverse effects on human health.

The Bill also extends amendments to the *Corrective Services Act 2006*, *Disaster Management Act 2003* and *Mental Health Act 2016* to support the public health response.

Corrective Services Act 2006

The correctional environment is uniquely vulnerable to COVID-19 due to the close proximity of prisoners and staff and the inability to maintain social distancing. Since the opening of Queensland's borders on 13 December 2021, Queensland Corrective Services (QCS) has increasingly been impacted by COVID-19 as Omicron rapidly spreads across the State. Positive cases of COVID-19 in prisoners and staff in Queensland's corrective services facilities have increased, and continue to increase, in line with cases across the broader community.

It is critical that QCS remains fully equipped to continue to respond rapidly to the increasing risks presented by COVID-19 for the duration of the public health emergency. To support this, the Bill will amend the Corrective Services Act to extend temporary legislative provisions to:

- provide for an emergency declaration under section 268 to be made about any corrective services facility, not just a prison so that a declaration will apply to the Helana Jones Centre (a community corrections centre) and work camps;³
- provide for an emergency declaration under section 268 to be made for up to 90 days, instead of three days as is ordinarily required by the Act;⁴ and

³ See section 351C of the Corrective Services Act.

⁴ See section 5 of the *Corrective Services (COVID-19 Emergency Response) Regulation 2020*.

- authorise QCS to temperature check and refuse entry to any person exhibiting COVID-19 symptoms.⁵

The Bill extends these amendments until the COVID-19 public health legislation expiry day.

Disaster Management Act 2003

The Disaster Management Act provides for a range of powers (declared disaster powers) that may be exercised for a disaster situation by persons authorised under the Act, including police officers. The declared disaster powers, which include the power to close a road to traffic, have been used throughout the pandemic where necessary to operationalise the Government's response to the COVID-19 emergency. Accordingly, the Bill extends the expiry of part 12A of the Disaster Management Act to:

- provide that the declared COVID-19 disaster situation may be extended by regulation for up to 90 days, instead of 14 days as is ordinarily required by the Act to provide greater certainty about disaster arrangements in relation to the COVID-19 emergency (section 138); 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 disaster situation (section 138A).

The Bill extends these amendments until the COVID-19 public health legislation expiry day.

Mental Health Act 2016

While the public health emergency continues, the approval of absence of certain patients may be required where, for example, a person who is already in the community on a temporary absence from a mental health facility contracts COVID-19 and is then required to isolate. The Bill extends amendments in chapter 18B of the Mental Health Act, which allow patients subject to the Mental Health Act to be granted leave where it may be necessary to comply with public health directions. The Bill extends these amendments until the COVID-19 public health legislation expiry day.

The measures in the Corrective Services Act, Disaster Management Act and Mental Health Act are all dependent on the COVID-19 public health emergency declared under the Public Health Act and cannot be used if that declaration ceases. The effect of the Bill is that all temporary legislation that is being extended to respond to COVID-19, except for the transitional provisions, will automatically expire if the Minister ends the declared public health emergency under section 324 of Public Health Act before 31 October 2022.

Expiry of associated COVID-19 related measures

The effect of the Bill is that most of the associated COVID-19 measures that were put in place as part of the temporary COVID-19 legislative framework, including extraordinary regulations and statutory instruments made pursuant to the modification framework under the COVID-19 ER Act, will expire on 30 April 2022, with the exception of the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*, which has already been extended for two years after the COVID-19 legislation expiry day (meaning it will operate

⁵ See section 6 of the Corrective Services (COVID-19 Emergency Response) Regulation.

until 30 April 2024 unless repealed earlier). As noted above, some associated COVID-19 measures have had a different expiry day enacted in primary legislation through the modification framework.⁶ The Bill does not extend or change these different expiry days.

Continuation of savings and transitional provisions for associated COVID-19 measures

While most of the associated COVID-19 measures will expire on 30 April 2022 or another day enacted through earlier amending Acts, the Bill continues the following savings and transitional provisions in the COVID-19 ER Act:

- part 6, to support the operation of the temporary Queensland Small Business Commissioner until a permanent Commissioner has been appointed as proposed under the Small Business Commissioner Bill 2021 (which was introduced into the Legislative Assembly on 12 October 2021);
- part 7, to support the operation of the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020* which has been extended for up to two years after 30 April 2022 (until 30 April 2024) by the *Justice and Other Legislation Amendment Act 2021*.⁷ The extension of this regulation will ensure retail leasing disputes currently underway or that emerge during the COVID-19 emergency period can continue to be processed and resolved under the modification framework;
- part 8A, which validates certain regulations made under the modification framework; and
- part 9, which provides a transitional regulation-making power to facilitate the return to normal operations once associated COVID-19 measures expire. This will ensure there is an appropriate head of power to authorise the making and validity of regulations which may be necessary to address transitional issues, minimise any unforeseen risk and provide clarity for the public and stakeholders who are affected by the temporary associated COVID-19 measures.

The Bill does not change the effect of parts 6, 7, 8A and 9 of the COVID-19 ER Act other than by providing that:

- a transitional regulation for a COVID-19 law will expire two years after the relevant COVID-19 law expires or the day the COVID-19 ER Act expires, whichever is earlier; and
- the COVID-19 ER Act expires two years after the COVID-19 public health legislation expiry day.⁸

Alternative ways of achieving policy objectives

There is no alternative method of achieving the policy objective.

⁶ For example, section 94B of the *Local Government Act 2009* which provides that a local government may decide rates and charges for the 2021-2022 financial year at a meeting other than the local government's budget meeting, expires on 30 June 2022. This amendment was made by the *COVID-19 Emergency Response and Other Legislation Amendment Act 2021*.

⁷ The *Justice and Other Legislation Amendment Act 2021* amended the COVID-19 ER Act to provide that a regulation made under section 23 of the COVID-19 ER Act must be made before 30 April 2022 and expires on 30 April 2024, unless ended sooner. The effect is that no further extraordinary regulations for retail leases and other prescribed leases can be made under section 23 of the COVID-19 ER Act after 30 April 2022.

⁸ The Bill amends s

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

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.

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; and
- the exercise of the delegated power is sufficiently subjected to the scrutiny of the legislative assembly.

The Bill contains several clauses that may impact these fundamental legislative principles in the *Legislative Standards Act 1992*, as discussed below.

Corrective Services Act 2006

Amendments to the declaration of emergency power under section 268 of the Corrective Services Act

Clause 7 of the Bill continues amendments to the *Corrective Services Act* to:

- expand the application of an emergency declaration made by the chief executive under section 268 to all corrective services facilities, rather than just prisons; and
- enable the emergency declaration to be made for up to 90 days, instead of three days as is ordinarily required by the Act.

As the emergency declaration is made by the chief executive, these amendments require consideration of whether the delegation of administrative power is appropriate under sections 4(2)(a) and (b) of the *Legislative Standards Act*. However, it is important to note that the *Corrective Services Act* already allows the chief executive to make an emergency declaration. The only change made by the temporary amendments is to extend the application of the declaration to a broader number of facilities, and to extend the timeframe for the declaration.

The power to issue an emergency declaration is subject to the Minister's approval, a specific time limit of 90 days, 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 facility, the safety of a prisoner, or another person in the facility. Further, the expansion of the declaration-making power is temporary. In line with other temporary COVID-19 legislative measures, clause 9 of the Bill ensures the amendments will cease on 31 October 2022 or sooner if the COVID-19 public health emergency ends.

In the circumstances of the current COVID-19 public health emergency, it is necessary and appropriate that the chief executive, with the approval of the Minister, can make such a declaration to appropriately respond to the pandemic in the correctional environment and ensure the safety of staff, prisoners and the community. The chief executive is best placed to understand the impact of the public health emergency on corrective services facilities.

The temporary extension of the emergency declaration timeframe included in clause 7 of the Bill is consistent with emergency declaration powers under other Queensland Acts and will provide greater certainty for QCS officers, and for prisoners and visitors to corrective services facilities. Applying the emergency declaration to all corrective services facilities will ensure protective measures can be applied in any facility that may be impacted by COVID-19, such as work camps and the Helana Jones Centre.

Given the unprecedented challenges of managing the risks associated with COVID-19 in the correctional environment, these temporary measures are aimed at protecting the health and safety of staff, prisoners, offenders and the broader community. They are therefore considered acceptable and necessary to respond to the COVID-19 public health emergency.

COVID-19 Emergency Response Act 2020

Transitional-regulation making power under the COVID-19 Emergency Response Act 2020

The COVID-19 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, including an extraordinary regulation or statutory instrument made under the modification framework, has expired. While the modification framework and extraordinary regulation-making powers under the COVID-19 ER Act will expire on 30 April 2022, clause 14 of the Bill extends the transitional regulation-making power. 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 continuing a transitional regulation-making power is an important safeguard to ensure legal and commercial certainty in transitioning back to normal operations. As the COVID-19 emergency has been unprecedented and the extraordinary regulation-making and modification framework in the COVID-19 ER Act has been used across portfolios, the exact nature of transitional arrangements may not be immediately clear. The transitional regulation-making power is limited to matters necessary to transition from an expiring associated COVID-19 measure to normal operations.

Regulations made under this power will be subject to tabling and disallowance by the Legislative Assembly and will expire two years after the associated COVID-19 measure to which it relates has expired, or two years after the COVID-19 ER Act expires, whichever is

earlier. This means most transitional regulations will expire on or before 30 April 2024, and any that are remaining will expire by 31 October 2024 at the latest.

Continuation of the Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020

Clause 13 of the Bill does not affect the continuing operation of one principal regulation, the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*, made under the powers in the COVID-19 ER Act. Clause 13 of the Bill sets an expiry date for part 7 of the COVID-19 ER Act, under which the regulation was made. The provision in the Bill that sets the expiry date for part 7 of the COVID-19 ER Act does not in itself breach any fundamental legislative principles. The extent to which the regulation may impact on fundamental legislative principles is addressed in the Explanatory Notes for the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*.

Disaster Management Act 2003

Extended period of declared disaster situation

Clause 17 of the Bill has the effect of continuing amendments in the Disaster Management Act that enable a declared disaster situation to be extended by regulation for a longer period (90 days instead of 14 days as ordinarily required by the Act). 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. Accordingly, 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 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 particular circumstances of the officer or event. The power to give directions about property includes the requirement 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).

Accordingly, while the exercise of these disaster powers has the potential to impact on the rights and liberties of individuals, any breach is justified, given the need to continue to protect the health and wellbeing of the community by managing the spread of COVID-19. It is

important to note also that the Bill does not amend the existing powers exercisable during a disaster power under the Disaster Management Act.

The amendments also raise whether the legislation has sufficient regard to the institution of Parliament under section 4(2)(b) of the Legislative Standards Act, including whether the legislation allows the delegation of legislative power only in appropriate cases and to appropriate persons and sufficiently subjects the exercise of delegated legislative power to the scrutiny of the Legislative Assembly (section 4(4)(a) and (b) of the Legislative Standards Act).

The Disaster Management Act allows for the extension of a period of a disaster situation by regulation where a disaster is continuing, and it is necessary to continue to exercise disaster powers beyond the initial 14-day period. Providing for an ability to extend a disaster situation recognises the possibility of emergent circumstances and that the exercise of powers may be urgently necessary to protect human life and community safety. The ability to extend the period of a disaster situation by regulation may be inconsistent with the fundamental legislative principle that legislation should have sufficient regard to the institution of Parliament.

It is appropriate and necessary that a disaster declaration may be extended by regulation, rather than by an Act of Parliament, to ensure the ability to respond at short notice to the evolving situation and allow the Government to fulfil its responsibility to protect the health and safety of the Queensland community. The Bill does not itself extend the declared disaster situation. Further, a regulation when made, will sufficiently subject the exercise of the delegated legislative power to Parliamentary scrutiny.

Compensation for loss or damage suffered under the Disaster Management Act

The extension of the retrospective amendment to the Disaster Management Act to set aside the right to compensation raises the fundamental legislative principle that legislation should provide for compulsory acquisition of property only with fair compensation and that rights and liberties should not be adversely affected, or obligations imposed, retrospectively (sections 4(3)(g) and (i) of the Legislative Standards Act).

The exercise of the disaster powers available under the Disaster Management Act has the potential to result in loss or damage to a person to whom a direction is given. Should this occur, the amendments will have the effect of setting aside the right to make a claim for fair compensation. This breach is considered justified as, due to the extensive economic impacts of the COVID-19 emergency, 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.

The provision initially had retrospective commencement to ensure the limitation on compensation was applied equally to all potential claimants affected by the exercise of powers under the COVID-19 disaster situation. This approach is consistent with the Public Health Act, which was amended in 2020 to set aside the right to compensation for loss or damage suffered because of the exercise of emergency powers related to the COVID-19 emergency.

The Australian and Queensland Governments have provided substantial economic assistance packages to mitigate the loss and damage suffered by individuals and businesses due to COVID-19 including JobKeeper and JobSeeker payments issued by the Australian Government. The Queensland Government has provided more than \$14.2 billion of initiatives across the State to drive economic recovery and create jobs. The provision of stimulus packages

has supported the State recording positive growth conditions, which will provide for a quicker post-pandemic economic recovery.

Public Health Act 2005

Extension of duration of powers of the Chief Health Officer

Clause 26 of the Bill extends, until the COVID-19 public health legislation expiry day, 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 Bill may potentially breach fundamental legislative principles as it delegates powers to make directions to the Chief Health Officer. Such an approach may be considered a delegation of powers, the exercise of which has a potentially significant effect on individuals' rights and liberties (section 4(3)(c) of the Legislative Standards Act).

The content of the directions that may be issued under these provisions are technical and detailed in nature and 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.

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 includes 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 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 and Ambulance Services. 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 does not affect the existing safeguards in the Public Health Act 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 provisions that authorise the Chief Health Officer to issue directions may also interfere with the rights and liberties of individuals by, for example, restricting movement and requiring closure of business premises. 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.

It is considered the impact on 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 achieved. The amendments have contributed to Queensland's success at managing COVID-19 by allowing rapid and tailored responses to instances of local community transmission of COVID-19.

While broad, the Chief Health Officer's power to issue directions is clearly defined and subject to limits, including that the Chief Health Officer must reasonably believe the direction is necessary to assist in containing or responding to the spread of COVID-19. The Chief Health Officer must also revoke a direction if satisfied the direction is no longer necessary.

Extension of emergency powers provided to emergency officers

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 premises, seize items and exercise other powers. The Bill does not amend the existing powers of emergency officers, such as those that exist under chapter 8, part 6 of the Public Health Act.

However, clause 26 of the Bill extends temporary provisions that enable emergency officers to make directions if the emergency officer reasonably believes the direction is necessary to assist in containing, or to respond to, the spread of COVID-19 within the community. These provisions 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. These provisions may be considered a delegation of powers, the exercise of which has potentially significant effect on individuals' rights and liberties (section 4(3)(c) of the Legislative Standards Act). The provisions that authorise emergency officers to issue directions may also interfere with the rights and liberties of individuals by, for example, restricting movement or refrain from doing certain activities.

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 inconsistency.

It is considered that the impact these emergency powers have on the rights and liberties of individuals is justified, given the need to protect the health of the public by managing the response to COVID-19, and in particular to ensure the latest health and medical advice about isolation and quarantine of COVID-19 cases can be implemented. The amendments have contributed to Queensland's success at responding to 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 emergency officers must be revoked if the emergency officer is satisfied the direction is no longer necessary.

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 by potentially impacting on the rights and liberties of individuals by delegating administrative power to emergency officers (medical) (section 4(3)(c) of the Legislative Standards Act).

Clause 26 of the Bill does not change or increase the detention powers of emergency officers (medical) in any way other than to extend the duration of when the powers may be exercised until the COVID-19 public health legislation expiry day. The powers provided to emergency officers (medical) may be required to direct persons entering Queensland to quarantine for a certain period of time upon arrival to limit the potential spread of COVID-19 in the community.

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 (medical).

Given the need to protect the health of the public, the limitations on the rights and liberties of individuals to limit the risks to the public, arising from the risks of COVID-19, are considered to be appropriately justified.

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, proportionate and reasonable in light of the conduct that constitutes the offence. Clause 26 of 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, until the COVID-19 public health legislation expiry day. It is an offence, carrying a maximum penalty of 100 penalty units or 6 months imprisonment, if a person does not comply with a public health direction unless the person has a reasonable excuse. Comparably, existing section 351 of the Public Health Act 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.

In a pandemic situation, it is critical that the directions made by emergency officers are complied with. It is considered that the ability to impose immediate fines will act as an appropriate deterrent against non-compliance. The policy objective of continuing these amendments is to readily enforce non-compliance of directions made by the Chief Health Officer and emergency officers by enabling certain offences to be enforced through penalty infringement notices. For this reason, the penalty units are proportionate to prevent the risk of an uncontrolled outbreak of COVID-19 in Queensland that may ensue from non-compliance with a public health direction or detention order.

While the penalty provisions provide the maximum penalty units applicable, in practice an escalating compliance framework is used by enforcement officers with the level of enforcement action being dependent on the seriousness of the breach and/or the likelihood of the alleged non-compliance continuing. For example, less serious breaches are often resolved through education or oral and written warnings of non-compliance, with prosecution being used as a last resort in the most serious cases.

The penalty provisions are considered reasonable, proportionate 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

Clause 27 of the Bill continues provisions in the Public Health Act requiring persons to contribute to the costs of quarantine in government-arranged accommodation, until the COVID-19 public health legislation expiry day. The fees charged for services provided to people required to quarantine in a place other than a person's home are prescribed in the *Public Health Regulation 2018*. The Bill does not affect the previous (but not yet commenced) amendments made to the Public Health Act that enable certain prescribed cohorts to be required to pay quarantine fees upfront, before a person's arrival in Queensland.⁹

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). The potential infringement is considered justified as it is necessary to charge fees for the services provided to a person required to quarantine in a place other than a person's home to ensure that a clear mechanism is in place to sustainably manage the costs associated with quarantine. Quarantine requirements are considered necessary to be able to respond to potential outbreaks of new variants of COVID-19 in the community, particularly for people entering Queensland who are unvaccinated. There are opportunities for vulnerable people and people experiencing significant financial hardship to apply for a full or partial waiver of fees, and payment plans can be agreed to limit the impact of the requirements.

Declaring a public health emergency

Clause 31 of 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, instead of seven days as ordinarily required by the Act. 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, this provision may be inconsistent with the fundamental principle that legislation is consistent with principles of natural justice (section 4(2)(b) of the Legislative Standards Act) and whether the legislation has sufficient regard to the institution of Parliament (section 4(4) of the Legislative Standards Act).

It is appropriate that this power is contained in regulation, rather than in primary legislation, given the need to respond swiftly to manage the ongoing public health risks posed by

⁹ Part 12, division 3 of the *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021*, which includes amendments to the Public Health Act to authorise prepayment quarantine fee requirements for prescribed cohorts, is set to commence on a day to be fixed by proclamation. A proclamation has not yet been made.

COVID-19. 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 Public Health Act continues safeguards on the regulation-making power. The provision in clause 31 means the power to make a regulation to extend the public health emergency by up to 90 days will cease on 31 October 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.¹⁰

The Bill does not itself extend the declared public health emergency. The extension of the declared public health emergency can only be achieved through the Governor in Council making a regulation to extend the declared public health emergency under section 323 of the Public Health Act. This ensures that a regulation to extend the declared public health emergency will sufficiently subject the exercise of delegated legislative power to Parliamentary scrutiny.

Consultation

Targeted consultation was undertaken with key stakeholders on the policy proposal to further extend those aspects of the COVID-19 legislative framework directly related to the public health response to 31 October 2022. Stakeholders consulted included key representative bodies from the health, tourism, business, legal, hospitality, entertainment, gaming, aged care and disability sectors.

Stakeholders were generally supportive of extending the public health COVID-19 measures proposed in the Bill. Only one stakeholder provided feedback that was not supportive of the proposed extensions beyond 30 April 2022, on the basis there was insufficient justification for the restrictions on the community's freedoms.

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. The extension of the measures to support Queensland's COVID-19 response is consistent with the approach of other jurisdictions in Australia to continue to exercise their emergency powers in some form in 2022.

¹⁰ Section 324 of the Public Health Act.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 provides that, when enacted, the short title of the Act will be the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2022*.

Commencement

Clause 2 provides for the commencement of the Act.

Sections 7 and 8, part 12 and schedule 1, part 1 of the Act will commence on the day after the COVID-19 legislation expiry day. Schedule 1 of the *Acts Interpretation Act 1954* defines the *COVID-19 legislation expiry day* to mean the earlier of 30 April 2022, or another day prescribed by regulation as the COVID-19 legislation expiry day.

Schedule 1, part 2 of the Act will commence two days after the day chapter 8, part 7A of the *Public Health Act 2005* expires. Chapter 8, part 7A expires on the COVID-19 public health legislation expiry day. The Bill inserts a new definition of *COVID-19 public health legislation expiry day* in the *Public Health Act 2005* and a cross-reference to that term in the *Acts Interpretation Act*. It is defined to mean the earlier of 31 October 2022 or the day the COVID-19 emergency ends under section 324(1) of the *Public Health Act*. Commencement is required to take effect two days after the expiry of chapter 8, part 7A, rather than one day, because some amendments to the *Public Health Act* commence on the day after chapter 8, part 7A expires.

Part 2 Amendment of Acts Interpretation Act 1954

Act amended

Clause 3 provides that part 2 amends the *Acts Interpretation Act 1954*.

Amendment of sch 1 (Meaning of commonly used words and expressions)

Clause 4 amends schedule 1 of the *Acts Interpretation Act* to insert a definition for the term *COVID-19 public health legislation expiry day*, which is defined in section 315 of the *Public Health Act*. The Bill amends section 315 of the *Public Health Act* to define the *COVID-19 public health legislation expiry day* to mean the earlier of 31 October 2022 or the day the COVID-19 emergency ends under section 324(1) of the *Public Health Act*.

Part 3 Amendment of Corrective Services Act 2006

Act amended

Clause 5 provides that part 3 amends the *Corrective Services Act 2006*.

Omission of s 351B (Modification of s 228 (Acting appointments))

Clause 6 omits section 351B of the Corrective Services Act, which was temporarily inserted by the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020*.

This amendment was permanently enacted through section 36 of the *Corrective Services and Other Legislation Amendment Act 2020*. Clause 11 provides for the commencement of the permanent amendment.

Amendment of s 351C (Modification of s 268 (Declaration of emergency))

Clause 7 modifies section 351C of the Corrective Services Act, which was temporarily inserted by the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020*. Section 351C modifies section 268 of the Corrective Services Act to expand the scope and duration of the chief executive's power to declare an emergency for the COVID-19 emergency period.

Section 351C(a) replaces references in section 268 to 'prison' with 'corrective services facility'. This will allow the chief executive to declare an emergency at any corrective services facility, not just a prison. A corrective services facility is defined in the Dictionary in schedule 4 of the Corrective Services Act and includes the Helana Jones Centre (a community corrections centre) and work camps.

Section 351C(b) provides that the maximum duration an emergency declaration under section 268 can be made for is increased from three to 90 days.

Section 351C(c) provides that an emergency declaration must lapse on the earlier of either the day stated for it to cease, or the end of the COVID-19 emergency period.

The modified section 351C replicates the existing section 351C and combines it with section 6 of the *Corrective Services (COVID-19 Emergency Response) Regulation 2020*. The amendment of section 351C continues both of these amendments beyond the COVID-19 legislation expiry day to the newly defined *COVID-19 public health legislation expiry day*.

Insertion of new s 351D

Clause 8 inserts new section 351D of the Corrective Services Act. Section 351D provides additional entry procedures for corrective services facilities to respond to the risks and transmissibility of COVID-19.

Section 351D(1) provides that the additional entry procedures only apply when a declaration of emergency under section 268 of the Corrective Services Act, as applied by section 351C is in force.

Section 351D(2) provides a power for the chief executive to require any person entering, or attempting to enter, a corrective services facility to be screened for COVID-19, including by taking the person's temperature.

Section 351D(3) provides that subsection 351D(4) applies where an *examiner*, the person conducting the screening, is of the opinion that a person displays cold or flu-like symptoms, or has a temperature that exceeds 37.5 degrees celsius. This temperature aligns with the definition

of fever used in the public health direction *Isolation for Diagnosed Cases of COVID-19 and Management of Close Contacts Direction (No. 5)* issued by the Chief Health Officer.

Section 351D(4) ensures the chief executive, on advice from the examiner, has the power to refuse entry to a person where the circumstances in section 351D(3) exist.

Section 351D replicates section 7 of the *Corrective Services (COVID-19 Emergency Response) Regulation 2020*, which will cease on the COVID-19 legislation expiry day. Section 351D makes one change to the previous temporary amendment, to lower the maximum temperature for screening purposes from 38 degrees to 37.5 degrees celsius in line with current public health advice.

Amendment of s 351E (Expiry of part)

Clause 9 amends section 351E of the Corrective Services Act to provide for the expiry of temporary part 15A on the COVID-19 public health legislation expiry day. The Bill amends section 315 of the Public Health Act to define the *COVID-19 public health legislation expiry day* to mean the earlier of 31 October 2022 or the day the COVID-19 emergency ends under section 324(1) of the Public Health Act. The Bill also includes a cross-reference to the defined term in the Acts Interpretation Act.

Part 4 Amendment of Corrective Services and Other Legislation Amendment Act 2020

Act amended

Clause 10 provides part 4 amends the *Corrective Services and Other Legislation Amendment Act 2020*.

Amendment of s 2 (Commencement)

Clause 11 provides for the commencement of section 36 of the *Corrective Services and Other Legislation Amendment Act 2020*. It is a consequential amendment to clause 6 of the Bill.

Part 5 Amendment of COVID-19 Emergency Response Act 2020

Clause 12 provides that part 5 amends the *COVID-19 Emergency Response Act 2020*.

Insertion of new pt 8AA

Clause 13 inserts new part 8AA, section 24AA into the COVID-19 Emergency Response Act, after part 8. Section 24AA provides that parts 2 to 5 and 8 of the COVID-19 Emergency Response Act will expire on the COVID-19 legislation expiry day. Section 4A of the COVID-19 Emergency Response Act provides that the *COVID-19 legislation expiry day* is the earlier of 30 April 2022 or another day prescribed by regulation as the COVID-19 legislation expiry day.

Section 24AA(2) provides the remaining parts of the COVID-19 Emergency Response Act will expire two years after the COVID-19 public health legislation expiry day. The Bill amends section 315 of the Public Health Act to define the *COVID-19 public health legislation expiry day* to mean the earlier of 31 October 2022 or the day the COVID-19 emergency ends under section 324(1) of the Public Health Act. The Bill also includes a cross-reference to the defined term in the Acts Interpretation Act.

Amendments of s 25 (Transition regulation-making power)

Clause 14 amends section 25(7) of the COVID-19 Emergency Response Act to provide that a transitional regulation for a COVID-19 law will expire on the earlier of:

- (a) two years after the COVID-19 law expires;
- (b) the day the COVID-19 Emergency Response Act expires under 24AA(2).

Insertion of new pt 9, div 4

Clause 15 inserts new part 9, division 4 into the COVID-19 Emergency Response Act, consisting of transitional provisions.

New section 28 provides how section 25 (Transitional regulation-making power) of the COVID-19 Emergency Response Act will apply when parts 2 to 5 and 8 of the COVID-19 Emergency Response Act expire. Section 25 provides a transitional regulation-making power for extraordinary regulations, affected laws and COVID-19 laws made under parts 2, 5 and 8.

Parts 2 to 5 and 8 will expire on the COVID-19 legislation expiry day. Section 25 continues to apply until the expiry of the COVID-19 Emergency Response Act, which is two years after the COVID-19 public health legislation expiry day.

For the purpose of making a transitional regulation under section 25, new section 28 provides that a reference to an extraordinary regulation, affected law or COVID-19 law in section 25 will apply as though it is a reference to those terms as defined by the COVID-19 Emergency Response Act in force before the expiry of parts 2 to 5 and 8 of the COVID-19 Emergency Response Act.

Part 6 Amendment of Disaster Management Act 2003

Act amended

Clause 16 provides part 6 amends the *Disaster Management Act 2003*.

Amendment of s 138B (Expiry of part)

Clause 17 amends section 138B of the Disaster Management Act to provide that part 12A (COVID-19 emergency provisions) expires on the COVID-19 public health legislation expiry day. The Bill amends section 315 of the Public Health Act to define the *COVID-19 public health legislation expiry day* to mean the earlier of 31 October 2022 or the day the COVID-19 emergency ends under section 324(1) of the Public Health Act. The Bill also includes a cross-reference to the defined term in the Acts Interpretation Act.

Part 7 **Amendment of Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020**

Act amended

Clause 18 provides part 7 amends the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020*. The amendments in part 7 ultimately amend the Public Health Act.

Amendment of s 2 (Commencement)

Clause 19 amends section 2(2) of the Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act, which ultimately amends sections 354 and 360 of the Public Health Act.

The amendment has the effect of delaying the commencement of part 16, division 3 of the Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act from 1 May 2022 to the day after the COVID-19 public health legislation expiry day. On the day after the COVID-19 public health legislation expiry day, the amendments in part 16, division 3 will commence and have the effect of reinstating the original maximum period for a detention order under section 354 and 360 of the Public Health Act of 96 hours rather than 14 days.

Amendment of pt 16, div 3 hdg (Amendments commencing on 1 May 2022)

Clause 20 amends the heading of part 16, division 3 of the Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act to replace the words ‘1 May 2022’ with the ‘day after *COVID-19 public health legislation expiry day*’. This amendment has the same ultimate effect as outlined in clause 19 above.

Part 8 **Amendment of the Mental Health Act 2016**

Act amended

Clause 21 provides part 8 amends the *Mental Health Act 2016*.

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

Clause 22 amends section 800I(3)(b) of the Mental Health Act to extend the period that the Chief Psychiatrist may grant leave to a person subject to the Mental Health Act to comply with a public health direction, to the COVID-19 public health legislation expiry day.

The Bill amends section 315 of the Public Health Act to define the *COVID-19 public health legislation expiry day* to mean the earlier of 31 October 2022 or the day the COVID-19 emergency ends under section 324(1) of the Public Health Act. The Bill also includes a cross-reference to the defined term in the Acts Interpretation Act.

Amendment of s 800P (Expiry of chapter)

Clause 23 amends section 800P of the Mental Health Act to change the expiry date of chapter 18B of the Mental Health Act to the COVID-19 public health legislation expiry day.

The Bill amends section 315 of the Public Health Act to define the *COVID-19 public health legislation expiry day* to mean the earlier of 31 October 2022 or the day the COVID-19 emergency ends under section 324(1) of the Public Health Act. The Bill also includes a cross-reference to the defined term in the Acts Interpretation Act

Part 9 Amendment of Public Health Act 2005

Act amended

Clause 24 provides part 9 amends the *Public Health Act 2005*.

Amendment of s 315 (Definitions for ch 8)

Clause 25 amends section 315 of the Public Health Act to insert a new definition of the *COVID-19 public health legislation expiry day*. The *COVID-19 public health legislation expiry day* means the earlier of 31 October 2022 or the day the COVID-19 emergency ends under section 324(1) of the Public Health Act.

Under section 324(1) of the Public Health Act, the Minister must end the declared public health emergency as soon as the Minister is satisfied it is no longer necessary to exercise powers under chapter 8 to prevent or minimise serious adverse effects on human health. If the Minister ends the declared public health emergency under section 324(1), the Minister must make a written record of the time and date the declared public health emergency ended.

Insertion of new ch 8, pt 7A, div 7

Clause 26 inserts new chapter 8, part 7A, division 7 in the Public Health Act. New section 362MAJ provides that part 7A expires on the COVID-19 public health legislation expiry day.

Amendment of s 362MG (Expiry of part)

Clause 27 amends section 362MG of the Public Health Act to change the expiry date of part 7AA of the Public Health Act from 30 April 2022 to the COVID-19 public health legislation expiry day.

Amendment of s 362Q (Expiry of part)

Clause 28 amends section 362Q of the Public Health Act to change the expiry date of part 7B of the Public Health Act to the COVID-19 public health legislation expiry day.

Amendment of sch 2 (Dictionary)

Clause 29 amends the dictionary in schedule 2 to insert a cross-reference to the definition of *COVID-19 public health legislation expiry day* in section 315.

Part 10 **Amendment of the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021**

Act amended

Clause 30 provides that part 10 amends the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021*. The amendments in part 10 ultimately amend the Public Health Act.

Amendment of s 2 (Commencement)

Clause 31 amends section 2 of the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act to change the commencement of part 4, division 3 from 1 May 2022 to the day after the COVID-19 public health legislation expiry day. Part 4, division 3 has the effect of acting as a sunset clause for various amendments made to section 323 of the Public Health Act during the COVID-19 public health emergency. On the day after the COVID-19 public health legislation expiry day, the original provision for section 323 of the Public Health Act will be reinstated to provide that a regulation may extend a declared public health emergency for up to seven days.

Amendment of pt 4, div 3, hdg (Amendment commencing on 1 May 2022)

Clause 32 changes the heading for part 4, division 3 to replace ‘1 May 2022’ with ‘day after the COVID-19 public health legislation expiry day’. The reason for this amendment is the same as outlined for clause 31 above.

Part 11 **Amendment of Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020**

Act amended

Clause 33 provides that part 11 amends the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020*. The amendments in part 11 ultimately amend the Public Health Act.

Amendment of s 2 (Commencement)

Clause 34 amends section 2 of the Public Health and Other Legislation (Public Health Emergency) Amendment Act to change the commencement date for part 11, division 3 of that Act to the day after the COVID-19 public health legislation expiry day. These provisions will, on commencement, amend the Public Health Act to reinstate the provisions of chapter 8 of the Public Health Act that were in effect before the COVID-19 emergency.

Amendment of pt 11, div 3, hdg (Amendments commencing on 1 May 2022)

Clause 35 amends the heading of part 11, division 3 of the Public Health and Other Legislation (Public Health Emergency) Amendment Act to change the date referred to in the heading to

the day after the COVID-19 public health legislation expiry day as a consequence of amending the commencement date.

Omission of s 45 (Omission of ch 8, pt 7A (Particular powers for COVID-19 emergency))

Clause 36 omits section 45 of the Public Health and Other Legislation (Public Health Emergency) Amendment Act, which omitted chapter 8, part 7A of the Public Health Act. Section 45 is being omitted because clause 18 of the Bill has the same effect of expiring chapter 8, part 7A of the Public Health Act but does so by making a direct amendment to the Public Health Act rather than amending an amending Act. The omission of section 45 and insertion of clause 18 above ensures a consistent approach is taken with how chapter 8, parts 7, 7AA and 8 of the Public Health Act expire.

Amendment of s 46 (Insertion of new s 498)

Clause 37 omits the words ‘as if the amended Act, section 45 had not commenced’ from section 46 of the Public Health and Other Legislation (Public Health Emergency) Amendment Act and replaces it with ‘as if chapter 8, part 7A had not expired’. Section 46 ultimately inserts new section 498 into the Public Health Act which provides a transitional provision for repealed sections 362D and 362J of the Public Health Act. This clause also omits the definition of ‘amendment Act’ from section 498(4).

Part 12 Minor and consequential amendments

Legislation amended

Clause 38 provides that schedule 1 amends the legislation mentioned in schedule 1.

Schedule 1 makes amendments to:

- update cross-referencing in the COVID-19 Emergency Response Act as a consequence of amendments made by the Bill;
- omits the definition in the Acts Interpretation Act for the term *COVID-19 public health legislation expiry day*, which will commence two days after the COVID-19 public health legislation expiry day;
- omit the definition in the Public Health Act for the term *COVID-19 public health legislation expiry day*—this amendment will commence two days after the COVID-19 public health legislation expiry day, as this term will no longer be required.