

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

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Yvette D'Ath MP, Minister for Health and Ambulance Services and Leader of the House make this statement of compatibility with respect to the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022.

In my opinion, the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

On 29 January 2020, a public health emergency was declared for all of Queensland under section 319 of the *Public Health Act 2005* due to the outbreak of COVID-19. The public health emergency was declared in response to the potential for COVID-19 to become a pandemic due to cases spreading to other countries, and the public health implications for Queensland with travellers recently arriving from the epicentre of the outbreak. Under section 323 of the Public Health Act, the declared public health emergency has been extended by regulation until 26 March 2022 and may be extended further.

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).

The temporary legislative framework supporting Queensland's response to the COVID-19 public health emergency comprises:

- amendments to the Public Health Act (public health COVID-19 measures) to:
 - provide increased 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;
 - enable a regulation to extend the declared public health emergency for up to 90 days;
 - enable fees to be charged for accommodation, food and other costs of persons quarantining in government-arranged accommodation; and

- protect the privacy of personal information collected for contact tracing; and
- 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). These 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*, *COVID-19 Emergency Response and Other Legislation Amendment Act 2020* and *COVID-19 Emergency Response and Other Legislation Amendment Act 2021*, as well as modifications to various Acts made through a number of extraordinary regulations and statutory instruments authorised under the ‘modification framework’ established by the COVID-19 ER Act; and
- a broad power in the COVID-19 ER Act to make regulations to facilitate transitional arrangements for the temporary framework.

Parliament has periodically amended and extended this temporary legislative framework, most recently by the *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021*. Unless further extended, all public health COVID-19 measures and most associated COVID-19 measures will expire on 30 April 2022.¹

The pandemic continues to be unpredictable, and factors such as the emergence of new variants means that the need for restrictions to be put in place at short notice may remain for some time. Having the ability to respond at short notice to an evolving epidemiological situation will continue to ensure public health objectives are met while also balancing the social and economic needs of the community. It is critical that flexibility is retained to ensure that, as restrictions are eased and normal social and economic activity resumes, appropriate public health measures can continue to be put in place where necessary to address ongoing public health risks and support the health system.

The Bill proposes to:

- extend the following provisions until the *COVID-19 public health legislation expiry day*, 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:
 - the public health COVID-19 measures;
 - other COVID-19 measures where they are directly related to the public health response, in particular:
 - disaster arrangements under the *Disaster Management Act 2003*;
 - measures to respond to the risks of COVID-19 in corrective services facilities under the *Corrective Services Act 2006*; and
 - measures to allow patients subject to the *Mental Health Act 2016* to be granted leave to comply with public health directions;
- continue provisions to support the operation of the Queensland Small Business Commissioner, provisions to support the operation of the *Retail Shop Leases and Other*

¹ Some associated COVID-19 measures have had a different expiry day enacted in primary legislation through the temporary legislative framework. 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*.

Commercial Leases (COVID-19 Emergency Response) Regulation 2020 and transitional regulation-making powers to facilitate the transition of expiring associated COVID-19 measures;

- provide for most of the remaining associated COVID-19 measures to expire on 30 April 2022 (unless a different expiry date has already been set by relevant legislation); and
- provide for the automatic expiry of all temporary COVID-19 legislation being extended by the Bill, except for transitional provisions, if the Minister for Health and Ambulance Services ends the declared public health emergency under the Public Health Act before 31 October 2022.

Extending the COVID-19 public health measures until the earlier of 31 October 2022 or until the COVID-19 emergency ends under the Public Health Act will ensure the Chief Health Officer can continue to apply any of the existing public health measures that are directly related to the COVID-19 health response deemed 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.

Conversely, it is proposed most other associated COVID-19 measures that are not directly related to the COVID-19 public health response expire on 30 April 2022 as already provided for under the temporary legislative framework (unless a different expiry date has already been set by relevant legislation). As Queensland transitions towards more normal social and economic conditions, there is no longer a compelling need or justification for extending most extraordinary and temporary measures, other than those that are directly related and integral to the ongoing public health response.

Summary of measures to be extended until the COVID-19 public health legislation expiry day

Public Health Act 2005

Extension of making a regulation to extend the public health emergency for 90 days

Chapter 8, part 2, section 323 of the Public Health Act provides that a regulation may extend the declared public health emergency for up to 90 days, instead of seven days. The proposed extension of section 323 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 under section 323 to extend the declared public health emergency. A human rights certificate accompanies any regulation made for this purpose.

Chief Health Officer and emergency officer powers

Chapter 8, part 7A of the Public Health Act contains additional powers for emergency officers and the Chief Health Officer to limit, and respond to, the spread of COVID-19 in Queensland, and provides for:

- the Chief Health Officer to give public health directions to assist in containing, or to respond to, the spread of COVID-19 within the community;

- the Chief Health Officer to give a notice to businesses or facilities making recommendations to open, close or limit access to the business or facility;
- the Chief Health Officer to delegate some emergency powers, except for the power to give a public health direction;
- emergency officers to give a direction to an individual to stay at a particular place or for a business or facility to open, close or limit access; and
- a quarantine direction notice given by an emergency officer to be given to a person electronically.

Chapter 8, part 7, section 350 of the Public Health Act provides for an emergency officer (medical) to give a detention order for up to 14 days. Sections 354 and 360 impose obligations on an emergency officer (medical) who has given a detention order under section 350.

Confidentiality of Check In Qld app information

Chapter 8, part 7A, division 6 of the Public Health Act also requires personal information collected by the Check In Qld app to be kept confidential and only used for purposes associated with COVID-19.

Quarantine fee scheme

Chapter 8, part 7AA establishes a fee payment scheme for persons who are directed to enter quarantine in government-nominated accommodation. From 1 July 2020, individuals required to undertake quarantine have been required to contribute to the costs of government accommodation by payment of a quarantine fee. Provisions in part 7AA, which are yet to commence, also provide that quarantine fees for individuals in prescribed cohorts may be required to be paid in advance, before arriving in Queensland.

Disclosure of information in the public interest

Chapter 8, part 7B of the Public Health Act provides that the chief executive may delegate the chief executive's powers to disclose information in the public interest to the Chief Health Officer or another appropriately qualified public servant.

This amendment allows the chief executive to authorise the disclosure of confidential information about notifiable conditions, such as COVID-19, including information supplied for contact tracing. The disclosure must be in the public interest and the delegation of the power to authorise the disclosure is limited to no more than two delegates: the Chief Health Officer and another appropriately qualified person.

Corrective Services Act 2006

To support the Queensland Corrective Services (QCS) response to the ongoing COVID-19 pandemic situation the Bill extends three key temporary provisions due to expire on 30 April 2022 by:

- providing for an emergency declaration under section 268 of the *Corrective Services Act 2006* to be made about any corrective services facility, not just a prison; and

- providing the authority for an emergency declaration under section 268 of the Corrective Services Act to be made for up to 90 days; and
- authorising QCS to temperature check and refuse entry to any person exhibiting COVID-19 symptoms.

The temporary provisions are dependent on the COVID-19 public health emergency declared under the Public Health Act. Therefore, the powers cannot be used if that declaration ceases.

Disaster Management Act 2003

Part 12A, section 138 of the Disaster Management Act provides that the declared COVID-19 disaster situation may be extended for up to 90 days, to provide greater certainty about disaster arrangements in relation to the COVID-19 emergency.

Part 12A, section 138A of the Disaster Management Act sets 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.

Mental Health Act 2016

Chapter 18B of the Mental Health Act allows mental health patients to be granted leave to comply with public health directions.

Human Rights Issues

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

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

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

Human rights promoted by the Bill

Amendments to extend public health COVID-19 measures under the *Public Health Act 2005*

Right to life

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

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

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

Protection from torture and cruel, inhuman or degrading treatment

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

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

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

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

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

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 Human Rights Act 2019)

Public health COVID-19 measures

Continuation of emergency powers provided to the Chief Health Officer and emergency officers appointed under the *Public Health Act 2005* to respond to the COVID-19 emergency

(a) the nature of the right

Right to equality before the law

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

This right is engaged by the power of the Chief Health Officer to issue public health directions, as a direction could have a disproportionate impact on certain groups.

For example, a direction limiting freedom of movement may disproportionately affect access to services by people with a disability. In practice, any restriction on the movement of people made under a direction includes an exemption for a person to leave their principal place of

residence or move freely to obtain medical treatment to preserve the person's quality of life. This measure does not extend to cosmetic or non-urgent medical treatments but to people requiring medical attention or other forms of care or support, such as people with a disability requiring disability services.

Another example is a direction issued by the Chief Health Officer which may require people entering certain public places or working at certain high-risk places such as residential aged care, shared disability accommodation, places of detention, childcare and schools and health facilities to be vaccinated. However, in practice there are exemptions from being vaccinated including if a person has a recognised medical contraindication. Higher rates of vaccinations, particularly in high-risk settings, also provide increased levels of protection for vulnerable cohorts in the community including the elderly and immunocompromised.

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

Freedom of movement

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

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

Right to privacy and reputation

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

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

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

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

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

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

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

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

Right to property

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

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

The powers of the Chief Health Officer under section 362F and 362I of the Public Health Act requiring a business to open, close or limit access to any facility used in a business may also impact on a person's right to property. It is acknowledged that the human right is engaged by virtue of the potential loss to the business owner due to changes in the delivery of services or a mandated closure. However, given the need to protect human life and limit the spread of COVID-19, it is considered that addressing the public health risks do not make the limitation on a person's right to property an arbitrary limitation on human rights.

Taking part in public life

Every person in Queensland has the right to take part in public life. This includes the right to participate in the conduct of public affairs and the right to vote and be elected at State and local government elections. Being part of community consultations with government, attending local council meetings, participating in public debate, and taking part in referendums or other electoral processes are important aspects of taking part in public life.

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

Right to protection of families and children

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

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

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

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

Right to liberty and security of person

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

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

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

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

These procedural aspects of the right are not limited in relation to a detention order issued by an emergency officer (medical). The existing provisions under chapter 8, part 7 of the Public Health Act allow a person subject to such a detention order to appeal the decision of a magistrate on an application for an order ending a person's detention to the District Court. These procedural aspects of the right will continue to be limited in relation to the exercise of powers under chapter 8, part 7A as appeal rights are not included.

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

Humane treatment when deprived of liberty

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

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

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

Right to education

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

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

Right to health services

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

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

In practice, any restriction on the movement of people includes an exemption for a person to leave their principal place of residence or move freely to obtain medical treatment to preserve the person's quality of life. This measure does not extend to cosmetic or non-urgent medical

treatments but to people requiring medical attention or other forms of care, such as people with disability.

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

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

Protecting the health and safety of the public is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom. The purpose of the limitations on human rights in the Bill is to protect the Queensland public from serious risks to health and safety, including the potential for loss of life that could occur without an effective public health response to the COVID-19 pandemic.

According to *Boffa v San Marino (1998) 92 Eur Comm HR 27*, protecting public health is clearly a legitimate objective. For example, vaccines protect the community as a whole by increasing protection and reducing the spread of COVID-19 in the community.

The amendments to public health legislation have enabled an effective public health response to the COVID-19 pandemic in Queensland and allowed time for a large proportion of the population to be vaccinated to minimise transmission, illness and hospitalisations. However, despite reaching high levels of vaccination in the community, flexibility to deliver ongoing public health responses is an important safeguard to ensure the pandemic can continue to be managed safely and effectively. There are a number of ongoing uncertainties about how the pandemic will continue to develop, including risks of reinfection, the potential emergence of new variants of concern, vaccine effectiveness over time and possible increased transmission during the winter months. The amendments in the Bill to extend public health powers provide the flexibility to continue to respond to the current Omicron wave and to adapt the public health response to new variants which may be more infectious or vaccine resistant or other unforeseen circumstances that emerge.

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

The limitation of human rights is necessary to ensure that public health officials can implement effective ongoing measures to respond to the COVID-19 pandemic. These measures will help to minimise transmission of COVID-19 and respond to developments in the pandemic, including new variants of concern or particular outbreaks.

The limitations are incidental to the grant of emergency powers to the Chief Health Officer and emergency officers appointed under the Public Health Act to implement physical distancing measures, isolating or quarantining a person suspected or known to have been exposed to COVID-19 and protecting vulnerable populations.

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

The purpose of the Bill, to extend the various amendments made to the Public Health Act to support the Queensland Government's health response to COVID-19, cannot be achieved through any other reasonably available and less restrictive means. Extensive campaigns by the

Queensland and Commonwealth Governments have educated members of the public about the risks of COVID-19 and how to minimise their potential exposure to infection. However, education campaigns alone are not sufficient to effectively respond to the changing nature of the pandemic.

The extension of the amendments made to the Public Health Act, until 31 October 2022 (or earlier if the COVID-19 public health emergency ends by a declaration made by the Minister under section 324 of the Public Health Act), is considered to be the least restrictive and reasonably available way to achieve the purpose of the Bill. The COVID-19 pandemic continues to evolve across Australia and internationally, making it difficult to determine with certainty how long the emergency response measures, particularly the emergency powers provided to the Chief Health Officer and emergency officers appointed under the Public Health Act, will be required. However, an extension of the amendments for a further six months is considered the most appropriate approach to allow for the continuation of the Queensland Government's health response to respond to any emerging developments for the COVID-19 pandemic in Queensland.

Existing safeguards in the Public Health Act will continue to ensure that any potential impact on human rights is minimised and no greater than necessary to respond to the COVID-19 pandemic. These include:

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

The most significant human rights limitations relate to the right to freedom of movement, particularly for persons who are subject to a self-isolation direction. To a lesser extent, restrictions on movement will also limit rights to freedom of thought, conscience, religion and belief; freedom of expression; peaceful assembly and freedom of association; and cultural rights.

These limitations are unavoidable and have been mitigated to the greatest extent possible. For example, as a part of *Queensland's COVID-19 Vaccine Plan to Unite Families*, less restrictive measures have been introduced as vaccination rates increase such as more opportunity to move freely within the community, reduced quarantine periods and fewer border restrictions. As the Queensland community transitions to more normal social and economic conditions, a significant number of temporary amendments put in place to respond to COVID-19 will no longer be needed. For this reason, the Bill does not extend other associated COVID-19 measures that are not directly linked to the public health response to COVID-19.

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

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

Failure to extend the public health measures could result in worse outcomes during future waves of the COVID-19 pandemic in Queensland, especially if new variants of concern or vaccine resistant strains of COVID-19 begin circulating in the community. The extension of public health measures will help to prevent Queensland's health infrastructure becoming overwhelmed.

Although the continuation of the amendments made to the Public Health Act to support the Queensland Government's health response to COVID-19 potentially limits many human rights, the limitations are generally minor or temporary in nature and frequently consistent with internal limitations in the Human Rights Act.

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

(f) any other relevant factors

Not applicable.

Continuation of the power to give electronic quarantine notices

(a) the nature of the right

Right to privacy

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

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

However, the right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary'. This internal limitation applies because the Bill continues the provisions that authorise the use of a person's personal information for the purpose of issuing a notice under section 362H. Also, the amendments are clear that a quarantine direction notice can only be given to a person electronically if the person gives their consent and nominates a unique email address.

Therefore, it is considered the right to privacy and reputation is not limited by the Bill.

Fair Hearing; Rights in criminal proceedings

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

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

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

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

Protecting the health and safety of the public is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom. The purpose of the limitations on human rights is to remove doubt as to how a

quarantine direction notice may be given and at what point in time the notice is deemed to have been received by the person when issued via email.

By deeming a quarantine direction notice to be received at the time it is sent to the person's email address, the provisions in the Public Health Act, being continued by this Bill, ensure that the notice has been 'given' under the Public Health Act and can be enforced if the person does not comply. This supports effective containment and mitigation measures in response to the COVID-19 pandemic and protects Queenslanders from exposure to COVID-19. This purpose is consistent with a free and democratic society based on human dignity, equality and freedom.

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

The limitation of human rights is necessary to ensure legislative clarity about issuing quarantine direction notices, which is heavily reliant on electronic communications to facilitate efficient administration and rapid contact tracing when needed. The giving of electronic notices also supports the efficient management of quarantine systems.

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

The amendments are considered the best way to achieve the purpose ensuring a responsive, efficient and clear system for issuing quarantine direction notices.

The Public Health Act contains safeguards to ensure that any potential interference with human rights is minimal and no greater than necessary to support the current arrangements. A person must consent to receive a quarantine direction notice by email and provide their email address to an emergency officer. This means the person will be aware of the process and that they must ensure they receive and comply with notice.

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

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

Any limitation on human rights in the Bill is outweighed by the need to support the efficient operation of Queensland's quarantine system through the use of electronic communication.

(f) any other relevant factors

Not applicable.

Continuation of the amendments to the *Public Health Act 2005* to delegate powers to authorise the disclosure of confidential information

(a) the nature of the right

Right to privacy and reputation

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

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

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

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

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

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

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

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

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

The continuation of the amendment is considered the best way to reduce the administrative burden of the chief executive and Chief Health Officer during the COVID-19 emergency. If the amendments are not continued, the chief executive or Chief Health Officer would need to authorise every instance of a disclosure of confidential information relating to a notifiable

condition where the disclosure is in the public interest. Importantly, the delegation power is appropriately restricted to one other person in addition to the Chief Health Officer.

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

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

- (f) any other relevant factors

Not applicable.

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

- (a) the nature of the right

Freedom of movement

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

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

Right to protection of families and children

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

The exercise of emergency powers has the potential to impact children through, for example, temporarily restricting their movement, restricting the movement of family or other contacts, or restricting their access to certain facilities or events. Also, directions given by an emergency officer may not consider the child's views or give their views due weight, which does not respect their capacity to influence the determination of their best interests. However, there are

other aspects of the child's best interests which weigh in favour of the amendments, such as their right to life and their health and wellbeing.

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

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

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

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

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

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

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

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

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

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

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

As noted above, safeguards will also continue to ensure the potential interference with human rights is minimal and no greater than necessary to respond to the COVID-19 pandemic.

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

- (f) any other relevant factors

Not applicable.

Continuation of amendments to the *Public Health Act 2005* relating to quarantine fees

- (a) the nature of the right

Imposition of quarantine fee

Right to property

Every person has the right to own property alone or in association with others and must not be arbitrarily deprived of their property. The concept of arbitrariness in the context of the right to property carries a human rights meaning of capriciousness, unpredictability, injustice and unreasonableness, in the sense of not being proportionate to the legitimate aim sought.

The requirement to quarantine potentially limits the human right to property to the extent that it requires payment of a fee.

Pre-payment of quarantine fees

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

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

It is also important to acknowledge that the provisions in the Public Health Act that provide the head of power to prescribe cohorts of people who must pay quarantine fees in advance have not yet commenced. While the Bill does not commence these provisions in the Public Health Act, it extends the expiry of chapter 8, part 7AA, where the empowering provisions will be contained if commenced, until the COVID-19 public health legislation expiry day.

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

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

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

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

The purpose of establishing a head of power to prescribe requirements for prepayment of quarantine fees is to ensure that Queensland's quarantine system is financially sustainable and can be expanded to additional cohorts of travellers as public health risks change and travel restrictions are eased in line with efforts to support Queensland's economic recovery.

While mandatory quarantine requirements for people entering Queensland have eased in Queensland since late 2021, in line with Queensland's *COVID-19 Vaccine Plan to Unite Families*, recent events like the emergence of the Omicron variant serve as a clear reminder that 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. This includes the ability to implement future quarantine requirements, if required, such as the emergence of new variants of concern or vaccine resistant strains of COVID-19.

As the rollout of COVID-19 vaccines and boosters continues in Australia and overseas, additional demands may be placed on the quarantine system as more people from a broader range of cohorts are permitted to enter Queensland. For example, as of 22 January 2022, unvaccinated international arrivals are still required to quarantine in government nominated facilities. The return of particular cohorts, such as critical and skilled workers and persons who support service-related industries such as tourism and education, is seen as critical to the State's economic recovery.

The amendments provide the Queensland Government with the flexibility to approve quarantine arrangements for specific traveller cohorts and make the quarantine fee system more adaptable to the changing nature of the COVID-19 emergency.

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

The Public Health Act contains several protections for prescribed cohorts by:

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

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

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

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

The requirement for those entering Queensland from overseas to pay a fee for quarantine reflects the fact that they are receiving the benefit of the services provided by the locations in which they are quarantined, including food and linen services being provided. The government is providing these services because they are necessary to enable a person returning from overseas to comply with quarantine requirements and meet their responsibility to protect their families and the community from the spread of COVID-19. It is considered appropriate for those receiving the benefit of these services to contribute to these costs.

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

International human rights law indicates that economic considerations alone are insufficient to justify a limit on human rights. However, 'financial considerations wrapped up with other public policy considerations could qualify as sufficiently important objectives [to justify a

limitation on human rights]’² and could be justified where measures to reduce expenditure were undertaken to ‘promote other values of a free and democratic society’³.

Requiring prepayment of quarantine fees improves the collection rate of these fees. This ensures that sufficient resources are available to the State to guarantee the quality and sustainability of Queensland’s quarantine system and ultimately, its management of the significant public health risk caused by the COVID-19 emergency.

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

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

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

Any limit on human rights arising from imposing a fee for mandatory quarantine is considered necessary to have a clear and equitable mechanism in place to sustainably manage the costs associated with international arrivals who are required to quarantine.

The amendments to the Public Health Act being extended by the Bill to require upfront payment of quarantine fees support this purpose by ensuring that persons who are capable of paying fees in advance in appropriate circumstances do so. This facilitates an improved debt recovery rate and ensures the costs of quarantine are equitably distributed.

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

If the amendments are not continued, the Queensland Government would be unable to issue invoices to recover quarantine fees to contribute to the cost of government accommodation for persons required to quarantine.

If the amendments to require prepayment of quarantine fees are not continued, the only realistic alternative is to continue the current cost recovery process of seeking payment after a period of quarantine. Removing the provisions that require the prepayment of quarantine fees would not

² *Newfoundland (Treasury Board) v NAPE* [2004] 3 SCR 381, 411 [69] (Binnie J, for the Court)

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

achieve the purpose of ensuring the quality and sustainability of Queensland's quarantine system.

The amendments to the Public Health Act which are extended by the Bill include a provision to allow the fee for quarantine, or part of the fee, to be waived by the chief executive. This will apply to cohorts who must prepay quarantine fees, unless specifically excluded by regulation. This will allow a hardship scheme to be available. The inclusion of a hardship scheme is considered to be an appropriate way to ensure that human rights are not unreasonably limited.

In addition to offering a hardship scheme, payment plans will be offered so that persons can enter into an agreement to repay the quarantine fee over time, unless the person is one of the cohorts required to prepay quarantine fees. This will allow a person to pay the fee for quarantine over time, which is considered to also reduce any limitation on human rights.

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

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

(f) any other relevant factors

Not applicable.

Other COVID-19 measures related to the public health response

Amendment to the *Corrective Services Act 2006* to temporarily expand the scope and duration of the emergency declaration making power

Section 268 of the Corrective Services Act enables the chief executive to declare that an emergency exists in relation to a prison for a stated period if a situation threatens the security or good order of a prison or the safety of a prisoner or another person in a prison. The making of a declaration allows the chief executive to take certain actions including restricting access to activities in a facility.

The Bill temporarily amends the definition of 'prison' to 'corrective services facility' to enable the extension of the declaration of emergency powers to any corrective services facility (such as the Helana Jones Centre and work camps, which are currently not captured by the definition of 'prison'). The Bill also extends the maximum duration that a declaration can be made for, from 3 to 90 days or until the end of the COVID-19 emergency under sections 324 and 325 of the Public Health Act.

The expanded declaration making power in the Bill is limited to the period of the COVID-19 public health emergency declaration under the Public Health Act. The temporary amendment expands the scope of any limitations on these rights to prisoners at facilities other than prisons and allows a declaration to be in place for a longer period of time.

The making of an emergency declaration under the Corrective Services Act, and the actions that are enlivened under the temporary amendment engage the following rights under the Human Rights Act:

- right to protection from cruel, inhuman or degrading treatment (section 17(b));
- right to freedom of movement (section 19);
- right to freedom of association (section 22);
- right to property (section 24);
- right to privacy (section 25(a));
- right to protection of families and children (section 26(1));
- cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28);
- right to humane treatment when deprived of liberty (section 30(1)); and
- right to education (section 36).

(a) the nature of the right

Protection from and cruel, inhuman and degrading treatment

The right prohibits three distinct types of conduct: torture; cruel, inhuman or degrading treatment or punishment; and medical or scientific experimentation or treatment without consent. Only the protection from cruel, inhuman and degrading treatment is engaged by this amendment, and so the other aspects of the right under section 17 are not addressed in this statement.

The right imposes both negative and positive obligations on the State. The negative obligation prevents the State from carrying out acts that amount to cruel, inhuman or degrading treatment. The positive obligation requires the State to adopt safeguards and mechanisms to ensure that cruel, inhuman or degrading treatment or punishment does not occur (or, at the very least, that there are few or no opportunities for it to occur without detection). The right protects the principle of dignity – the innate value of all human beings.

Cruel and inhuman treatment involves a high degree of suffering, though not necessarily intentionally inflicted. Degrading treatment is focused less on severity of suffering but on humiliation (which is a subjective test). In order for conduct to amount to cruel, inhuman or degrading treatment or punishment, it need not involve physical pain and can include acts that cause both physical and mental suffering. Treatment or punishment that humiliates or debases a person, causes fear, anguish or a sense of inferiority, or is capable of possibly breaking moral or physical resistance or driving a person to act against their will or conscience, can be cruel, inhuman or degrading.

The amendment limits the right to the extent that isolating prisoners to reduce the risks of COVID-19 transmission may be considered inhuman or degrading in a custodial environment only where this occurs for a prolonged and sustained period under an emergency declaration.

Freedom of movement

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

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

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

Freedom of association

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

The amendment limits the freedom of association to the extent a prisoner may be unable to receive visits in circumstances where movement is restricted to mitigate the spread of COVID-19. The amendment may also limit the rights of a visitor whose association with a person detained in a corrective services facility will be impacted because of similar measures.

Property rights

This right protects the right of all persons to own property (alone or with others) and provides that people have a right not be arbitrarily deprived of their property. The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom. The right includes the protection from the deprivation of property. The term ‘deprived’ is not defined by the Human Rights Act, however deprivation in this sense is considered to include the substantial restriction on a person’s use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use their property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it or deriving profits from it).

Property is likely to include all real and personal property interests recognised under general law (for example, interests in land, contractual rights and shares) and may include some statutory rights (especially if the right includes traditional aspects of property rights, such as to use, transfer, dispose and exclude). The right does not provide a right to compensation.

The concept of arbitrariness in the context of the right to property carries a human rights meaning of ‘capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought’.⁴

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

⁴ WBM v Chief Commissioner of Police (2012) 43 VR 466, 472 (Warren CJ, Hansen JA agreeing).

Right to privacy

The underlying value of the right to privacy is the ‘protect[ion] and enhance[ment of] the liberty of the person – the existence, autonomy, security and well-being or every individual in their own private sphere.’⁵ It protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The scope of the right to privacy is very broad, but at its most basic is concerned with notions of personal autonomy and dignity. The United Nations Human Rights Committee (UNHRC) has said that it refers to those aspects of life in which a person can freely express their identity, either alone or in relationships with others.⁶

The right protects privacy in that personal sense (and in the sense of personal information, data collection and correspondence) but also extends to an individual’s private life more generally. For example, the right to privacy protects the individual against interference with their physical and mental integrity, freedom of thought and conscience, legal personality, sexuality, family and home, and individual identity (including appearance, clothing and gender).

The right to privacy protects individuals against unlawful or arbitrary interferences with their privacy. The concept of lawfulness in the context of the right to privacy means that no interference can take place except in cases envisaged by the law. The concept of arbitrariness in the context of the right to privacy carries a human rights meaning of ‘capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought’.⁷

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

As questions of proportionality arise when considering justification of limits on human rights under section 13 of the Human Rights Act, it is convenient to consider these questions below (under headings (b) – (e)) before making a determination as to whether any limitation on the right to privacy will be arbitrary.

Protection of families

The right to the protection of families and children recognises that families are the fundamental group unit of society and entitles families to protection by the society and the State. The meaning of families is broad and recognises that families take many forms and accommodates the various social and cultural groups in Queensland whose understanding of family may differ. Cultural, religious and other traditions will be relevant when considering whether a group of persons constitute a ‘family’.

⁵ Director of Housing v Sudi (2010) 33 VAR 139, 145 (Bell J). See also Re Kracke and Mental Health Review Board (2009) 29 VAR 1, 131 (Bell J).

⁶ Coeriel and Aurik v The Netherlands (Communication No 45/1991) [10.2].

⁷ WBM v Chief Commissioner of Police (2012) 43 VR 466, 472 (Warren CJ, Hansen JA agreeing).

The amendment limits the protection of families and children to the extent that it may restrict a prisoner's relationship with a family member because a prisoner may be unable to receive visits where a corrective services facility is required to restrict access and contact to manage the risks of COVID-19. The amendment may also limit the right for the family of a prisoner if they are prevented from accessing visits.

Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

The Human Rights Act recognises the special importance of human rights for Aboriginal peoples and Torres Strait Islander peoples, and explicitly protects their distinct cultural rights as Australia's first people. The core value underpinning the various cultural rights protected under section 28 of the Human Rights Act is recognition and respect for the identity of Aboriginal peoples and Torres Strait Islander peoples, both as individuals and in common with their communities. Of particular significance to Aboriginal peoples and Torres Strait Islander peoples of Queensland is the right to self-determination, as is reflected in the preamble of the Human Rights Act.

The right recognises that spiritual, economic and material connection with traditional lands and waters is an essential component of that identity and is inextricably connected to Aboriginal peoples' and Torres Strait Islander peoples' cultural heritage, language and kinship ties.

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

Humane treatment when deprived of liberty

The right to humane treatment when deprived of liberty requires that all persons must be treated with humanity and with respect for their inherent human dignity, recognising the particular vulnerability of all persons deprived of their liberty. Individuals who are detained should not be subject to any hardship or constraint that is in addition to that resulting from the deprivation of their liberty (that is, a person who is detained should retain all their human rights subject only to the restrictions that are unavoidable in a closed environment).

The right is informed by a number of United Nations standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners which covers matters such as accommodation conditions, adequate food, personal hygiene, clothing and bedding standards, exercise, medical services, and disciplinary procedures. Under the International Covenant on Civil and Political Rights, the application of the right to humane treatment when deprived of liberty cannot depend on government resources and must be applied without discrimination.

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

Right to education

The right to education empowers people to realise other human rights, achieve social mobility, participate fully in the community and enjoy human existence.

Relevantly, the right to education provides that every person has the right to have access, based on the person's abilities, to further vocational education and training that is equally accessible to all. This right is understood to go towards helping 'to achieve steady economic, social and cultural development and full and productive employment'.⁸

The right to education is a right to access education (not a right to education).⁹ Access in this context carries a particular human rights meaning, incorporating underlying principles of non-discrimination, physical accessibility and economic accessibility.¹⁰

The right to have access to education is likely to be considered a systemic right (similar to the equivalent right under the European Convention of Human Rights¹¹). This means the right is likely only to be limited if there is a systemic breakdown of the provision of education resulting in a person not having access to a minimum level of education.

The individual's right of access to education is also limited to what the State has a progressive duty to realise and how the State elects to realise the right.¹² It is generally accepted that the scope of the discretion granted to the executive and the legislature in how to fulfil social and economic rights such as the right to education is 'very wide',¹³ particularly where the decision involves the allocation of public resources.¹⁴

The amendment may limit the right to education where a corrective services facility is required to restrict movement and contact between prisoners in response to COVID-19 risks and these requirements may impact the availability of educational services to prisoners for a prolonged period. It would not be limited by short disruptions to services.

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

The ability to rapidly respond to the risks associated with COVID-19 is necessary to mitigate the spread of COVID-19, prevent loss of life, and ensure the safety of prisoners, staff, and essential visitors. Providing that a declaration of emergency can be made for any corrective services facility ensures that prisoners in facilities not otherwise gazetted as prisons are afforded the same protection and level of responsiveness.

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

⁸ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 13.

⁹ As noted in the Legal Affairs and Community Safety Committee, Parliament of Queensland, Human Rights Bill 2018 (Report No. 26, February 2019) 51.

¹⁰ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 13

¹¹ European Convention of Human Rights, article 2.

¹² The concept of alternativity suggests that the State can fulfil obligations in multiple ways – see Robert Alexy, 'On Constitutional Rights to Protection' (2009) 3 *Legisprudence* 1, 5.

¹³ Aharon Barak (2012) *Proportionality: Constitutional Limits and Their Limitations* (Cambridge University Press) 431

¹⁴ See *McCloy v New South Wales* (2015) 257 CLR 178, 211-2 (French CJ, Kiefel, Bell and Keane JJ) and *Soobramoney v Minister of Health (Kwazulu-Natal)* [1998] 1 SA 765

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

The correctional environment is uniquely vulnerable to COVID-19 due to the close proximity of prisoners and staff and the inability to maintain social distancing.

To date, QCS has responded to the COVID-19 public health emergency with a staged approach in correctives services facilities. Under this response restrictions have been developed to respond to increasing levels of risk of COVID-19 infection.

QCS' response to the COVID-19 public health emergency is mainly authorised under a declaration of emergency made under section 268 of the Corrective Services Act. Under a section 268 declaration, the Commissioner can make directions including to declare and revoke restrictions at a particular correctional facility, impose visit restrictions, provide for the wearing of face masks, suspend prisoner activities or privileges, and implement of COVID-19 policies for the management of prisoner receptions, employee health risks and vulnerable prisoners. These decisions align with advice from the Chief Health Officer.

These powers also enable QCS to operationalise the 'Managing vulnerable prisoner COVID-19 policy' which has been implemented to preserve the integrity of the correctional environment and to limit the risk of COVID-19 infection amongst prisoners within QCS facilities. The policy has been made on the basis of contemporary public health advice received from Queensland Health to ensure the health and safety of all prisoners, but especially those prisoners who are identified as vulnerable to COVID-19. A vulnerable prisoner is a prisoner who falls within the category of people identified in the statement published by the Australian Health Protection Principal Committee on 30 March 2020 as being at, or likely to be at, a higher risk or serious illness if infected with COVID-19 (that is: Aboriginal and Torres Strait Islander people aged 50 or over with one or more chronic medical conditions; people aged 65 or over with chronic medical conditions; people aged 70 or over; and people with compromised immune systems). Under the policy, and through the use of the emergency powers, identified vulnerable prisoners will be accommodated and managed by QCS and Queensland Health to best prevent infection. Dependent on advice from Queensland Health, this may include placement into single cell secure accommodation isolation, isolation within an existing residential unit or daily temperature and health checks.

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

Temporarily extending the time an emergency declaration can be made in response to COVID-19 under section 268 from three days to 90 days, provides the certainty required for the duration of the emergency in line with the roll-out of restrictions in the correctional environment. Temporarily extending the application of the declaration of emergency powers for up to 90 days or until the COVID-19 emergency is ended pursuant to sections 324 and 325 of the Public Health Act also ensures QCS can continue to respond as necessary to the unique risks surrounding COVID-19, and ensure the safety of prisoners, staff, and essential visitors, without having to re-make the same declaration under section 268 every three days.

The expansion of these emergency powers therefore is necessary to ensure that QCS is able to ensure the health and safety of prisoners and staff in all correctional environments.

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

No less restrictive and reasonably available ways of achieving the purpose have been identified. Due to the human to human transfer of the virus, restrictions need to be imposed in the correctional environment to reduce the risk of transmission.

Adequate safeguards are also in place to reduce the extent of any human rights limitations associated with this amendment and exercise of the power to make an emergency declaration, including:

- all decisions made under an emergency declaration, such as decisions to restrict visits or cancel activities, are themselves decisions that must be made in a way that is compatible with human rights in accordance with the Human Rights Act;
- the expanded emergency declaration making power is only available while the COVID-19 public health emergency is declared and cannot be used if that declaration ceases;
- declarations reflect the roll-out of restrictions in the correctional environment based on advice from the Chief Health Officer;
- the making of a declaration is subject to the approval of the Minister;
- a declaration can only be made for a set period of time after which it must cease or a new decision to declare an emergency must be made;
- while not required by statute, all declarations made under section 268 in response to COVID-19 have been made publicly available. This will continue to occur; and
- the amendment is a temporary measure and will expire on 31 October 2022, or earlier if the COVID-19 public health emergency ceases under section 324 of the Public Health Act.

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

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

(f) any other relevant factors

Not applicable

Requiring persons to be screened for COVID-19 prior to entering a corrective services facility

The amendment to require persons to be screened for COVID-19 prior to entering a corrective services facility, engages the following rights under the Human Rights Act:

- Right to protection from medical or scientific experiment or treatment without consent (section 17(c)); and
- Right to privacy (section 25(a)).

(a) the nature of the right

Right to protection from medical or scientific experimentation or treatment without consent

Section 17(c) of the Human Rights Act ensures an individual has the right not to be subjected to medical or scientific experiments or treatment without the person's full, free, and informed consent. The amendment engages the right not to be subjected to medical treatment without full, free, and informed consent to the extent that participation in COVID-19 screen may be a requirement before entering a corrective services facility to mitigate the potential risk of contagion. Further, a person may be refused entry to a corrective services facility where they display a high temperature or flu-like symptoms. The screening is non-invasive. Further, a participant may choose not to enter a facility and not undergo any screening. It is therefore unlikely that such measures would meet the threshold for limiting this right, however, if the right is considered to be limited, that limitation is considered justified for the reasons set out below.

Right to privacy

Section 25 of the Human Rights Act protects the individual from all unlawful and arbitrary interferences and attacks upon their privacy. This extends to private relationships. The amendment limits the right to privacy of staff, offenders, and visitors to the extent that they may be required to participate in a COVID-19 screen, including temperature checks before being granted approval to enter a corrective services facility.

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

The purpose of the amendment is to reduce the risk of COVID-19 spreading through corrective services facilities. This supports a safe working environment for QCS staff and a healthy and safe living environment for all prisoners while in the State's custody and accommodated in facilities.

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

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

A COVID-19 screen prior to entry to a corrective services facility is done via the checking of temperature and review for flu-like symptoms. It is minimally invasive, including through the use of self-report of symptoms or non-contact thermometers. People exhibiting a temperature

over 37.5 degrees or flu-like symptoms are able to be refused access to a corrective services facility by the chief executive and referred to a fever clinic or emergency room.

Providing that persons seeking access to a corrective services facility may be required to be subject to a COVID-19 screen, and the ability to refuse entry for persons who display a high temperature or flu-like symptoms, is necessary to mitigate the spread of COVID-19, prevent loss of life, and ensure the safety of prisoners, staff, and essential visitors.

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

No less restrictive and reasonably available ways of achieving the purpose have been identified. The checking of temperature and review for flu-like symptoms is as minimally invasive as possible, including through the use of self-report of symptoms or non-contact thermometers. This approach is also akin to what is being implemented in some settings in the community in response to COVID-19.

Safeguards have also been put in place, including that the amendment contains an internal limitation restricting its application to corrective services facilities where a declaration of emergency is in place.

The amendment is also temporary and dependent on the COVID-19 public health emergency declared under the Public Health Act. Therefore, the powers cannot be used if that declaration ceases on the COVID-19 public health legislation expiry day.

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

While it is accepted that this amendment places some limitations on human rights, the extent of that limitation is minimal, with non-invasive screening methods having been adopted.

On balance the purpose of the proposed amendment outweighs the potential limitations on the identified rights, noting any limitation on human rights will be restricted to responding to the current COVID-19 pandemic. Further, the purpose of the amendment is to protect the health, safety and wellbeing (and right to life) of prisoners, staff, and essential visitors.

The COVID-19 screen requirement aims to prevent the introduction and spread of COVID-19 into facilities in a non-invasive way. It aims to prevent loss of life and ensure the health and safety of prisoners and those working or engaging with the correctional environment.

(f) any other relevant factors

Requiring staff and visitors to undertake a COVID-19 screen is consistent with the World Health Organization recommendation for strong infection prevention control measures, including adequate testing and screening, irrespective of whether or not there are suspected cases in the community.

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

(a) the nature of the right

Right to property

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

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

The Disaster Management Act provides for just and reasonable compensation for loss or damage suffered because of the exercise, or purported exercise of disaster powers under the Act. The right to property is limited by the extension of provisions which remove the right to compensation for damage or loss suffered as a result of the exercise of specified powers under the Disaster Management Act, where these powers are exercised as a result of the COVID-19 emergency.

The amendment applies to both individuals and corporations. Under section 11 of the *Human Rights Act 2019* only individuals have human rights. However, the rights of individuals may be affected directly, by setting aside an individual's usual entitlement to compensation, or indirectly arising from a corporation's inability to seek compensation.

The amendment provides that the usual rights to compensation which are provided for under section 119 of the Disaster Management Act for damage or loss because of the exercise, or purported exercise, of powers under that Act, will not apply for the COVID-19 emergency.

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

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

International human rights law indicates that economic considerations alone are insufficient to justify a limit on human rights. However, 'financial considerations wrapped up with other public policy considerations could qualify as sufficiently important objectives [to justify a limitation on human rights]¹⁵ and could be justified where measures to reduce expenditure

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

were undertaken to ‘promote other values of a free and democratic society’¹⁶. Public policy considerations relevant to the limitation include the Government’s role in protecting the health and safety of the community by effectively responding to the pandemic and supporting the community to recover from the economic impacts of the COVID-19 emergency.

In response to the significant impacts arising from the pandemic, 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.

In addition, the administrative burden on the State associated with assessing a potentially high volume of compensation claims may divert resources throughout the pandemic which could instead be directed towards the disaster response.

Restricting compensation payments under the Disaster Management Act is therefore a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.

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

The limitation on the right to property helps to achieve the purpose of continuing the amendment to limit the economic impacts of the COVID-19 emergency on the Government. There is the potential for a significant proportion of the population to be affected by the exercise of powers under the declared disaster situation.

In this environment, the broad entitlement to seek compensation that generally applies under section 119 of the Disaster Management Act would unreasonably open the Government to uncapped and unpredictable compensation claims for damage or loss. This may place further economic and administrative pressure on the State and diminish the Government’s ability to provide stimulus measures and respond to evolving circumstances of the pandemic. Avoiding compensation payments (and the burden of administering such payments) will support the Government to implement various economic resilience measures for Queenslanders.

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

A less restrictive alternative approach could be to provide a limited entitlement to compensation where there were insufficient grounds for the chairperson of the Queensland Disaster Management Committee to authorise persons to exercise declared disaster powers for the COVID-19 disaster.

The COVID-19 emergency has had and will continue to have severe and long-lasting economic impacts on Queensland. The removal of compensation rights for the COVID-19 emergency has been in place under the Disaster Management Act since 20 May 2020 and is consistent with the approach for loss or damage suffered because of the exercise of emergency powers under the Public Health Act (section 366(2)).

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

This consistent approach across Government has ensured that officers acting under the Public Health Act and the Disaster Management Act have been able to exercise powers during the COVID-19 emergency period with the legitimate aim of protecting the health and safety of the community without placing the Government at risk of unknown and unpredictable compensation claims.

Even a limited entitlement to compensation would not achieve the purpose of the amendment as it could create a significant administrative burden for Government to establish a process for the assessment of claims different to that which generally applies in disaster situations. Within the constantly changing environment of the pandemic, it would be difficult to assess claims and navigate any potential liability of the State.

Therefore, this alternative is not considered to be a reasonably available way to achieve the purpose of mitigating the economic impacts of the COVID-19 emergency on the Queensland Government and supporting the Government's ability to provide economic stimulus packages.

Although the amendment sets aside all compensation entitlement under the Disaster Management Act, the Act contains safeguards on the exercise of disaster powers which will mitigate loss or damage suffered as a result of the powers. The amendment is limited to the exercise of powers for the purposes of the declared disaster, and various protections contained in the Disaster Management Act ensure that the relevant powers are exercised appropriately. For example, these powers may only be exercised by authorised officers in certain circumstances, such as where they are necessary for public safety and the protection of life or property. Authorised officers are limited to those with the necessary expertise or experience to exercise the powers, and authorisations may be limited or given on conditions specific to the particular circumstances of the officer or event.

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

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

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

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

Considering the state-wide and long-term scale of the COVID-19 emergency, imposing this potential limitation on the right to property is considered reasonable and justified to limit the potential economic impacts on Queensland. The amendment supports the Government's ability to respond at short notice to an evolving and unpredictable epidemiological situation and ensuring public health objectives are met while also balancing the social and economic needs of the community. On balance, minimising the potential economic impacts on the State of unpredictable compensation payouts arising from actions of officers during the declared disaster outweighs any potential limitation imposed on property rights.

- (f) any other relevant factors

Not applicable.

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

- (a) the nature of the right

The Bill continues amendments to the Disaster Management Act relating to the exercise of disaster powers for the COVID-19 emergency that limit the right to freedom of movement, the right to peaceful assembly and freedom of association, the right to privacy and reputation, and the right to liberty and security.

Freedom of movement

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

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

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

Peaceful assembly and freedom of association

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

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

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

Privacy and reputation

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

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

The purpose of the limitation on the identified rights through the amendment to allow for the longer extension of the disaster declaration regulation period is to give declared disaster officers and the Queensland community greater certainty about the anticipated need for the declared disaster situation to continue.

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

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

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

No less restrictive and reasonably available ways to achieve the purpose have been identified. Due to the human to human transfer of the virus, restrictions may need to be imposed on the movement of persons to reduce the risks of transmission of the virus.

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

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

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

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

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

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

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

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

- (f) any other relevant factors

Not applicable.

Continuation of amendments to the *Mental Health Act 2016*

- (a) the nature of the right

Right to privacy

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

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

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

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

Right to equality; right to health services

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) any other relevant factors

Not applicable.

Associated COVID-19 measures

Extension of some of the extraordinary regulation-making powers in the COVID-19 ER Act

The regulation-making powers and modification framework under the COVID-19 ER Act have the potential to limit most, if not all, of the human rights protected by the Human Rights Act depending on the nature of the secondary instruments that may be enacted or exercised under

the empowering provisions. This was acknowledged in the Statement of Compatibility that accompanied the COVID-19 ER Act, noting that the human rights implications would not crystallise until a specific proposal (that is, a regulation, extraordinary regulation, statutory instrument or notice) had been developed and enacted.

However, those implications have now crystallised in the form of a number of secondary instruments the majority of which are not being extended under the Bill.

This Bill proposes to continue temporary amendments to manage transitional and savings arrangements for one principal regulation made under the extraordinary making regulation powers in the COVID-19 ER Act, the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*.

The human rights certificate for the extraordinary regulation proposed to be extended is available here:

- [Human Rights Certificate](#) – *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*

This human rights certificate was made in the name of the Minister who, at the time, administered the law or provision under which the identified secondary instrument was made, and I am advised that the certificate accurately reflects the human rights that are limited by that secondary instrument.

The other extraordinary regulation making powers in the COVID-19 ER Act will not be extended beyond 30 April 2022 given there is no longer a compelling need or justification for continuing these extraordinary and temporary measures.

It is not, at this point, reasonably foreseeable that any secondary instruments will be enacted or exercised in the future under the COVID-19 ER Act powers which radically depart from the types of instruments that have already been made. This means that there are no reasonably foreseeable limitations on human rights in addition to those detailed in the human rights certificates noted above and the Statement of Compatibility for the COVID-19 ER Act. If the need arises for further secondary instruments to be enacted, the potential limitations of human rights will be canvassed in a human rights certificate which will be attached to the secondary instrument.

Extension of the Office of the Queensland Small Business Commissioner in part 6 of the COVID-19 ER Act

The Bill extends part 6 of the COVID-19 ER Act. This extension is required to support the operation of a small business commissioner until a permanent commissioner is appointed under the *Small Business Commissioner Bill 2021*, subject to passage of the Small Business Commissioner Bill.

The human rights Statement of Compatibility for the Small Business Commissioner Bill is available here:

- [Human Rights Statement of Compatibility](#) – Small Business Commissioner Bill 2021.

Conclusion

In my opinion, the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022 is compatible with human rights under the Human Rights Act because it limits the identified human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

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

© The State of Queensland 2022