Corrective Services and Other Legislation Amendment Bill 2020

Explanatory Notes

FOR

Amendments during consideration in detail to be moved by the Honourable Mark Ryan MP

Title of the Bill

Corrective Services and Other Legislation Amendment Bill 2020

Objective of the Amendments

The objectives of the amendments to the Corrective Services and Other Legislation Amendment Bill 2020 (the Bill) to be moved during consideration in detail are to:

- Ensure the amendments to sections 228 (Acting appointments), 234 (Meetings about particular matters relating to parole orders), and section 268 (Declaration of emergency) of the *Corrective Services Act 2006* (CS Act), which were brought forward as part of the Government's response to the COVID-19 emergency, commence after the COVID-19 emergency period ceases, and to make consequential amendments to the transitional provisions for 234 and schedule 4 (Dictionary).
- Remove clause 15 (Insertion of new section 110A) which was to allow the chief executive to release a prisoner from custody early on parole.
- Clarify that the new offence prohibiting a staff member from having an intimate relationship with an offender applies to all Queensland Corrective Services (QCS) and engaged service provider staff, not only those working in correctional centres.
- Amend the *Hospital and Health Boards Act 2011* (HHB Act) and the *Public Health Act 2005* (Public Health Act) to:
    - support the Chief Health Officer (CHO) in performing her functions during the public health emergency and beyond by creating the position of Deputy Chief Health Officer (DCHO);
    - support the CHO in responding to the public health emergency by allowing for the delegation of certain powers under the Public Health Act;
    - clarify the CHO and DCHO are protected from civil liability under the *Public Service Act 2008* (Public Service Act) when performing functions under the Public Health Act;

  - ensure the penalties for breaching public health directions remain effective to prevent future outbreaks of COVID-19 as a result of failure to comply with directions; and
  - allow Queensland contact tracing officers to assist other jurisdictions experiencing outbreaks of COVID-19 to prevent the spread of COVID-19 from other jurisdictions to Queensland.
- Reinstate and clarify the power of the chief executive administering the general elements of the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act).
- Clarify that trespass laws under the *Summary Offences Act 2005* (SOA) do not prevent:
  - WHS entry permit holders under the *Work Health and Safety Act 2011* (WHS Act) from entering into a workplace in accordance with that Act; and
  - WHS entry permit holders acting in accordance with the WHS Act and authorised industrial officers under the SOA acting in accordance with their appointment from entering and remaining in a workplace.

Amendments to the Bill relating to the *Corrective Services Act 2006*

Amendment 1 amends the commencement dates for clauses 36; 37(1), (2) and (4); 41; 52, to the extent it inserts section 490ZC; and 53(8) of the Bill. Temporary legislative modifications which duplicate clauses 36, 37 and impact on clause 41 of the Bill were made through the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* and the *Corrective Services (COVID-19 Emergency Response) Regulation 2020* in response to the COVID-19 emergency and the resulting increase in parole order applications. These modifications expire on 31 December 2020, or after the cessation of the COVID-19 emergency period. Amendment 1 will ensure clauses 36; 37(1), (2) and (4); 41; 52, to the extent it inserts section 490ZC; and 53(8) of the Bill commence after the COVID-19 emergency period ceases.

Amendment 3 relocates the new offence prohibiting intimate relationships between staff members and offenders to make it clear that the offence applies to all staff members as defined under schedule 4 of the CS Act, not only those working in corrective services facilities and that offenders are not captured by virtue of Chapter 2 (Parties to offences) of the Criminal Code.

Amendments to the Bill relating to the *Hospital and Health Boards Act 2011* and *Public Health Act 2005*

On 29 January 2020, a public health emergency was declared under section 319 of the Public Health Act for COVID-19.

On 19 March 2020, the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* amended the Public Health Act to include powers for the CHO to make public health directions to assist in containing, or to respond to, the spread of COVID-19 in the community.

Since 19 March 2020, the CHO has made over 60 public health directions, considered many requests for exemptions to the public health directions, approved plans and checklists and declared numerous COVID-19 hotspots. This is in addition to providing advice to the Premier, Deputy Premier, chief executive and others about the

public health ramifications of, and response to, the COVID-19 emergency. In light of the continuing rise in cases in Victoria and internationally, it is likely that the public health emergency will continue for some time.

Since the declaration of the public health emergency, Queensland has recorded 1,068 cases of COVID-19, including six fatalities. As at 13 July 2020, Queensland has three active cases of COVID-19. The last confirmed case in Queensland that has no epidemiology link to interstate or overseas transmission or another confirmed case (known as community transmission) was notified on 26 May 2020, with symptom onset on 2 May 2020. In Queensland, 79 per cent of cases are related to overseas or interstate travel.

Although Queensland has had considerable success limiting the spread of COVID-19, this has not been replicated in every state and territory. Since late June 2020, Victoria has seen a significant rise in COVID-19 cases. Victoria has reported 3,379 cases of COVID-19, including 22 fatalities. As at 11 July 2020, Victoria had 1,249 active cases with 216 new cases reported in the previous 24 hours. Victoria appears to be experiencing significant community transmission. In response to the increase in active cases, 31 metropolitan Melbourne local government areas and the Mitchell Shire local government area are subject to a six week stay at home direction. Residents of these local government areas are required to stay home, with limited exceptions. The Melbourne and Mitchel Shire local government areas have been declared COVID-19 hotspots.

From 10 July 2020, under the Border Restrictions (No. 8) public health direction, any person can enter Queensland unless they have been in a COVID-19 hotspot in the last 14 days. This applies to everyone who has been in a COVID-19 hotspot in the past 14 days, except people needed in Queensland for essential purposes and Queensland residents. Queensland residents who have been in a COVID-19 hotspot can return home but are required to quarantine in government provided accommodation at their expense.

Internationally, COVID-19 cases continue to increase. As at 11 July 2020, the World Health Organization reported more than 12.3 million cases globally. Australia's international borders have been closed since 20 March 2020. Only Australian citizens, permanent residents and their immediate family may enter Australia. Since 28 March 2020, anyone arriving in Queensland from overseas is required to quarantine for two weeks in a hotel under the self-quarantine for persons arriving in Queensland public health direction and its successors.

The situation in Victoria and internationally demonstrates that although Queensland has had success in limiting COVID-19 cases, the public health emergency continues and will most likely need to be further extended to allow for the continuation of public health directions requiring the quarantine of people arriving from overseas and from COVID-19 hotspots in Australia and to manage any further outbreaks that may occur in Queensland.

Amendments to the Bill relating to the *Petroleum and Gas (Production and Safety) Act 2004*

The Bill will correct an oversight in the P&G Act by reinstating and clarifying the power of the chief executive administering the general elements of the Act to appoint and manage authorised officers. This amendment will not affect the chief executive officer of the Resource Safety and Health Queensland's power to appoint authorised officers for safety related matters.

Amendments to the Bill relating to the *Summary Offences Act 2005*

Under the WHS Act, WHS entry permit holders have right of entry powers to allow them to make contributions to work health and safety outcomes in workplaces. Part 7 of the WHS Act authorises a WHS entry permit holder to enter a workplace for the following purposes:

- to enquire into a suspected contravention of the WHS Act that relates to, or affects a relevant worker; and
- to consult on work health and safety matters with, and provide advice on, those matters to one or more relevant workers who wish to participate in discussions.

If the WHS entry permit holder has entered a workplace in relation to a suspected contravention of the WHS Act, the WHS entry permit holder may:

(a) inspect any work system, plant, substance, structure or other thing relevant to the suspected contravention;
(b) consult with the relevant workers in relation to the suspected contravention;
(c) consult with the relevant person conducting a business or undertaking about the suspected contravention;
(d) require the relevant person conducting a business or undertaking to allow the WHS entry permit holder to inspect, and make copies of, any document that is directly relevant to the suspected contravention and that—
    (i) is kept at the workplace; or
    (ii) is accessible from a computer that is kept at the workplace; and
(e) warn any person whom the WHS entry permit holder reasonably believes to be exposed to a serious risk to his or her health or safety, emanating from an immediate or imminent exposure to a hazard, of that risk.

It is important that WHS entry permit holders are not constrained in exercising their powers under the WHS Act as they may have received information about possible contraventions of this Act provided confidentially to them by workers and be attempting to prevent dangerous work practices that present immediate risks to those at the worksite.

Division 2 'Offences involving presence on property' of part 2 'Offences' of the SOA provide various trespass offences that may be applied to workplaces. These offence provisions exempt authorised industrial officers entering a workplace in accordance with the terms of their appointment. However, this exemption does not extend to WHS entry permit holders, nor does it expressly provide that an exempted person entering a workplace may remain in that place.

At times, police officers may be called to disputes about a right of entry to a workplace regarding health and safety matters. The amendments to the Bill will assist police officers by clarifying when SOA trespass offences may apply to workplaces.

Achievement of Policy Objectives

The policy objectives will be achieved by:

- Amending clause 2 (Commencement) of the Bill to provide that certain clauses in the Bill commence after the COVID-19 emergency period ceases.

- Omitting clause 15 of the Bill which was to insert a new section 110A (Chief executive may order early release from custody) in the CS Act.
- Relocating the offence contained in clause 21 (new section 173A (Prohibition on intimate relationships between staff members and offenders)) of the Bill to clause 17A (Insertion of new ch 3, pt 2A) (new section 124A (Prohibition on intimate relationships between staff members and offenders)).
- Amending the HHB Act to create the position of DCHO to support the CHO in exercising her functions under the Public Health Act during the COVID-19 emergency and afterwards.
- Amending the Public Health Act to:
    - allow the CHO to delegate some of her COVID-19 emergency powers to the DCHO or appropriately qualified officers;
    - clarify the CHO and DCHO are protected from civil liability under the Public Service Act when exercising their powers under the Public Health Act;
    - increase the penalties for breaching public health directions to 100 penalty units or six months imprisonment (or both); and
    - authorise contact tracing officers to exercise their functions outside of Queensland or in relation to persons outside Queensland so that they may assist other jurisdictions to prevent or minimise the transmission of a notifiable condition.
- Making amendments to the P&G Act to reinstate and clarify the ability of the chief executive administering the Act's general provisions to appoint and manage authorised officers. This power to appoint and manage authorised officers was incorrectly removed by the *Resources Safety and Health Queensland Act 2020*.
- Expanding the definition of *authorised industrial officer* in schedule 2 'Dictionary' of the SOA to include a WHS entry permit holder under the WHS Act.
- Clarifying that trespass offences under the SOA do not prevent an authorised industrial officer from entering or remaining in a workplace in accordance with the terms of the person's appointment as an authorised industrial officer.

Chief Health Officer (CHO) and Deputy Chief Health Officer (DCHO)

The position of the CHO is established under section 52 of the HHB Act. The CHO is employed as a public service officer or as a health service employee and must be a medical practitioner.

Under section 53 of the HHB Act, the functions of the CHO are to provide high-level medical advice to the chief executive and the Minister on health issues, including policy and legislative matters associated with the health and safety of the Queensland public; any functions given to the CHO by the chief executive and other functions under this or another Act.

The CHO's workload since the commencement of the COVID-19 emergency has been extraordinary. To support the CHO during the COVID-19 emergency and afterwards, new section 53AA creates the statutory position of DCHO. The position will be filled at the chief executive's discretion.

Queensland Health has committed to reviewing the public health emergency provisions of the Public Health Act following the expiration of the COVID-19 emergency provisions.

The role of DCHO beyond the public health emergency will be assessed at this time, however, given the breadth and complexity of the CHO role itself, it is anticipated that the CHO will require support to assist with the aftermath of the public health emergency. As such it is necessary that the amendments allow flexibility for the role to continue as long as needed.

Many other jurisdictions have a DCHO, including Victoria, where the DCHO (communicable diseases) has been granted considerable powers under section 199(2)(a) of the *Public Health and Wellbeing Act 2008*, including the power to make directions under that Act. The DCHO position is not always a statutory position. However, creating a statutory position ensures the DCHO's authority to make decisions is clear and will promote transparency and accountability, which is especially important given the fluid decision making conditions that surround the COVID-19 emergency.

The DCHO's functions will be to support the CHO in performing her functions; any other functions given to the DCHO by the CHO or chief executive or any other functions under the HHB Act or any other Act. The CHO will also be able to delegate functions to the DCHO under the HHB Act and other Acts, where appropriate. The CHO will not be able to delegate any function to the DCHO that is expressly non-delegable under the relevant Act. This will allow sufficient flexibility in the DCHO's role to ensure that the DCHO can effectively support the CHO in coordinating the public health response to the COVID-19 emergency and with her other functions.

Delegation of some COVID-19 emergency powers under the Public Health Act 2005

Part 7A of the Public Health Act confers additional powers on the CHO for the COVID-19 emergency. The additional powers include the power to make public health directions under section 362B and the power to recommend actions in relation to facilities under section 362F.

The CHO cannot delegate these powers under the Public Health Act.

New section 362FA allows the CHO to delegate some of her functions under the Public Health Act to the DCHO and to an appropriately qualified medical practitioner who is a public service officer or employee or a health service employee.

The amendments do not allow the CHO to delegate all her powers under the Public Health Act, as the ability to give public health directions is non-delegable. However, the CHO will have the ability to delegate functions that arise under the public health directions, for example, granting exemptions, approving plans and checklists and declaring COVID-19 hotspots. These ancillary activities are time consuming and having the ability to delegate these functions would assist the CHO to manage the extraordinary workload and afford the CHO greater capacity to lead strategically.

In addition to delegating powers to the DCHO, new section 362FA allows the CHO to delegate functions to an appropriately qualified medical practitioner who is a public service officer or employee or an employee of a health service. These qualifications are consistent with the requirements for the appointment to the role of CHO or DCHO and will ensure that the person to whom the power is delegated has the requisite medical knowledge to undertake the required functions. Allowing delegation to appropriately qualified officers aside from the DCHO will create flexibility and allow the CHO to respond to future increases in workload if necessary.

Allowing for the delegation of powers will relieve the CHO of some of her workload and will also future proof the COVID-19 emergency powers under the Public Health Act by ensuring there will be some continuity in functions if, for any reason, the CHO is unable to perform her functions.

New section 362FA is in part 7A of the Public Health Act. Under the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020*, Part 7A will be removed from the Public Health Act on 19 March 2021. New section 362FA will be removed from the Public Health Act with the rest of part 7A.

Clarification of protection from civil liability

Under section 456 of the Public Health Act, a prescribed person is not civilly liable for an act done, or omission made, honestly and without negligence under the Public Health Act. The prescribed persons include the Minister, a chief executive officer and others. The CHO is not a prescribed person under section 456.

The introduction of the part 7A of the Public Health Act greatly expanded the CHO's powers under the Public Health Act, however, the CHO was not added to the list of prescribed persons under section 456. It is not necessary for the CHO to be a prescribed person under the Public Health Act because she is protected from civil liability under the Public Service Act. The DCHO will also be protected from civil liability under the Public Service Act.

New section 55Z in Amendment 7 amends the note in section 456(3) of the Public Health Act to clarify the CHO and DCHO are protected under the Public Service Act. This amendment clarifies that even though the CHO and DCHO are not prescribed persons under the Public Health Act, they do have protection from civil liability when exercising their functions under the Public Health Act.

Increase in penalties for breaching a public health direction

Under section 362D of the Public Health Act, it is an offence to fail to comply with a public health direction. The maximum penalty for the offence is 100 penalty units. New section 55X in Amendment 7 amends section 362D to increase the maximum penalty to 100 penalty units or 6 months' imprisonment (or both). The term of imprisonment will be imposed by a court having considered all the circumstances of the offence and is expected to only be used in the most serious cases of public health direction breaches. Section 362D continues to be an infringement notice offence under the *State Penalties Enforcement Regulation 2014*. The majority of breaches of public health directions will continue to be enforced by way of penalty infringement notices, which do not impose a term of imprisonment.

The introduction of a maximum penalty of a six-month term of imprisonment for breaching a public health direction is considered appropriate to provide a sufficient deterrent and is proportionate to the potential harm to the community. Queensland has a small number of active cases of COVID-19, however public health directions will remain in place for some time to protect the community from potential cases brought in from overseas or elsewhere in Australia and to manage any outbreaks within Queensland. The highly contagious nature of COVID-19 means that even a small number of breaches of public health directions can lead to rapid transmission of the disease within the community. The increase in maximum penalty to include a term of imprisonment will be

a strong deterrent and protect Queenslanders from the public health risks posed by persons who breach public health directions.

Introducing a term of imprisonment is also consistent with the approach taken in other states and territories and the Commonwealth. In those jurisdictions a term of imprisonment and/or a fine may be imposed for breaching a public health direction (or local equivalent), as follows:

- In New South Wales, failure to comply with a direction under the *Public Health Act 2010* (NSW) carries a penalty of six months' imprisonment or a fine of up to $11,000 (or both).
- In Western Australia, a person may be liable for 12 months' imprisonment or a fine of $50,000 if they fail to comply with quarantine, border and other directions made under the *Emergency Management Act 2005* (WA) to limit the spread of COVID-19.
- In Tasmania, failure to comply with a direction made under the *Public Health Act 1997* (Tas) carries a maximum penalty of $16,800 or six months' imprisonment or both.
- Under the *Biosecurity Act 2015* (Cth), non-compliance with a determination or direction of the Minister in relation to a human biosecurity emergency is subject to a penalty of five years' imprisonment and/or a maximum fine of $63,000 for an individual.

Section 362D is in part 7A of the Public Health Act. Under the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020*, Part 7A will be removed from the Public Health Act on 19 March 2021. Section 362D, as amended by amendment 55S, will be removed from the Public Health Act with the rest of part 7A.

Contact tracing officers to assist other jurisdictions

Victoria is currently experiencing a severe outbreak of COVID-19. Queensland proposes to make contact tracing officers available to remotely assist with contact tracing in Victoria. The highly contagious nature of COVID-19 means it is in Queensland's interests to contain the current outbreak in Victoria. If this is not achieved, there is a risk COVID-19 may again spread to Queensland.

Under the Public Health Act, contact tracing officers identify persons who may have contracted a notifiable condition or who may transmit a notifiable condition, inform persons who may have contracted a notifiable condition so they may seek advice and treatment, provide information on how a person may prevent or minimise transmission of a notifiable condition and obtain information about how a person may have been exposed to a notifiable condition or exposed others to a notifiable condition. The Public Health Act is silent as to whether contact tracing officers can exercise these functions outside of Queensland.

New section 55V in Amendment 7 amends the Public Health Act to authorise contact tracing officers to exercise their functions under the Public Health Act within or outside Queensland or in relation to persons within or outside Queensland. This amendment will allow contact tracing officers to exercise their functions to assist with contact tracing in Victoria or other Australian jurisdictions that may experience COVID-19 outbreaks. The amendment also enables the CHO to make an arrangement with a corresponding officer in another jurisdiction for Queensland contact tracing officers to exercise functions in relation to that jurisdiction and for contact tracing officers to perform their functions under any such arrangement.

Although contact tracing officers may exercise their functions outside of Queensland to assist another jurisdiction, it is not intended that contact tracing officers exercise their powers to require people to provide information when they are assisting another jurisdiction. Under the Public Health Act, contact tracing officers can require people and businesses to provide contact information. A failure to give the contact information without a reasonable excuse is an offence that carries a penalty of 50 penalty units. When exercising their functions to assist another jurisdiction, contact tracing officers will only be able to request contact information on a voluntary basis. It will not be an offence to fail to provide information to a contact tracing officer.

The relevant provisions have not been amended to specify that they do not apply to outside of Queensland or in relation to persons outside of Queensland. When exercising their contact tracing functions in Queensland, it may be necessary for a contact tracing officer to require information from a person in another state; for example, a person who works in Coolangatta in Queensland but lives in Tweed Heads in New South Wales. Expressly limiting the relevant provisions so they only apply in Queensland may unnecessarily limit contact tracing officers performing their role in Queensland. Contact tracing officers will receive guidance and training to ensure they understand that they may only collect information on a voluntary basis when assisting another jurisdiction.

Under the Public Health Act, contact tracing officers are subject to confidentiality obligations and able to use the information they obtain in limited ways consistent with their obligations. These obligations attach to any information obtained in the course of performing a contact tracing officer's functions. As such, the obligations will apply to information obtained when exercising their functions outside of Queensland or in relation to persons outside Queensland. For clarity, new section 55W in Amendment 7 amends the Public Health Act to specify that it is the intention of Parliament that this division have effect outside of Queensland and in relation to persons outside of Queensland. This amendment does not affect the continued application of the confidentiality provisions to information obtained by contact tracing officers exercising their functions in Queensland or in relation to people in Queensland.

Alternative ways of Achieving Policy Objectives

There is no alternative way of achieving the policy objectives.

Estimated Cost for Government Implementation

There are no implementation costs for Government associated with the amendments to the Bill relating to the CS Act or P&G Act.

The appointment of a DCHO, the preparation of delegations and the deployment of contact tracing officers to assist other jurisdictions will be implemented within existing resources. The amendments relating to the increased penalties for breaching a public health direction will be implemented by the Queensland Police Service from existing resources.

Any costs associated with the implementation of the amendments to the Bill relating to the SOA are negligible and will be met through existing budgets.

Consistency with Fundamental Legislative Principles

Amendments to the Bill relating to the *Corrective Services Act 2006*

The amendment to clause 21 (Insertion of new s 173A) may be inconsistent with the fundamental legislative principle requiring that legislation has sufficient regard to the rights and liberties of individuals. The purpose of the amendment is to clarify the offence prohibiting intimate relationships between staff members and offenders applies to all staff, not just those working in corrective services facilities. The inconsistency between the amendment and this fundamental legislative principle arises because staff members will be required to disclose personal relationships to QCS to determine whether the relationship fits within a legislative exemption. It also places a penalty on staff forming particular intimate relationships. However, any potential inconsistency with this fundamental legislative principle is justifiable because relationships between any staff member and an offender constitutes a significant corruption risk, as identified in the Crime and Corruption Commission's *Taskforce Flaxton: An examination of corruption risks and corruption in Queensland prisons* report. Further, subsection (2) provides an exception to the offence where the staff member did not know the person was an offender or was in an intimate relationship with the person before they became an offender.

Amendments to the Bill relating to the *Hospital and Health Boards Act 2011* and *Public Health Act 2005*

The amendments are generally consistent with the fundamental legislative principles.

Whether the legislation has sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992*, s 4(2)(a))

New section 55V in Amendment 7 authorises contact tracing officers to perform their functions outside of Queensland or in relation to persons outside of Queensland. New section 55W in Amendment 7 clarifies that the confidentiality provisions relating to information obtained by contact tracing officers also apply outside of Queensland and when the information relates to persons outside Queensland. The functions of contact tracing officers involve the collection and use of personal information, which engages the right to privacy and potentially raises the fundamental legislative principal that the amendments must have sufficient regard to the rights and liberties of individuals (Legislative Standards Act, section 4(2)(a)).

The amendment does not change the functions of contact tracing officers; it extends the territorial application of the functions. The amendments will only allow contact tracing officers to exercise their functions outside of Queensland on a voluntary basis, the people contacted will not be required to provide their information and may decline to do so without penalty. The use of the personal information collected outside of Queensland or in relation to people outside of Queensland will be governed by the strict confidentiality provisions in the Public Health Act and only able to be used in limited situations, which primarily relate to protecting public health and safety. As the information is to be collected voluntarily and is subject to strict confidentiality protections and limitations on use, the amendment has sufficient regard to the rights and liberties of individuals and does not breach fundamental legislative principles.

The human rights implications of the amendments authorising contact tracers to operate outside of Queensland and in relation to persons outside of Queensland are discussed in detail in the Human Rights Statement of Compatibility.

Whether the legislation has sufficient regard to the institution of Parliament (Legislative Standards Act, s 4(2)(b))

Allows the delegation of legislative power only in appropriate cases and to appropriate persons

The amendments potentially breach the principle that legislation must have sufficient regard to the institution of Parliament as the legislation allows the CHO to delegate her powers under the Public Health Act and other Acts (Legislative Standards Act, section 4(4)(a)).

The delegation under the Public Health Act is appropriate as it allows the CHO to delegate her more ancillary functions under the Public Health Act while ensuring the power to give public health directions, which is the CHO's most impactful power under the Public Health Act, remains with the CHO as a non-delegable power. Further, the powers are only delegable to the DCHO or appropriately qualified medical practitioners who are employed in the public service or with a health service. These qualifications mirror the requirements for appointment to the position of CHO and DCHO and will ensure that the delegates have suitable public health knowledge to make the necessary decisions under the Act. As such, any breach of fundamental legislative principles is justified.

The delegation of the CHO's powers to the DCHO under the HHB Act and other Acts is appropriate as the delegation will allow the CHO the flexibility to determine the most effective manner for the DCHO to fulfil their supportive functions. The DCHO will be a suitably qualified medical practitioner, which is the same level of qualification as the CHO. This ensures the DCHO will have the requisite knowledge and experience to act under the delegated powers. Powers that are expressed to be non-delegable (for example, the power to give public health directions) will not be able to be delegated to the DCHO. As such, any breach of fundamental legislative principles is considered justified.

Fundamental legislative principles not contained in the Legislative Standards Act

Penalties

By increasing the penalty for breaching a public health direction to 100 penalty units or six months' imprisonment, the amendments potentially breach the principle that the legislation must have sufficient regard to the rights and liberties of individuals.

The amendment does not create an offence, as it is already an offence under the Public Health Act to breach a public health direction. Whether the introduction of an offence for breaching public health directions is consistent with fundamental legislative principles was considered when the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* was introduced to Parliament. Further, public health directions are statutory instruments that are clear on their face, publicly available and well publicised. As such, the law is sufficiently clear at the time the breach occurs to impose a term of imprisonment, if a court considers it appropriate. As a result, the legislation is unambiguous and drafted in a sufficiently clear and precise way and is consistent with the fundamental legislative principle in section 4(2)(a) of the Legislative Standards Act.

The higher penalty is justified on the basis that the COVID-19 public emergency is continuing and that breaches of public health directions in other jurisdictions have been shown to lead to serious outbreaks and the associated public health risks. Queensland has been successful in limiting the spread of COVID-19, which indicates a high degree of compliance with public health directions. However, there have been instances of people breaching public health directions, including quarantine directions. Given the increasing number of cases internationally and in Victoria, it is possible that the public health emergency will be extended beyond its current end date of 17 August 2020. The longer the public health emergency and related restrictions continue, the more likely people will become complacent about complying with public health directions. Increasing the penalty to include a term of imprisonment sends the message that breaching a public health direction is a serious offence that may put people's lives at risk. It is important that the penalties are a sufficient deterrent to breaching a public health direction and that the penalties are commensurate with the potential severity of the crimes and its effects.

The penalty of six months' imprisonment is also consistent with the position in New South Wales and Tasmania. Western Australia and the Commonwealth impose longer terms of imprisonment for breaching the local equivalent of public health directions. A term of imprisonment will only be imposed by a court following usual criminal law processes. As such, natural justice will be afforded to any person who may be subject to a term of imprisonment. It is expected that the term of imprisonment will only be used in the most serious cases. The relevant offence continues to be an infringement notice offence under the *State Penalties Enforcement Regulation 2014*. The majority of breaches of public health directions will likely continue to be enforced by way of penalty infringement notices, which do not impose a term of imprisonment. Any breach of fundamental legislative principles is justified on these bases.

The human rights implications of imposing the term of imprisonment are discussed in detail in the Human Rights Statement of Compatibility.

Amendments to the Bill relating to the *Petroleum and Gas (Production and Safety) Act 2004*

The *Resources Safety and Health Queensland Act 2020* inadvertently removed powers of the chief executive in the P&G Act to appoint and manage authorised officers. Amendments included in the Bill correct this oversight.

The amendments are designed to ensure that administrative power is delegated only in appropriate cases and to appropriate persons (section 4(3)(c) of the *Legislative Standards Act 1992*). Ensuring that the chief executive has appropriate power to appoint and manage authorised officers for the elements of the P&G Act that fall within the chief executive's administrative responsibility will achieve this.

Further, the requirement that the chief executive must be satisfied the person is qualified for appointment and has the necessary expertise or experience has been maintained, which will ensure that only suitable persons can be appointed as authorised officers.

Amendments to the Bill relating to the *Summary Offences Act 2005*

No inconsistencies between the amendments relating to the SOA and the fundamental legislative principles were identified.

Consultation

No consultation was undertaken on the amendments to the Bill. Amendments 3 and 4 were developed in response to a concern raised by the Queensland Law Society in its submission to the Legal Affairs and Community Safety Committee on the Bill.

No public consultation was undertaken on the amendments to the HHB Act and Public Health Act, given the urgent nature of the amendments.

Consistency with legislation of other jurisdictions

Many other jurisdictions have a DCHO, including Victoria, where the DCHO (communicable diseases) has been granted considerable powers under section 199(2)(a) of the *Public Health and Wellbeing Act 2008*, including the power to make directions under that Act. The position of DCHO is not always a statutory position in other jurisdictions.

The amendment increasing the penalties for breach of a public health direction is consistent with the approach taken in other jurisdictions. In New South Wales, Tasmania and Western Australia the penalty for breaching a public health direction is a term of imprisonment and/or a financial penalty. In New South Wales, failure to comply with a direction under the *Public Health Act 2010* (NSW) carries a penalty of six months' imprisonment or a fine of up to $11,000 (or both). In Western Australia, a person may be liable for 12 months' imprisonment or a fine of $50,000 if they fail to comply with quarantine, border and other directions made under the *Emergency Management Act 2005* (WA) to limit the spread of COVID-19. In Tasmania, failure to comply with a direction made under the *Public Health Act 1997* (Tas) carries a maximum penalty of $16,800 or six months' imprisonment or both. A term of imprisonment is also imposed by Commonwealth legislation; under the *Biosecurity Act 2015* (Cth), non-compliance with a determination or direction of the Minister in relation to a human biosecurity emergency is subject to a penalty of five years' imprisonment and/or a maximum fine of $63,000 for an individual.

Notes on provisions

Amendment 1 amends clause 2 (Commencement) of the Bill to provide that clauses 36 (Amendment of s 228 (Acting appointments)); 37 (Amendment of s 234 (Meeting about particular matters relating to parole orders)) subclauses (1), (2) and (4); 41 (Amendment of s 268 (Declaration of emergency)); 52 (Insertion of new ch 7A, pt 14) to the extent it inserts section 490ZC (Meetings about particular matters relating to parole orders) and clause 53 (Amendment of sch 4 (Dictionary)) subclause (8) of the Bill will commence on the day immediately after the COVID-19 emergency period ceases. This period is defined in schedule 1 of the *COVID-19 Emergency Response Act 2020*.

It also provides that part 3B commences on 1 July 2020, immediately after the commencement of the *Resources Safety and Health Queensland Act 2020*, part 7, division 9. This amendment ensures continuity of the chief executive's power under the *Petroleum and Gas (Production and Safety) Act 2004* to appoint and manage authorised officers.

Amendment 2 omits clause 15 (Insertion of new s 110A) of the Bill.

Amendment 3 inserts new chapter 3, part 2A (Offences by staff members). Part 2A includes section 124A (Prohibition on intimate relationships between staff members and offenders). The relocation of the amendment clarifies that the offence applies to any *staff member*, which is defined in schedule 4 (Dictionary) of the *Corrective Services Act 2006*.

Amendment 4 omits clause 21 (Insertion of new s 173A) of the Bill as a consequence of amendment 3.

Amendment 5 inserts new clauses 55A to 55H to the Bill. These clauses insert new part 3A (Amendment of Hospital and Health Boards Act 2011).

Clause 55A provides that this part amends the *Hospital and Health Boards Act 2011*.

Clause 55B amends the heading of part 3 to include the deputy chief health officer.

Clause 55C amends the heading of part 3, division 3 to include the deputy chief health officer.

Clause 55D inserts new sections 53AA to 53AC.

Section 53AA provides that the chief executive may appoint a deputy chief health officer for the State. The deputy chief health officer is to be employed as a public service officer or as a health service employee. The deputy chief health officer must be a medical practitioner.

Section 53AB provides that the functions of the deputy chief health officer are to support the chief health officer in the exercise of the chief health officer's functions under this or another Act and any functions given to the deputy chief health officer by

the chief health officer or the chief executive and other functions under this or another Act.

Section 53AC provides that the chief health officer may delegate the chief health officer's functions or powers under this or another Act to the deputy chief health officer.

Clause 55E amends section 139A to add the deputy chief health officer into the definition of designated person for the purposes of part 7 confidentiality.

Clause 55F amends section 266 so that the deputy chief health officer's appointment and authority to do anything under the *Hospital and Health Boards Act 2011* must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it.

Clause 55G amends section 267 so that a signature purporting to be the deputy chief health officer's signature is evidence of the signature it purports to be.

Clause 55H inserts the definition of deputy chief health officer into the dictionary.

Amendment 6 inserts new clauses 55I to 55T to the Bill. These clauses insert new part 3B (Amendment of Petroleum and Gas (Production and Safety) Act 2004).

These amendments are required to ensure the chief executive administering the general provisions of the *Petroleum and Gas (Production and Safety) Act 2004* has the ability to appoint and manage authorised officers within that administrative responsibility. These powers were incorrectly provided exclusively to the CEO of Resources Safety and Health Queensland by amendments in the *Resources Health and Safety Queensland Act 2020*. Given Resources Safety and Health Queensland is an independent statutory body, it is appropriate that separate powers are in place for the CEO and chief executive to appoint and manage authorised persons to carry out their respective functions.

Clause 55I provides that part 3B amends the *Petroleum and Gas (Production and Safety) Act 2004*.

Clause 55J amends section 735 of the *Petroleum and Gas (Production and Safety) Act 2004* to reinstate the power of the chief executive to appoint authorised officers under the Act.

The amendment also clarifies that the CEO of Resources Safety and Health may appoint authorised officers (safety and health) in relation to health and safety functions under the *Petroleum and Gas (Production and Safety) Act 2004*, while the chief executive may appoint authorised officers (general) in relation to general resources functions under the Act.

Clause 55K amends section 736 of the *Petroleum and Gas (Production and Safety) Act 2004* to clarify the functions of authorised officers (safety and health) and authorised officers (general).

Clauses 55L, 55M, 55N and 55O respectively amend sections 737, 738, 741 and 742 of the *Petroleum and Gas (Production and Safety) Act 2004* to ensure the chief

executive has appropriate authority to manage authorised officers (general) and the CEO has appropriate authority to manage authorised officers (safety and health).

Clauses 55P, 55Q and 55R respectively amend section 772, 773 and 774 of the *Petroleum and Gas (Production and Safety) Act 2004* to ensure the chief executive can manage the forfeiture of things seized by authorised officers (general). The CEO and chief inspector's powers in relation to the forfeiture and seizure of things is retained in relation to authorised officers (safety and health).

Clause 55S amends schedule 1 (Reviews and appeals) of the *Petroleum and Gas (Production and Safety) Act 2004* to include a decision made by the chief executive to forfeit a thing seized by an authorised officer (general).

Clause 55T amends schedule 2 (Dictionary) of the *Petroleum and Gas (Production and Safety) Act 2004* to define the new terms 'authorised officer (general)' and 'authorised officer (safety and health)'. These terms have the meaning of a person who, under section 735, respectively holds appointment as an authorised officer (general) or authorised officer (safety and health).

The definition of 'authorised officer' has been replaced to provide that an authorised officer is an authorised officer (general) or an authorised officer (safety and health).

Amendment 7 inserts new clauses 55U to 55ZA to the Bill. These clauses insert new part 3C (Amendment of Public Health Act 2005).

Clause 55U provides that this part amends the *Public Health Act 2005*.

Clause 55V amends section 89 to provide that a contact tracing officer's functions may be exercised within or outside Queensland or in relation to persons within or outside Queensland.

Clause 55V also provides that without limiting subsection (2), if the chief health officer has made an arrangement under subsection (4) with the corresponding officer for a jurisdiction, a contact tracing officer's functions may be exercised under the arrangement in relation to the jurisdiction or persons connected with the jurisdiction. The chief health officer may make an arrangement with a corresponding officer for a jurisdiction for contact tracing officers to exercise functions in relation to the jurisdiction or persons connected with the jurisdiction.

Clause 55W inserts new section 104A.

Section 104A provides that it is the intention of the Parliament that Part 3, Division 3 (Confidentiality of information and use of information supplied for contact tracing) have effect outside Queensland and in relation to persons outside Queensland.

Clause 55X amends section 362D to increase the penalty for the offence of failing to comply with public health directions to 100 penalty units or six months imprisonment (or both).

Clause 55Y inserts new section 362FA.

Section 362FA provides that the chief health officer may delegate the chief health officer's functions or powers under this part to the deputy chief health officer or an appropriately qualified medical practitioner who is a public service officer or employee, or a health service employee. The chief health officer must not delegate the chief health officer's power to give a public health direction but may delegate a function or power under a public health direction.

Section 362FA(4) provides that this section has effect despite the *Hospital and Health Boards Act 2011*, section 53AC.

Clause 55Z inserts chief executive, chief health officer and deputy chief health officer to the note in section 456 (3)(b).

Clause 55ZA inserts the definition of deputy chief health officer into the dictionary in Schedule 2.

Amendment 8 inserts the new part 4A (Amendment of Summary Offences Act 2005) consisting of new sections 60A to 60E into the Bill.

The new section 60A (Act amended) provides that the new part 4A will amend the SOA.

The new section 60B (Amendment of s 11 (Trespass)) clarifies that section 11 of the SOA does not prevent an authorised industrial officer entering or remaining in a workplace in accordance with the terms of the person's appointment as an authorised industrial officer.

The new section 60C (Amendment of s 12 (Persons unlawfully gathering in or on a building or structure)) clarifies that section 12 of the SOA does not prevent an authorised industrial officer entering or remaining in or on a workplace in accordance with the terms of the person's appointment as an authorised industrial officer.

The new section 60D (Amendment of s 13 (Unlawfully entering or remaining on particular land)) clarifies that section 13 of the SOA does not prevent an authorised industrial officer entering or remaining in or on a workplace in accordance with the terms of the person's appointment as an authorised industrial officer.

The new section 60E (Amendment of sch 2 (Dictionary)) expands the definition of *authorised industrial officer* in schedule 2 (Dictionary) of the SOA to include a WHS entry permit holder under the WHS Act.

Amendment 9 inserts references to the *Hospital and Health Boards Act 2011*, *Penalties and Sentences Act 1992*, *Petroleum and Gas (Production and Safety) Act 2004*, the *Public Health Act 2005*, the *Racing Integrity Act 2016*, the *Racing Integrity Regulation 2016* and the *Summary Offences Act 2005* into the long title of the Bill.