

Public Health and Other Legislation (Public Health Emergency) Amendment Bill 2020

Explanatory Notes

Short title

The short title of the Bill is the Public Health and Other Legislation (Public Health Emergency) Amendment Bill 2020 (Bill).

Policy objectives and the reasons for them

Background

In December 2019 and January 2020, a new coronavirus, now known as COVID-19, emerged in Wuhan City, in the Hubei Province of China. On 29 January 2020, the Minister for Health and Minister for Ambulance Services declared a public health emergency under section 319 of the *Public Health Act 2005* due to the outbreak of COVID-19 in China, its pandemic potential due to cases spreading to other countries and the public health implications within Queensland resulting from recently arrived travellers from the epicentre of the outbreak (COVID-19 emergency). The COVID-19 emergency was declared for all of Queensland. A copy of the public health emergency order was published in the Queensland Government Gazette on 31 January 2020. The COVID-19 emergency has been extended by regulation until 19 May 2020 and may need to be further extended.

On 11 March 2020, the Director-General of the World Health Organization (WHO) declared COVID-19 a global pandemic. As of 18 March 2020, there were approximately 197,000 confirmed cases of COVID-19 globally. In Australia, as of 18 March 2020, there were 414 confirmed cases of COVID-19 and five confirmed deaths, with 94 confirmed cases in Queensland.

An effective public health response to the COVID-19 emergency will require more than exclusively containment-based strategies such as screening and contact tracing. The response will need to focus on slowing and delaying community transmission rates through social distancing measures and restrictions on public gatherings. The WHO has stated the number of cases is expected to increase further and has urged countries to continue to implement a containment strategy while accelerating their efforts to control the disease. In particular, the WHO considers that social distancing and quarantine measures need to be implemented in a timely and thorough manner.

On 13 March 2020, the Commonwealth Government endorsed social distancing measures as set out by the Australian Health Protection Principal Committee. The Commonwealth Government also announced that:

- non-essential public gatherings of more than 500 people should not occur from 16 March 2020; and

- effective as at 11.59pm on 15 March 2020, all persons entering Australia, regardless of their country of origin, will be required to self-isolate for 14 days on arrival;
- effective as at 11.59pm Sunday 15 March 2020 a 30-day ban on docking of international cruise ships will be implemented.

On 15 March 2020, the National Cabinet, comprising the Prime Minister, State Premiers and Territory Chief Ministers, asked all States and Territories to ensure they had appropriate legislative provisions in place to implement, monitor and social distancing measures. Social distancing measures may need to be adjusted over time if COVID-19 continues to spread in the community.

On 18 March 2020, the Prime Minister advised of further restrictions, including advice to not travel overseas at this time, restrictions on non-essential indoor gatherings of more than 100 people, and restrictions on entry into aged care facilities.

COVID-19 represents a significant risk to the health and wellbeing of many Queenslanders. It also has the potential to cause adverse economic and social consequences. The Bill amends various Acts to ensure there is clear legal authority to make the interventions necessary to mitigate the spread of COVID-19 in the community and to provide increased flexibility to manage disruptions caused by the disease and social distancing measures.

Summary of Bill

The Bill will:

- amend the Public Health Act to:
 - strengthen powers of the chief health officer and emergency officers appointed under the Act for the COVID-19 emergency to implement social distancing measures, including regulating mass gatherings, isolating or quarantining people suspected or known to have been exposed to COVID-19 and protecting vulnerable populations such as the elderly;
 - provide that the compensation provisions that apply to declared public health emergencies do not apply to the COVID-19 emergency; and
- amend the *State Penalties Enforcement Regulation 2014* so that penalty infringement notices (PINs) can be issued for the offences of failing to comply with a direction made by the chief health officer or an emergency officer in relation to the COVID-19 emergency.

The Bill will also amend:

- the *Planning Act 2016* and *Economic Development Act 2012* to ensure important services may continue to be provided to the community;
- the *City of Brisbane Act 2010*, *Local Government Act 2009*, *Local Government (Dissolution of Ipswich City Council) Act 2018*, *Local Government Electoral Act 2011* and *Local Government Regulation 2012* to provide flexibility, if required, for the election date for the 2020 quadrennial local government election and statutory processes for the conduct of the election, to help minimise serious risks to the health and safety of persons caused by the COVID-19 pandemic;
- the *Electoral Act 1992* to provide flexibility, if required, to facilitate the holding of State by-elections in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 pandemic;
- the *Constitution of Queensland 2001* to allow meetings of Executive Council to be held via technology, such as teleconferencing or videoconferencing.

Each of these issues is discussed in more detail below.

Public Health Act

The scale of the COVID-19 pandemic is unprecedented. The provisions of the Public Health Act that deal with declared public health emergencies have not been used in a pandemic situation of this scale before.

Based on the latest health and medical advice from Queensland and Australian experts, Queensland Health has identified provisions of the Public Health Act that should be strengthened to ensure appropriate responses to the COVID-19 pandemic can be undertaken within a robust legal framework. It is necessary to strengthen powers of the Chief Health Officer and emergency officers appointed under the Act to implement social distancing measures, including regulating mass gatherings, isolating or quarantining people to assist in containing the spread of COVID-19 and protecting vulnerable populations such as the elderly.

Isolation, quarantine and detention powers

The emergency powers available to emergency officers under chapter 8 of the Public Health Act include directing a person to stay at or in a stated location. The Public Health Act enables an emergency officer (medical) to detain a person while they receive medical treatment. The emergency officer (medical) or a person nominated by the emergency officer may enforce the detention order using force reasonable in the circumstances.

The number of persons appointed as emergency officers (medical) is limited, as they are required to be a doctor. An emergency officer (medical) can only order the detention of a person for 96 hours, after which the emergency officer (medical) or the chief executive may apply to a magistrate to extend the detention order. During the COVID-19 emergency, it is important that frontline staff such as doctors are able to focus on treating patients.

There is a need to ensure that there is a robust, efficient and enforceable legal framework for the widespread self-isolation activities that are occurring and will continue to occur in response to the COVID-19 pandemic. It is proposed that emergency officers be specifically empowered to issue directions to a person to isolate or quarantine themselves for a period of up to 14 days, if the emergency officer reasonably believes the direction is necessary to assist in containing, or responding to, the spread of COVID-19 within the community.

In addition, it is proposed emergency officers (medical) be able to order the detention of a person for up to 14 days, rather than 96 hours.

These powers are necessary to implement recommendations from the Commonwealth Government that all persons entering Australia, regardless of their country of origin, be required to self-isolate for 14 days on arrival. The powers are also necessary to ensure the latest health and medical advice about isolation and quarantine of suspected or confirmed cases of COVID-19 can be achieved.

Mass gatherings and vulnerable persons

The social distancing measures endorsed by the National Cabinet include cancelling non-essential public gatherings of 500 people or more. The Commonwealth Government

subsequently advised of further restrictions, including restricting non-essential indoor gatherings of 100 people or more, and restricting entry to aged-care facilities.

The required social distancing measures may need to adjust as the COVID-19 emergency develops. There is a need for the Public Health Act to provide a legislative framework that provides for the ongoing use of social distancing measures to respond to the COVID-19 emergency, including preventing mass gatherings and restricting access to vulnerable populations.

Compensation

Chapter 8, part 9 of the Public Health Act includes provisions about compensation for loss or damage because of an exercise or purported exercise of powers in connection with a declared public health emergency. These provisions are uncapped and only limited to the common law principles of causation, foreseeability and whether the damage is proportional. In a pandemic situation, there is the possibility for a significant proportion of the population to be directly affected by the exercise of powers under the declared public health emergency.

The Commonwealth Government and State and Territory Governments are providing a range of economic stimulus and industry assistance to assist with the economic impacts of the COVID-19 pandemic. In this environment, it is considered imprudent for the State of Queensland to be potentially liable to uncapped and unpredictable compensation claims.

The policy objective of this amendment is to limit the compensation scheme by making it clear that it does not apply to the COVID-19 emergency.

Enforcement through penalty infringement notices

Chapter 8 of the Public Health Act includes penalties for failing to comply with a requirement or direction of an emergency officer, or a detention order made by an emergency officer (medical). Currently, these penalties can only be enforced by way of a complaint and summons process.

In a pandemic situation, it is critical that the directions and orders made by emergency officers are complied with. It is considered that the ability to impose immediate fines will act as an appropriate deterrent against non-compliance.

The policy objective of these amendments is to readily enforce non-compliance of directions and orders made by the chief health officer and emergency officers by enabling certain offences to be enforced through penalty infringement notices.

Planning Act

The objective of the amendments to the Planning Act is to respond to the emerging public health emergency of COVID-19, or other future events by:

- ensuring the planning framework is able to make advance preparations and respond to emerging situations, by introducing the concept of an ‘applicable event’;
- ensuring important services may continue to be provided to the community, as needed in an applicable event, by allowing operators to change lawful existing use rights through a new ‘temporary use licence’;

- ensuring there is an immediate ability to manage supply chains for businesses by allowing 24 hours, seven days per week operating conditions in order to provide goods and services to the community during the applicable event through introducing the concept of a ‘declared use’; and
- providing the ability to temporarily suspend or extend statutory timeframes for the planning framework, where there is a need, for example, in circumstances where the community and workforces are adversely affected in an applicable event.

Economic Development Act

The objective of the amendments to the Economic Development Act is to ensure that it mirrors the amendments under the Planning Act to ensure priority development area (PDA) development approvals and timeframes under the Economic Development Act can also be extended or suspended in the same manner as the Planning Act. This is to ensure consistency across the state, whether it is a PDA approval or an approval under the Planning Act.

Amendments relating to the 2020 quadrennial local government election

The Bill amends the City of Brisbane Act, Local Government Act, Local Government (Dissolution of Ipswich City Council) Act, Local Government Electoral Act and Local Government Regulation to provide flexibility, if required, for the election date for the 2020 quadrennial local government election and the statutory processes for the conduct of the election, to help minimise serious risks to the health and safety of persons caused by the COVID-19 pandemic.

The measures are temporary and will only apply to the 2020 quadrennial local government election in order to maximise public safety and minimise the public health risks associated with the COVID-19 pandemic.

Electoral Act

The policy objective of the amendments to the Electoral Act is to provide flexibility, if required, to facilitate the holding of State by-elections in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 pandemic. These measures are temporary and will only apply in relation to by-elections held before the next general election.

Constitution of Queensland

The Constitution of Queensland provides that there must be an Executive Council for the State and makes provision for appointment of members. It is customary for Cabinet Ministers to be appointed as Executive Councillors by the Governor.

Given the evolving COVID-19 situation and the potential for disruption to the ability of required individuals to be physically present at Executive Council meetings if health directions or advice require isolation, it is necessary to progress measures to ensure that meetings of the Executive Council can be held by technological means. This could include teleconferencing or video conferencing.

Achievement of policy objectives

Public Health Act

To protect the health of Queenslanders, the Bill amends the Public Health Act to provide additional powers to enable the chief health officer and emergency officers to implement containment and social distancing strategies, in accordance with WHO guidance and public health interventions being pursued by the Commonwealth and other State and Territory Governments. The Bill also provides for more effective enforcement of public health orders, including through issuing penalty infringement notices, and clarifies the obligations of the State about compensation for exercising emergency powers of the Public Health Act during the COVID-19 emergency.

The majority of these new powers are contained in new part 7A, chapter 8 of the Public Health Act and are designed to apply to the circumstances of the COVID-19 emergency. Given this, the Bill provides for part 7A of chapter 8 to be repealed one year after commencement.

Chief health officer directions

The Bill inserts new provisions in the Public Health Act to provide that the chief health officer may give a public health direction if they reasonably believe the direction is necessary to assist in containing, or responding to, the spread of COVID-19 within the community.

A public health direction may:

- restrict the movement of persons. This could include, for example, restricting the attendance of persons at mass gatherings;
- require persons to stay at or in a stated place, or not to enter or stay in a stated place. This could include, for example, requiring persons who have arrived from overseas to remain in their home or another place for a period of time;
- restrict contact between persons; and
- be made about any other matter the chief health officer considers necessary to protect public health.

The public health direction must state the period for which the direction applies, and that it is an offence to not comply with the direction. The direction may be given by notice published on the department's website or in the gazette. The direction will take effect as soon as it is given, but if it is published on the department's website or in the gazette, it will take effect when it is published. As soon as reasonably practicable after the direction is given, the chief health officer must take reasonable steps to notify people who are likely to be directly affected. This may include, for example, use of signage, advertising or using emails and text messages.

It will be an offence to not comply with a direction, with a maximum penalty of 100 penalty units. The new provisions will require the chief health officer to revoke a public health direction as soon as reasonably practicable if satisfied it is no longer necessary to assist in containing or responding to the spread of COVID-19 within the community.

The Bill also inserts a new provision empowering the chief health officer to publish a notice on the department's website directed to the owners or operators of businesses or undertakings of a stated class. This notice may state the chief health officer's recommendation that the

owners do one or more of the following actions in relation to a facility, at a stated time, in a stated way or to a stated extent:

- open the facility;
- close the facility; or
- limit access to the facility.

These notices could, for example, be used to recommend that the owners of supermarkets open for trade during particular hours and limit entry to customers holding a pensioner concession card. The Bill includes a provision that ensures that a person who is acting in compliance with a notice is not liable to an offence that would ordinarily apply under another Act. For example, the owner of a supermarket would not be liable for a breach of the trading hours restrictions in the *Trading (Allowable Hours) Act 1990* if they open a supermarket outside of their permitted trading hours in accordance with a notice.

Emergency officer powers – isolation or quarantine

The Bill includes new powers for emergency officers to give one or more directions to a person if they reasonably believe the direction is necessary to assist in containing or responding to the spread of COVID-19 within the community.

The Bill also provides a specific power for emergency officers to give a person a written direction to stay at or in a stated place for a stated period of not more than 14 days. This direction may contain conditions such as restricting the ability of other persons to enter the stated place or restricting the person's contact with other persons in another way. The direction may also state any purposes for which the person is permitted to leave the stated premises in certain circumstances. This could include to obtain medical care or supplies.

Emergency officer powers – directions in relation to particular facilities

The Bill will also enable emergency officers to give a direction to the owner or operator of a business or undertaking requiring the person to take reasonable steps to open, close or limit access to the facility. This is a similar power to the new power for the chief health officer to give directions, however it is intended to apply to an individual facility, rather than particular classes of facilities. This direction may be used, for example, to restrict the access of visitors to an aged care facility in order to protect the health of vulnerable elderly residents, or to restrict access to a particular business to contain the spread of COVID-19 in response to a known case.

Similar to the new powers for the chief health officer, an emergency officer is required to revoke a direction if satisfied the direction is no longer necessary to contain the spread of COVID-19 within the community.

Emergency officer (medical) powers – detention orders

The Bill amends section 350 of the Public Health Act to enable a detention order made by an emergency officer (medical) to be for a period of up to 14 days, rather than 96 hours. This will ensure that detention orders can be issued for up to 14 days without seeking an order from a magistrate. This amendment is only intended to apply for a limited period. The Bill provides that one year after assent, section 350 will revert back to the 96-hour detention period.

Compensation

The Bill will insert a new provision that provides a person is not entitled to compensation for loss or damage if a power was exercised, or purportedly exercised, in relation to the COVID-19 emergency. This amendment is retrospective, commencing from Monday 16 March 2020 for loss or damage suffered on or after 16 March 2020.

Enforcement through the State Penalties Enforcement Regulation

The Bill will prescribe non-compliance with the emergency powers directions under the Public Health Act in the State Penalties Enforcement Regulation, which will make them able to be enforced by way of a penalty infringement notice.

The proposed penalty infringement notices will be set at 10 per cent of the maximum penalty, in accordance with normal practice, resulting in fines as follows:

- for individuals – 10 penalty units (currently \$1,334.50); and
- for corporations – 50 penalty units (currently \$6,672.50).

Planning Act and Economic Development Act

The objective of the amendments will be achieved by:

- introducing the concept of an ‘applicable event’, which draws upon the meaning of ‘event’ in the *Disaster Management Act 2003*;
- introducing the concept of a ‘temporary use licence’ in the Planning Act and Economic Development Act where an application may be made to lawfully change the existing operating use rights during an applicable event;
- introducing the concept of a ‘declaration of uses’, to provide immediate ability for the hours of operation and number and frequency of deliveries for uses to be unlimited during the applicable event;
- provide powers for the Planning Minister to temporarily suspend or extend statutory timeframes in the Planning Act, *Planning Regulation 2017* or in a statutory instrument made under the Planning Act; and
- provide powers for the Minister for Economic Development Queensland to temporarily suspend or extend statutory timeframes in the Economic Development Act.

Amendments relating to the 2020 quadrennial local government election

Parts 2, 6, 7, 8 and 9 of the Bill will achieve the stated policy objective by amending the City of Brisbane Act, Local Government Act, Local Government (Dissolution of Ipswich City Council) Act, Local Government Electoral Act and Local Government Regulation to:

- allow for the suspension or termination of the 2020 quadrennial local government election, if needed, and confirm the respective caretaker arrangements that apply during a period of suspension;
- allow the timeframes for the receipt of postal vote applications to be extended for certain electors;
- allow flexibility in deciding if a poll is to be conducted by postal ballot;
- ensure there are no barriers to appropriately qualified persons being issuing officers;
- provide more flexible timeframes for taking, or resuming, an adjourned poll;

- allow the declaration of another class of electors who may cast an electronically assisted vote and for alternative voting arrangements to be made for visitor electors who cannot be visited by an issuing officer due to health and safety concerns;
- allow the electoral commission to give a direction about how, where and when how-to-vote cards may be distributed/displayed at a polling booth, prohibiting the distribution/display of how-to-vote cards or other election material at a polling booth, prohibiting a person from canvassing for votes in or near polling booths and permitting the display of political statements inside, or within 6 metres of the entrance to, a polling booth;
- allow the making of regulations under the City of Brisbane Act or the Local Government Act, if necessary, about matters not provided for or not sufficiently provided for in these Acts as a result of the 2020 quadrennial local government election not being held in March 2020;
- allow the making of regulations under the Local Government Electoral Act, if necessary, about matters not provided for or not sufficiently provided for in the Act to allow or facilitate the holding of the 2020 quadrennial local government election;
- provide flexibility in the filling of councillor vacancies that may arise if the election is not held in March 2020; and
- allow for the continuation of the Ipswich City Council and Logan City Council interim administrations if the election is significantly delayed.

Electoral Act

The Bill amends the Electoral Act to:

- allow the Governor or Speaker, as the case requires, to postpone polling day for a by-election and substitute later days for days stated in the writ;
- allow the day for taking or resuming an adjourned poll to be fixed by the Electoral Commission of Queensland to the earliest Saturday on which it may practicably and safely be taken or resumed, rather than being limited to no later than 34 days after polling day;
- allow the time and day by which an elector may request a postal vote to be fixed to a later time and day by the Electoral Commission of Queensland, rather than by 12 days before the polling day;
- allow requests for elector visitor voting in a by-election to be refused and met by the making of alternative arrangements, to the extent practicable, for voting;
- allow the Electoral Commission of Queensland to declare additional classes of electors who may make an electronically assisted vote;
- allow the Electoral Commission of Queensland to give a direction about the distribution or display of how-to-vote cards or other election material at a polling booth and canvassing for votes in or near a polling booth for a by-election, with an offence applying to persons who contravene such a direction; and
- allow for a regulation to make provisions to facilitate the holding of a by-election in a way that helps minimise serious risks to the health and safety of persons caused by the public health emergency involving COVID-19.

Constitution of Queensland

The Bill will achieve the policy objective by amending the Constitution of Queensland to provide that a meeting of the Executive Council may be held using any electronic technology, such as teleconferencing or video conferencing.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Estimated cost for government implementation

Public Health Act

Costs to implement the amendments to the Public Health Act will be met within existing resources.

Planning Act

There are no significant implementation costs for government arising from the amendments. Operational costs for the temporary use licence regime will be met from within existing budget allocations.

Amendments relating to the 2020 quadrennial local government election

The amendments may result in potential costs to the Electoral Commission of Queensland, candidates and local governments. These potential costs will ultimately be dependent on which measures are put in place for the 2020 quadrennial local government election, which in turn will be informed by the public health response to minimise the risks associated with the coronavirus disease outbreak.

Electoral Act

The amendments to the Electoral Act may result in additional costs for the Electoral Commission of Queensland, in particular, administering the potentially extended timeframes for postal voting. The costs involved will depend on any specific measures that are implemented by the relevant decision makers in relation to each of the amendments included in the Bill and will also depend on variables, including take-up of any measures by voters, which are difficult to predict in the context of the public health emergency involving COVID-19. Any costs will be considered through the normal budgetary processes.

Consistency with fundamental legislative principles

Public Health Act

Section 4(2)(a) of the *Legislative Standards Act 1992* provides that fundamental legislative principles include requiring that legislation has sufficient regard to rights and liberties of individuals. Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

The amendments to the Public Health Act may potentially breach this principle as they authorise the chief health officer and emergency officers to issue directions that may restrict the ability of persons to leave their homes or other premises, to enter particular facilities, or to freely move about and engage in activities.

It is considered that any potential impact that the amendments have upon the rights and liberties of individuals is justified, given the need to protect the health of the public by managing the outbreak of COVID-19, and in particular to ensure the latest health and medical advice about isolation and quarantine of suspected or confirmed cases of COVID-19 can be achieved.

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

The ability for an emergency officer to direct a person to remain at a stated place is limited to 14 days, and the ability for an emergency officer (medical) to detain a person is also limited to 14 days.

Finally, because these amendments have been progressed urgently, the Bill includes a sunset clause that will repeal the provisions 1 year after commencement.

Enforcement through the State Penalties Enforcement Regulation

The inclusion of new offences in a legislative scheme have generally been identified as relevant to the consideration of whether legislation has sufficient regard to individuals' rights and liberties. New offences are required to be appropriate and reasonable in light of the conduct that constitutes the offence. Penalties are required to be consistent and proportionate to the offences.

Chapter 8 of the Public Health Act includes penalties for failing to comply with a requirement or direction made by an emergency officer, or a detention order made by an emergency officer (medical). Currently, these penalties can only be enforced by way of a complaint and summons process.

The Act amends the State Penalties Enforcement Regulation to make non-compliance with the emergency powers directions in the Public Health Act an offence for which a penalty infringement notice (PIN) may be issued under the State Penalties Enforcement Act.

The penalties and the way they may be issued is considered justified as in a pandemic situation, it is critical that the directions and orders made by emergency officers are complied with. It is considered that the ability to impose immediate fines will act as a significant deterrent against non-compliance.

Planning Act and Economic Development Act

The amendments to the Planning Act and the Economic Development Act are consistent with fundamental legislative principles.

Amendments relating to the 2020 quadrennial local government election

Local Government Electoral Act

The amendments to the Local Government Electoral Act are designed to allow flexibility to facilitate the timely holding of the quadrennial election for 2020 in a way that minimises serious risks to the health and safety of persons caused by the public health emergency involving COVID-19.

The amendment to allow the adjournment of a poll to a date in excess of the current 34-day period prescribed in section 53(3) raises whether the legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament (section 4(2)(a) and (b) of the Legislative Standards Act). Allowing for the extension of the postponement of the 2020 quadrennial local government election by more than 34 days by the returning officer is a delegation of legislative power. Similarly, the amendments to provide the Minister the power to suspend or terminate the election and to fix a new election date raises whether the legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament (section 4(2)(a) and (b) of the Legislative Standards Act).

The amendments contemplate an extended adjournment, suspension or termination of the election followed by the calling of a new quadrennial election. However, it is deemed that such a provision is justified given the potential risks arising from the public health emergency. It is also noted that during this period local governments (other than Logan City Council and Ipswich City Council who have been dissolved) will continue to be represented by elected officials, albeit under caretaker arrangements.

Under section 79 of the Local Government Electoral Act, the returning officer must have received an application from an elector for a postal ballot in a non-postal ballot election by 7pm on the Monday 12 days before polling day. Similarly, under section 81 of the Local Government Electoral Act the returning officer must have received an application from an elector in a postal ballot election who has not received a ballot paper and declaration envelope by 7pm on the Monday 12 days prior to an election. The amendment to allow the Minister to extend the time and day by which these applications must be received by the returning officer for particular electors raises whether the legislation has sufficient regard to the institution of Parliament (section 4 (2)(b) of the Legislative Standards Act).

These timeframes are intended to ensure that those who request a postal vote have the reasonable prospect of the postal ballot being received before polling day. The amendment to extend the day and time for applying for a postal vote for an election is justified as it encourages additional electors to vote who may be particularly vulnerable to infection.

Section 77 of the Local Government Electoral Act permits an elector who is ill, has a disability or is pregnant or is caring for a person who is ill, has a disability or is pregnant to make a request to the Electoral Commission of Queensland for someone to visit them at a nominated address to allow them to cast a vote. The returning officer must ensure that an issuing officer visits the elector for the purpose of enabling the person to vote.

The amendment in the Bill to allow the issuing officer to not visit the elector for an election during the public health emergency raises whether the legislation has sufficient regard to the rights of the individual (section 4(2)(a) of the Legislative Standards Act). The amendment is

justified due to public health considerations and where alternative voting methods may, if practical, be facilitated.

Section 68(5B) of the Local Government Electoral Act contemplates procedures about how an elector may cast an electronically assisted vote for certain prescribed electors. The amendment proposes that the Electoral Commission of Queensland may, by notice declare a further class of persons as an elector who may cast an electronically assisted vote.

Providing for the Electoral Commission of Queensland to declare an additional class of electors to be able to make an electronically assisted vote at an election during the public health emergency, raises whether the legislation has sufficient regard to the institution of Parliament (section 4(2)(b) of the Legislative Standards Act).

The amendment is justified because it is intended to maximise the enfranchisement of voters appropriate to make electronically assisted votes at an election in light of the social disruption in the public health context.

The amendment to provide the Electoral Commission of Queensland with the ability to issue a direction: about how, where and when how-to-vote cards may be distributed/displayed at a polling booth for the election; prohibiting the distribution/display of how-to-vote cards and other election material at a polling booth for the election; or prohibiting a person from canvassing for votes in or near polling booths, raises whether the legislation has sufficient regard to the freedom of political communication and the institution of Parliament (section 4(2)(a) and (b) of the Legislative Standards Act).

In addition, the Bill introduces an offence if a person contravenes a direction of the Electoral Commission of Queensland above, with a maximum penalty of 10 penalty units. Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, consequences imposed by legislation are proportionate and relevant to the actions to which the consequences are applied by the legislation.

These amendments are justified for elections during the public health emergency to facilitate restrictions on the physical handing out of how-to-vote cards and other election material due to public health considerations and instead provide a reasonable opportunity for how-to-vote cards and election material to be displayed, and voters to consider them, in or in proximity to a polling booth. The Electoral Commission of Queensland is an appropriate body for managing these temporary measures for elections in a public health emergency. The proposed maximum penalty of 10 penalty units is justified in the circumstances and is consistent with the current penalty under section 185 of the Local Government Electoral Act about canvassing in or near polling booths.

The Bill confers the power to make regulation about a matter for which it is necessary to make provision to allow for the proper holding of an election and for which the Act does not make provision or sufficient provision. This power allows for regulations to operate retrospectively, with the limitation that the regulation cannot commence prior to the commencement day for the Bill. A regulation may be inconsistent with the Act to the extent necessary to achieve the purpose of part 9A. This raises whether the legislation has sufficient regard to the rights of the individual and the institution of Parliament to the extent that it will allow for regulations with retrospective application to be made that may be inconsistent with the Local Government Electoral Act (section 4(2)(a) and (b) of the Legislative Standards Act). However, the scope of the power is limited to the purpose of facilitating the 2020 quadrennial election in a public

health emergency and the provision and any regulations made under it, will expire one year after commencement. It is in the public interest to include this regulation-making power to ensure that there are no legislative impediments or gaps that would prevent an election proceeding in an appropriate way in the circumstances of the public health emergency.

City of Brisbane Act and Local Government Act

The Bill confers the power to make regulation about a matter for which the relevant Act does not make provision, or sufficient provision, as a result of the 2020 quadrennial election not being held in March 2020. This power allows for regulations to operate retrospectively, with the limitation that the regulation cannot commence prior to the commencement day for the Bill. This raises whether the legislation has sufficient regard to the rights of the individual and the institution of Parliament to the extent that it will allow for regulations with retrospective application to be made (section 4(2)(a) and (b) of the Legislative Standards Act). However, the scope of the power is limited to the purpose of facilitating an election in a public health emergency and the provision and any regulations made under it, will expire one year after commencement. It is in the public interest to include this regulation-making power to ensure that there are no legislative impediments or gaps that would prevent an election proceeding in an appropriate way in the circumstances of the public health emergency.

Constitution of Queensland amendments

The amendments to the Constitution of Queensland are consistent with fundamental legislative principles.

Electoral Act

The amendments to the Electoral Act (in part 5) relate to the holding of by elections before the next general election that is held after the commencement of the Bill, if enacted.

The amendment to allow the Governor or the Speaker to postpone the date for a by-election polling day by more than 21 days (as currently provided for in section 86 of the Electoral Act) (the extended postponement period) raises whether the legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament (section 4(2)(a) and (b) of the Legislative Standards Act). Individuals in the electoral districts the subject of such by-elections are being denied the right to electoral representation during the extended postponement period.

Allowing for the extension of the postponement of a by-election by more than 21 days by the Governor or the Speaker is a delegation of legislative power. The amendment is confined to the circumstances of the public health emergency involving COVID-19. Allowing for such postponement is justified in the circumstances when public health considerations require it and there is a need to limit large public events which may result in a spread of contagion. In the circumstances, were the by-elections not postponed while public health concerns were current, there would also be a risk that persons would be disenfranchised by not attending the poll due to health concerns. The Governor and the Speaker are appropriate persons to delegate this power to, consistent with their existing role in relation to the postponement of elections.

The amendment to allow the Electoral Commission of Queensland to fix a date for the taking or resumption of an adjourned poll that may be more than 34 days after the polling day (as currently provided for in section 100 of the Electoral Act) raises whether the legislation has

sufficient regard to the rights and liberties of individuals and the institution of Parliament (section 4(2)(a) and (b) of the Legislative Standards Act).

Electors affected by the adjournment are being denied the right to electoral representation during an extended adjournment period. Allowing for the extension of the adjournment of the by-election by more than 34 days (as provided in section 100 of the Electoral Act) to the Electoral Commission of Queensland is a delegation of legislative power. The amendment is confined to the circumstances of the public health emergency involving COVID-19.

Allowing for such postponement is justified in the circumstances when public health considerations require it and there is a need to limit large public events which may result in a spread of contagion. In the circumstances, were the by-elections not postponed while public health concerns were current, there would also be a risk that persons would be disenfranchised by not attending the poll due to health concerns. In relation to the adjournment of polls, the Electoral Commission of Queensland is an independent statutory body and is appropriate for the delegation of this power consistent with its existing role.

Under section 119 of the Electoral Act, an elector's postal vote request must be received by the Electoral Commission of Queensland or a returning officer by not later than 7pm on the day that is 12 days before the polling day for the election. The amendment to allow the Commission to extend the time and day by which an individual must apply for a postal vote raises whether the legislation has sufficient regard to the institution of Parliament (section 4(2)(b) of the Legislative Standards Act).

The 12-day cut-off for postal vote applications for all electors is intended to ensure that those who request a postal vote have a reasonable prospect of the postal ballot being received before polling day. The amendment to extend the day and time for applying for a postal vote for a by-election is justified in that it would allow postal votes to be dispatched after the usual 12-day cut-off, enfranchising additional voters in the context of the social disruption due to the public health emergency involving COVID-19.

Section 120 of the Electoral Act contemplates voters who are ill making a request to the Electoral Commission of Queensland for someone to visit them at a nominated address to allow them to make a vote. The Commission or returning officer must ensure that an issuing officer visits the elector for the purpose of enabling the person to vote.

The amendment in the Bill to allow issuing officers to be directed not to visit the elector, or electors of the class, or any electors, raises whether the legislation has sufficient regard to the rights of individuals (section 4(2)(a) of the Legislative Standards Act). The amendment is justified due to public health considerations. The issuing officer must, to the extent practicable, make alternative arrangements to enable an elector affected by the direction to vote in the election.

Section 121A of the Electoral Act provides for who may make an electronically assisted vote, currently: an elector who cannot vote without assistance because the elector has an impairment or an insufficient level of literacy; an elector who cannot vote at a polling booth because of an impairment; or an elector who is a member of a class of electors prescribed under a regulation. The *Electoral Regulation 2013* allows certain special postal voters and distance voters to vote electronically.

Providing for the Electoral Commission of Queensland to declare an additional class of electors to be able to make an electronically assisted vote at a by-election during the public health emergency involving COVID-19 raises whether the legislation has sufficient regard to the institution of Parliament (section 4(2)(b) of the Legislative Standards Act). The amendment is justified because it is intended to maximise the enfranchisement of voters appropriate to make electronically assisted votes at a by election in the context of the social disruption in the public health context.

The amendment to provide the Electoral Commission of Queensland with the ability to issue directions in relation to the display or distribution of how-to-vote cards and other election material and canvassing for votes in or near polling booths, raises whether the legislation has sufficient regard to the freedom of political communication and the institution of Parliament (section 4(2)(a) and (b) of the *Legislative Standards Act 1992*).

These amendments are justified for by-elections during the public health emergency involving COVID-19 to facilitate restrictions on the physical handing out of how-to-vote cards and other election material and canvassing for votes due to a public health considerations. The amendments will provide a reasonable opportunity for how-to-vote cards to be displayed, and for voters to consider them in or in proximity to a polling booth. The Electoral Commission of Queensland is an appropriate body for managing these temporary measures.

The Bill confers the power to make a regulation about a matter for which it is necessary to make provision to facilitate the holding of a by-election in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 pandemic and for which the Electoral Act does not make provision or sufficient provision. This power allows for a regulation to operate retrospectively, with the limitation that the regulation cannot commence prior to the commencement day for the Bill. This raises whether the legislation has sufficient regard to the rights of the individual and the institution of Parliament to the extent that it will allow for regulations with retrospective application to be made and for the regulation to be inconsistent with the Electoral Act to the extent necessary for the purposes of the part (section 4(2)(a) and (b) of the Legislative Standards Act). However, the scope of the power is limited to the purpose of facilitating a by-election in a public health emergency and the provision and any regulation made under it will expire one year after commencement. It is in the public interest to include this regulation-making power to ensure that there are no legislative impediments or gaps that would prevent a by-election proceeding in an appropriate way in the circumstances of the public health emergency.

Consultation

Public Health Act

Due to the urgent nature of the Bill, consultation on the amendments was not possible. However, Queensland Health is in regular contact with clinicians and the general public about the COVID-19 emergency. Queensland Health will continue to ensure that Queenslanders are informed about COVID-19, including any confirmed cases and actions that can be taken to reduce the risk of COVID-19 spreading.

Planning Act and Economic Development Act

Due to the urgent nature of the Bill, consultation on the amendments was not possible. However, it has become apparent as a result of the COVID-19 emergency that should workforces of local and state governments be affected by this event this may affect the efficient and effective operation of the Queensland planning and development assessment framework. Representations have been made by local governments about this issue.

Also, it has become apparent that there may be a need to ensure the operation of certain uses during the event to respond appropriately. This need has been evidenced in the media and corresponding representations have been made by industry.

Amendments relating to the 2020 quadrennial local government election

The Electoral Commission of Queensland and the Local Government Association of Queensland were consulted on the amendments to the City of Brisbane Act, Local Government Act, Local Government (Dissolution of Ipswich City Council) Act 2018, Local Government Electoral Act and the Local Government Regulation. Due to the urgent nature of the Bill, community consultation on the amendments was not possible.

Electoral Act

The Electoral Commission of Queensland was consulted on the amendments to the Electoral Act in the Bill. Due to the urgent nature of the Bill, community consultation on the amendments was not possible.

Constitution of Queensland

Due to the urgent nature of the Bill, community consultation on the amendments was not possible. However, the amendments are technical in nature as they permit meetings of Executive Council to be held by technology, such as teleconferencing or videoconferencing. The amendments are not expected to have any impacts on the community.

Consistency with legislation of other jurisdictions

The amendments are specific to the State of Queensland and are not uniform with legislation of other jurisdictions. However, the amendments are part of a coordinated approach by the Commonwealth Government and all States and Territories to respond to the COVID-19 pandemic. The measures in the Bill are informed by decisions of the National Cabinet and other jurisdictions are implementing similar measures within their own legislative frameworks.

Notes on provisions

Part 1 Preliminary

Short Title

Clause 1 provides that, when enacted, the short title of the Act will be the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020*.

Commencement

Clause 2 provides for the commencement of the Act.

Part 11, division 3 commences 1 year after the date of assent of this Act. This clause has the effect of omitting the powers for the COVID-19 emergency after 1 year of the date of assent.

Part 2 Amendment of City of Brisbane Act 2010

Act amended

Clause 3 states that this part amends the *City of Brisbane Act 2010*.

Insertion of new ch 7, pt 5A

Clause 4 inserts new part 5A (Provisions for 2020 quadrennial election).

New section 240A (Minister may give directions about filling vacancies in office of councillors) provides that if the 2020 quadrennial election is not held in March 2020 under part 9A of the *Local Government Electoral Act 2001* and until the day before the 2020 quadrennial election is held, the following applies:

- section 163(2) and (6), which provides for the filling of a councillor's office if the office becomes vacant in certain circumstances, does not apply to the council;
- the Minister may give a direction to the council about whether or not a vacant office of a councillor (including the mayor) must be filled;
- if the vacant office must be filled, the Minister may, by notice to the council, extend the period within which the council may fill the vacancy under section 163(4); and
- if the Minister extends the period under section 163(4) to fill a vacancy, the Governor in Council may appoint a qualified person under section 163(5) to fill the vacancy only if the council has not filled the vacancy within the extended period.

New section 240B (Regulation-making power for 2020 quadrennial election) provides that if the 2020 quadrennial election is not held in March 2020, a regulation may make provisions about a matter for which this Act does not make provision or sufficient provision as a result of the 2020 quadrennial election not being held in March 2020. The regulation may have retrospective operation but only until the day of commencement of this section.

New section 240B (Regulation-making power for 2020 quadrennial election) and the regulation made under this section expire 1 year after the day of commencement of this section.

Amendment of sch 2 (Dictionary)

Clause 5 amends schedule 2 to insert a definition for *2020 quadrennial election*.

Part 3 Amendment of Constitution of Queensland 2001

Act amended

Clause 6 states that this part amends the *Constitution of Queensland 2001*.

Amendment of s 50 (Meetings of Executive Council)

Clause 7 amends section 50 of the Constitution of Queensland to provide that a meeting of Executive Council may be held by electronic communication.

Clause 7 inserts section 50(4) to specify that a meeting may be held using any technology that enables reasonably continuous and contemporaneous communication between participants.

Clause 7 also inserts section 50(5) to specify that a person who participates in a meeting through technological means is taken to be present at the meeting.

Clause 7 also inserts section 50(6) to define *participants*, in a meeting of Executive Council, for the purpose of section 50.

Part 4 Amendment of Economic Development Act 2012

Act amended

Clause 8 states that this part amends the *Economic Development Act 2012*.

Amendment of s 72 (Application of div 1)

Clause 9 amends section 72 to provide for the division dealing with priority development area (PDA) development offences to also apply to new section 171J dealing with offences related to temporary use licences.

Amendment of s 169 (Delegations)

Clause 10 amends section 169 to provide that section 169 does not apply to part 3B in chapter 5. Delegations under part 5 are dealt with in new section 171K, as stated in a note in this section.

Insertion of new ch 5, pt 3B

Clause 11 inserts new chapter 5, part 3B (Applicable Events).

Division 1, Preliminary

New section 171D (Definitions for part) provides the definitions for this part.

Division 2, Temporary use licenses

New section 171E (Application of division) states that the division applies if an applicable event has been declared under the *Planning Act 2016*. The division provides for a person to apply for a temporary use licence to the Minister for Economic Development Queensland within an area to which an applicable event notice applies if the premises are:

- located in a PDA;
- PDA-associated land for a priority development area.

New section 171F (Applications for temporary use licences) provides that a person may apply for the temporary use licence to the Minister for Economic Development Queensland. An application can be made to change a PDA development condition of a PDA development approval or to change an existing lawful use of premises to increase the intensity or scale of the use, add a new use or replace the existing lawful use with a new use. The application must be made in the approved form and include the matters prescribed by the *Economic Development Regulation 2013*. The application may relate to multiple uses and multiple premises.

New section 171G (Decisions on applications) provides that the Minister for Economic Development Queensland must consider and decide an application and issue the temporary use licence, with or without conditions, or refuse to issue the temporary use licence. This provision also provides the relevant checks and balances for the considerations of the issuing of the licence. The Minister for Economic Development Queensland must have regard to the nature of the applicable event and may issue the temporary use licence only if the Minister for Economic Development Queensland is satisfied there are reasonable grounds for authorising the temporary change in use of the premises during the applicable event.

New section 171H (Notices of decisions) provides that the Minister for Economic Development Queensland must provide a notice of the decision to the applicant and what the notice must state. If the decision is to grant the licence, the Minister for Economic Development Queensland must also notify the local government for the local government area in which the premises are located of the licence. If the decision is to refuse the application, the notice must state the reasons for refusal.

New section 171I (Period of temporary use licences) provides that a temporary use licence has effect until the end of the applicable event period. After this time, the effect of the temporary use licence ceases.

New section 171J (Effect of temporary use licences) provides for the effect of a temporary use licence which depends on the nature of the change to which the licence relates. The licence will change a PDA development condition of a PDA development approval. Provided the licence and any conditions are complied with, then offences against section 73 or 76 will not be committed in relation to the use, unless the conditions of the licence are contravened. This provision also provides that development other than a material change of use (e.g. operational work, building work or reconfiguring a lot) that would have been PDA assessable development if the licence were not given, continues to be PDA assessable development. Subsection (3) provides that an infrastructure agreement under the *Planning Act 2016* does not apply instead of the PDA development approval.

New section 171K (Delegations) specifies that the MEDQ may delegate to an appropriately qualified public service officer.

Division 3, Effect of particular declarations under Planning Act 2016

New section 171L (Effect of declarations under Planning Act 2016, s 275O) refers to declaration made under the Planning Act that provides a broad ability to remove any operating constraint on the hours and movements of certain lawful uses arising under a provision of the Economic Development Act or a PDA development condition of a PDA development approval.

Division 4, Extending and suspending periods under Act

The Economic Development Act does not currently provide for circumstances where there is a need to temporarily suspend or extend statutory timeframes in the Act.

New section 171M (Application of division) provides that this division only applies if an applicable event has been declared.

New section 171N (Extension of periods for doing things under Act) provides that the Minister for Economic Development Queensland can if satisfied it is necessary, by publishing on the website of the department administering the Economic Development Act a notice to extend a period under this Act to do a thing (an extension notice). This section also provides that this period may be extended by further notices published on the website of the department administering the Economic Development Act (further extension notices).

The effect of the extension is that any period that starts during the extension notice period or a relevant period that had started before the extension notice period but is not ended, is afforded the stated extension of time to complete that period.

New section 171O (Suspension of periods for doing things under Act) provides that the Minister for Economic Development Queensland can, if satisfied it is necessary, by publishing on the website of the department administering the Economic Development Act, a notice to suspend a period under this Act to do a thing (a suspension notice). This section also provides that this period may be extended by further notices published on the website of the department administering the Economic Development Act (further suspension notices).

The effect of the suspension is that the relevant period that starts during the suspension notice period or a relevant period that had started before the suspension notice but is not ended, is suspended and any action done under this suspended relevant period is taken to have no effect.

This clause mirrors the Planning Act amendments, substituting the MEDQ for ‘Minister’ as MEDQ is the recognised entity under the ED Act and cross referencing the relevant section of the ED Act.

Amendment of sch 1 (Dictionary)

Clause 12 amends schedule 1, dictionary of the Economic Development Act to include new definitions as provided for under the Bill.

Part 5 Amendment of Electoral Act 1992

Act amended

Clause 13 states that this part amends the *Electoral Act 1992*.

Insertion of new pt 12A

Clause 14 inserts new part 12A (By-elections before next general election).

New section 392A (Purpose of part) provides that the purpose of part 12A is to facilitate the holding of by-elections in a way that helps minimise serious risks to the health and safety of persons caused by the public health emergency involving COVID-19.

New section 392B (Application of part) provides that part 12A applies in relation to the holding of a by-election before the next general election is held after the commencement of the part.

New section 392C (Definition for part) provides a definition of ‘by-election’ to mean an election of a member of the Legislative Assembly between general elections.

New section 392D (Change of time limits in writ) provides that, in relation to the writ issued for a by-election, despite anything in the Electoral Act, the Governor or Speaker (whoever issued the writ) may declare by gazette notice that the polling day is postponed to a date to be fixed by gazette notice, or substitute a later day for the day stated in the writ (by gazette notice before, on or after a day specified in the writ).

New section 392E (Adjournment of poll) allows the Electoral Commission of Queensland to fix as the day for the taking of an adjourned poll, the earliest Saturday on which it is satisfied the poll may practicably and safely be taken or resumed as the day for taking or resuming an adjourned poll (rather than a day not later 34 days after the polling day for the election).

New section 392F (Making a declaration vote using posted voting papers) allows the Electoral Commission of Queensland to fix a time and day, by publishing a notice on its website, by which an elector may make a postal vote request under section 119.

New section 392G (Electoral visitor voting) allows the Electoral Commission of Queensland or a returning officer to direct an issuing officer not to visit an elector who has requested to vote as an electoral visitor voter, a class of elector or any elector if the Electoral Commission of Queensland is satisfied that a risk to the health and safety of an issuing officer is posed. The Commission or returning officer must, to the extent practicable, have the issuing officer make alternative arrangements, if practicable, to enable the elector affected by the direction to vote in the election.

New section 392H (Electronically assisted voting) allows the Electoral Commission of Queensland, having regard to the purposes of the part, to declare an additional class of electors to be able to make an electronically assisted vote at a by-election.

New section 392I (Distribution or display of how-to-vote cards or other election material) allows the Electoral Commission of Queensland to give a direction about the display or distribution of how-to-vote cards and election material or prohibiting a person from canvassing for votes in or near a polling booths or permitting the display of political statements at a place mentioned in section 190(1), if the Commission is satisfied that, having regard to the purposes of the part, it would be in the public interest to regulate, limit or prevent the distribution of how-to-vote cards or other election material or canvassing for votes in or near a polling booth. The direction must be published on the Commission’s website. It is an offence with a maximum penalty of 10 penalty units to contravene a direction under the section.

New section 392J (Regulation-making power) allows a regulation to make a provision about a matter for which it is necessary to make provision to facilitate the holding of a by-election in a way stated in new section 392 and for which the Electoral Act does not make provision or sufficient provision. It will expire one year after commencement, along with the section.

Part 6 Amendment of Local Government Act 2009

Act amended

Clause 15 states that this part amends the *Local Government Act 2009*.

Insertion of new ch 7, pt 5A

Clause 16 inserts new part 5A (Provisions for 2020 quadrennial election).

New section 260AA (Minister may give directions about filling vacancies in office of councillors) provides that if the 2020 quadrennial election is not held in March 2020 under part 9A of the Local Government Electoral Act and until the day before the 2020 quadrennial election is held, the following applies:

- section 163(2) and (5), which provide for filling of a councillor's office (including the mayor's office) in certain circumstances, does not apply to a local government;
- the Minister may give a direction to the local government about whether or not a vacant office of a councillor (including the mayor) must be filled;
- if the vacant office must be filled, the Minister may, by notice to the local government, extend the period within which the local government may fill the vacancy under section 163(3); and
- if the Minister extends the period under section 163(3), the Governor in Council may appoint a qualified person under section 163(4) to fill the vacancy only if the local government has not filled the vacancy within the extended period.

New section 260AB (Regulation-making power for 2020 quadrennial election) provides that if the 2020 quadrennial election is not held in March 2020, a regulation may make provisions about a matter for which this Act does not make provision or sufficient provision as a result of the 2020 quadrennial election not being held in March 2020. The regulation may have retrospective operation but only till the day of commencement of this section.

New section 260AB (Regulation-making power for 2020 quadrennial election) and the regulation expire 1 year after the day of commencement of this section.

Amendment of sch 4 (Dictionary)

Clause 17 amends schedule 4 to insert a definition for *2020 quadrennial election*.

Part 7 Amendment of Local Government (Dissolution of Ipswich City Council) Act 2018

Act amended

Clause 18 states that this part amends the *Local Government (Dissolution of Ipswich City Council) Act 2018*.

Amendment of s 9 (Expiry)

Clause 19 amends section 9 to extend the expiry of the Local Government (Dissolution of Ipswich City Council) Act from 30 June 2020 to 30 June 2021.

Part 8 Amendment of Local Government Electoral Act 2011

Act amended

Clause 20 states that this part amends the *Local Government Electoral Act 2011*.

Insertion of new pt 9A

Clause 21 inserts new part 9A (Provisions for quadrennial election for 2020).

New section 200A (Purpose of part) provides that the purpose of part 9A is to facilitate the holding of the quadrennial election for 2020 in a timely way that minimise serious risks to the health and safety of persons caused by the public health emergency involving COVID-19.

New section 200B (Suspension of election) provides that the Minister, in consultation with the electoral commission, may withdraw the notice of election published on 22 February 2020 under section 25, if the Minister, in consultation with the electoral commission, is satisfied that having regard to the purpose of part 9A, it would not be in the public interest for the election to be held on the day stated in the notice.

If the notice is withdrawn:

- the Minister must publish a notice about the withdrawal on the electoral commission's website;
- the election is suspended from the day the notice is published until the Minister ends the suspension under section 200C or terminates the election under section 200D; and
- chapter 3, part 5 of the City of Brisbane Act or chapter 3, part 5 of the *Local Government Act 2009* continue to apply to a local government during the period of the suspension.

New section 200C (Ending suspension) applies if the election is suspended under new section 200B and the Minister is not required to terminate the election under new section 200D. The Minister must, as soon as practicable after the withdrawal of the notice of the election, in consultation with the electoral commission, and having regard to the purpose of part 9A, end the suspension by notice published on the electoral commission's website.

The notice must fix a day that is a Saturday for the holding of the election and may be accompanied by an amended notice of election under section 25 for the election and may state that any votes cast in the election before it was suspended are to be disregarded. If the notice is accompanied by a replacement notice, a reference in part 4 of the Local Government Electoral Act to the nomination day is taken to be a reference to the nomination day stated in the amended notice of election. The nomination date in the amended notice could be the date originally notified under section 25 for March 2020 quadrennial election.

The day fixed by the notice must be decided by the Minister, in consultation with the electoral commission and having regard to the purpose of part 9A.

If the notice states that votes cast in the election before the suspension are to be disregarded, on the publication of the notice, then declaration envelopes, ballot papers in ballot boxes, all books and papers, other than the voters roll, used by each presiding officer must be destroyed.

Chapter 3, part 5 of the City of Brisbane Act and chapter 3, part 5 of the Local Government Act applies to a local government from the day the Minister publishes the notice on the electoral commission's website.

New section 200D (Terminating election) provides that the Minister must, by notice published on the electoral commission's website, terminate the election if the election is suspended under section 200B and the Minister, in consultation with the electoral commission, is satisfied the period of the suspension of the election is likely to compromise the outcome of the election and it would be practicable to hold a new election.

On the publication of the notice:

- nominations for the election are taken to have been withdrawn;
- declaration envelopes, ballot papers in ballot boxes, unused ballot papers, all books and papers, other than the voters roll, used by each presiding officer for the election must be destroyed;
- all deposits given to the returning officer under section 39 (Deposit to accompany a nomination) for an election must be refunded.

The Minister, must in consultation with the electoral commission and having regard to the purpose of this part, fix a day that is a Saturday for the holding of the quadrennial election for 2020.

New section 200E (Conduct of poll by postal ballot) provides that the Minister may direct that a poll for a local government's area, division or part of the area be conducted by postal ballot, if the Minister is satisfied that having regard to the purpose of part 9A it would be in the public interest for the poll for the election to be conducted by postal ballot in all of a local government's area; or one or more divisions of a local government's area; or a part of a local government's area. However, the Minister must consult with the electoral commission before giving the direction.

The Minister's direction must be published on the electoral commission's website and a direction that relates to a part of a local government area must be accompanied by a map showing the part of the area. The local government must ensure the public may inspect the map that accompanied the direction at the local government's public office and website.

If the election was suspended under section 200B and not terminated under section 200D and an elector cast a vote in the election other than by postal vote before it was suspended, when the suspension of the election ends the elector's vote is taken to have been cast by postal vote for section 68(5).

New section 200F (Electors who may vote electronically) applies if the electoral commission is satisfied that having regard to the purpose of part 9A, it would be in the public interest to allow a class of electors to cast an electronically assisted other than an elector mentioned in section 68(5A) and procedures about how an elector may cast an electronically assisted vote have been made under section 75A.

The electoral commission may, by notice published on the electoral commission's website, declare that a class of electors may vote electronically. An elector of the stated class may cast an electronically assisted vote in the election under part 4, division 5.

New section 200G (Electoral visitor voting) provides that the returning officer may direct an issuing officer not to visit a visitor elector or electors of a particular class, or any electors, if electoral commission is satisfied it would pose a risk to the health and safety of the issuing officer, for the officer to visit the elector.

The issuing officer must make alternate arrangements to enable an elector affected by the direction to vote in the election. Examples of alternate arrangements include casting an electronically assisted vote or postal vote.

New section 200H (Extending time for particular applications to cast postal vote) provides that the Minister may extend the time and day by when the returning officer must receive applications for postal votes under section 79(2)(d) and 81(2A) for an elector who is over 65 years of age and have an impairment or condition for which the public health emergency involving COVID-19 poses a high risk to the elector's health and safety (relevant elector), if the Minister is satisfied that, having regard to the purpose of part 9A, it would be in the public interest to do so. However, the Minister must consult the electoral commission before extending the time and day.

If the Minister extends the time and day for receiving postal vote applications for a relevant elector:

- the Minister must give a notice of the extension to the returning officer;
- the Minister must ensure a notice about the extension is published on the electoral commission's website, including the extended time and day;
- section 79 or 81, as the case may be, applies in relation to a relevant elector as if the reference in section 79(2)(d) or section 81(2A) to 7pm on the day that is 12 days before the polling day were a reference to the extended time and day.

Section 200H (Extending time for particular applications to cast postal vote) applies in relation to an application even if the application was made before the Minister extends the time and day.

New section 200I (Distribution or display of how-to-vote cards or other election material) applies if the electoral commission is satisfied that, having regard to the purpose of part 9A, it would be in the public interest to regulate, limit or prevent the distribution or display of how-to-vote cards or other election material at a polling booth for the election.

The electoral commission may give a direction about how, where or when how-to-vote cards may be distributed or displayed at a polling booth for the election or prohibiting the distribution or display of how-to-vote cards or other election material at a polling booth for the election, or prohibiting a person from canvassing for votes in or near polling booths. The direction may permit the display of political statements in a place mentioned in section 188(1) and section 188 does not apply to the display of a political statement permitted under the direction. The direction must be published on the electoral commission's website.

A maximum penalty of 10 penalty units applies for contravention with the direction.

New section 200J (Issuing officers for s 12) provides that for the 2020 quadrennial elections, despite section 12, an issuing officer is not required to be a member of the staff of the electoral commission under section 12(2) and may be another appropriately qualified person.

New section 200K (Adjournment of poll under s 52A or 53) applies if a poll for the election is adjourned under section 52A(3) or 53(1). Section 53 applies in relation to the poll as if the reference in section 53(3) to a day no later than 34 days after the day on which the poll is adjourned were a reference to the earliest Saturday on which the returning officer is satisfied the poll may practicably and safely be taken or resumed.

To remove any doubt, it is declared that the returning officer or presiding officer for a polling booth may act under section 53, as affected by this section, as occasion requires.

New section 200L (Regulation-making power for quadrennial election for 2020) provides that a regulation may make provisions about a matter for which it is necessary to make provision to allow or facilitate the holding of the quadrennial election for 2020 and this Act does not make provision or sufficient provision. The regulation may have retrospective operation to a day not earlier than the day of commencement and may be inconsistent with the Local Government Electoral Act to the extent necessary to achieve the purpose of the part.

New section 200L (Regulation-making power for quadrennial election for 2020) and the regulation expire 1 year after the day of commencement.

Part 9 Amendment of Local Government Regulation 2012

Regulation amended

Clause 22 states that this part amends the *Local Government Regulation 2012*.

Amendment of s 239AA (Dissolution of Logan City Council)

Clause 23 amends section 239AA(2) of the Local Government Regulation to extend the expiry of this section from 30 June 2020 to 30 June 2021 to provide for the continuation of the Logan City Council interim administration.

Part 10 Amendment of Planning Act 2016

Act amended

Clause 24 provides that this part amends the *Planning Act 2016*.

Amendment of s 161 (What part is about)

Clause 25 provides that development offences under chapter 5, part 2, section 161 of the Planning Act are subject to any licences under section 275L (Effect of temporary use licence).

Insertion of new ch 7, pt 4B

Clause 26 inserts new chapter 7, part 4B (Applicable Events) in the Planning Act.

Division 1, Preliminary

New section 275D (Definitions for part) provides the definitions for this part.

Division 2, Declaring applicable events

The concept of the ‘applicable event’ ensures that the Queensland Government is able to make advance preparations or respond to emerging circumstances that affect a State interest under the Planning Act. ‘Event’ is given the same meaning that is provided in the Disaster Management Act.

For this reason, these provisions are not limited to the public health emergency of COVID-19 but are intended to be available for other future events such as flood, cyclones, bushfires or future public health emergencies.

New section 275E (Declarations of applicable events) provides that this section applies if the Minister is satisfied that an event has taken place, is taking place or is likely to take place; and the event may affect a State interest as defined in the Planning Act.

This provision describes how the Minister may declare the applicable event by publishing on the website of the department administering the Planning Act, a notice (the applicable event notice). The applicable event notice must state the period for which it has effect (the applicable event period) and the part of the state to which the notice applies. This could be all or parts of the state. The applicable event notice is a statutory instrument and the applicable event period cannot start earlier than the day the applicable event notice is published.

New section 275F (Extensions of applicable event periods) provides that the Minister may by further notice (an applicable event extension notice), extend the applicable event period if the Minister is satisfied the extension is necessary considering the nature of the event and the effect on the state interest. The extension notice is also a statutory instrument and must be published on the website of the department administering the Planning Act before the applicable event period would otherwise end.

Division 3, Temporary use licences

When an applicable event has been declared, a person may apply for a temporary use licence for premises located in an area to which an applicable event notice applies. This division provides for the application and decision process and the effect of the temporary use licence.

New section 275G (Application of division) provides that a temporary use licence can only be applied for if an applicable event has been declared and notified for premises located in an area to which an applicable event notice applies.

New section 275H (Applications for temporary use licences) provides that a person may apply for the temporary use licence to the chief executive of the department administering the Planning Act. An application can be made to change a condition of a development approval, a requirement of a designation or to change an existing lawful use of premises to increase the intensity or scale of the use, add a new use or replace the existing lawful use with a new use. The application must be made in the approved form and include the matters prescribed by the Planning Regulation. The application may relate to multiple uses and multiple premises.

New section 275I (Decisions on applications) provides that the chief executive must consider and decide an application and issue the temporary use licence, with or without conditions, or refuse to issue the temporary use licence. This provision also provides the relevant checks and balances for the considerations of the issuing of the licence. The chief executive must have regard to the nature of the applicable event and may issue the temporary use licence only if the chief executive is satisfied there are reasonable grounds for authorising the temporary change in use of the premises during the applicable event.

New section 275J (Notices of decisions) provides that the chief executive must provide a notice of the decision to the applicant and what the notice must state. If the decision is to grant the licence, the chief executive must also notify the local government for the local government area in which the premises are located of the licence.

New section 275K (Period of temporary use licences) provides that a temporary use licence has effect until the end of the applicable event period. After this time, the effect of the temporary use licence ceases.

New section 275L (Effect of temporary use licences) provides for the effect of a temporary use licence which depends on the nature of the change to which the licence relates. Provided the licence and any conditions are complied with, then identified offences will not be committed. This provision also provides that development other than a material change of use (eg. operational work, building work or reconfiguring a lot) that would have been prohibited or assessable development if the licence was not given, continues to be prohibited or assessable development.

New section 275M (Delegations) provides that the chief executive may delegate the chief executive functions under this division to an appropriately qualified public service officer.

Division 4, Declaring uses and classes of uses

This division provides a broad ability to remove any operating constraint on the hours and movements of certain lawful uses.

New section 275N (Application of division) provides that this division only applies if an applicable event has been declared.

New section 275O (Declarations of uses and classes of uses) provides that the Minister may publish a notice to declare a use or a class of uses for the applicable event, if the Minister is satisfied the declaration is necessary having regard to the nature of the applicable event. The declaration may be made for all or part of the area the applicable event applies.

New section 275P (Effect of declarations under s 275O) provides for the effect of the declaration. The effect is that this section for the area where the declaration is made, a provision of this Act, a requirement of a designation or a condition of a development approval does not apply in relation to the carrying out of the use or a use of the class, where those matters have the effect of limiting the hours of operation of the use or a use of a class or restricting the movement of goods in relation to the use or the use of a class.

Division 5, Extending and suspending periods under Act

The Planning Act does not currently provide for circumstances where there is a need to temporarily suspend or extend statutory timeframes in the Act, the Planning Regulation or in a statutory instrument.

New section 275Q (Application of division) provides that this division only applies if an applicable event has been declared.

New section 275R (Extension of periods for doing things under Act) provides that the Minister can if satisfied it is necessary, by publishing on the website of the department administering the Planning Act, a notice to extend a period under this Act to do a thing (an extension notice). This section also provides that this period may be extended by further notices published on the website of the department administering the Planning Act (further extension notices).

The effect of the extension is that any period that starts during the extension notice period or a relevant period that had started before the extension notice period but is not ended, is afforded the stated extension of time to complete that period.

New section 275S (Suspension of periods for doing things under Act) provides that the Minister can if satisfied it is necessary, by publishing on the website of the department administering the Planning Act, a notice to suspend a period under this Act to do a thing (a suspension notice). This section also provides that this period may be extended by further notices published on the website of the department administering the Planning Act (further suspension notices).

The effect of the suspension is that the relevant period that starts during the suspension notice period or a relevant period that had started before the suspension notice but is not ended, is suspended and any action done under this suspended relevant period is taken to have no effect.

Amendment of s 281 (Delegation)

Clause 27 provides that the function of the Minister in the part cannot be delegated.

Amendment of sch 2 (Dictionary)

Clause 28 amends Schedule 2, Dictionary of the Planning Act to include new definitions as provided for under the Bill.

Part 11 Amendment of Public Health Act 2005

Division 1 Preliminary

Act Amended

Clause 29 states that this part amends the *Public Health Act 2005*.

Division 2 Amendments commencing on assent

Amendment of s 315 (Definitions for ch 8)

Clause 30 inserts the definition of *COVID-19 emergency* and *public health direction* into section 315 of the Public Health Act.

COVID-19 emergency means the public health emergency declared by the Minister on 29 January 2020 under section 319(2), as extended and further extended under section 323.

Public health direction is defined in section 362B(1).

Amendment of s 339 (Powers)

Clause 31 adds a new paragraph (c) to section 339(1) of the Public Health Act. It provides that if the declared public health emergency is the COVID-19 emergency, an emergency officer also has the powers stated in part 7A, division 3 (Other provisions about detention).

Amendment of s 340 (Identity cards)

Clause 32 inserts a new subsection 340(3) of the Public Health Act to provide that subsection (1) does not apply in relation to an emergency officer who is a police officer.

Amendment of s 341 (Failure to return card)

Clause 33 amends section 341 of the Public Health Act so that the offence of failing to return a card does not apply to a police officer that is appointed as an emergency officer.

Amendment of s 342 (Production or display of identity card by emergency officer)

Clause 34 amends section 342 of the Public Health Act to provide an emergency officer who is a police officer in uniform may exercise a power in relation to another person under this chapter only if the officer first informs the person of his or her name, rank and station. An emergency officer who is a police officer but not in uniform may exercise a power in relation to another person under this chapter only if the officer first informs the person that he or she is a police officer and of his or her name, rank and station, and produces for inspection his or her identity card as a police officer.

Clause 34 also inserts a new subsection 342(2)(d) of the Public Health Act so that a relevant person includes an emergency officer who is a police officer.

Amendment of s 350 (Duration of order)

Clause 35 amends section 350(a) of the Public Health Act so that a detention order by an emergency officer (medical) ends 14 days after the day it is given to the person the subject of the order.

Insertion of new ch 8, pt 7A

Clause 36 inserts a new part 7A (Particular powers for COVID-19 emergency) in the Public Health Act.

New section 362A (Purpose of part) provides that the purpose of this part is to confer additional powers for the COVID-19 emergency on the chief health officer and emergency officers.

Division 2, Chief health officer

New section 362B (Powers to give directions) provides that this section applies if the chief health officer reasonably believes it is necessary to give a direction under this section (a *public health direction*) to assist in containing, or to respond to, the spread of COVID-19 within the community. The chief health officer may, by notice published on the department's website or in the gazette, give any of the following directions:

- (a) a direction restricting the movement of persons;
- (b) a direction requiring persons to stay at or in a stated place;
- (c) a direction requiring persons not to enter or stay at or in a stated place;
- (d) a direction restricting contact between persons;
- (e) any other direction the chief health officer considers necessary to protect public health.

A public health direction must state the period for which the direction applies and that a person to whom the direction applies commits an offence if the person fails without reasonable excuse, to comply with the direction.

New section 362C (When public health directions take effect) provides that a public health direction takes effect as soon as it is given. If a public health direction is published on the department's website and in the gazette, it takes effect when it is first published. As soon as reasonably practicable after a public health direction is given, the chief health officer must take reasonable steps to ensure that persons likely to be directly affected by the direction are made aware of the giving of the direction.

New section 362D (Failure to comply with public health directions) provides that it is an offence, with a maximum penalty of 100 penalty units, for a person to whom a public health direction applies to fail to comply with the direction unless the person has a reasonable excuse.

New section 362E (When public health direction must be revoked) provides that the chief health officer must revoke a public health direction as soon as reasonably practicable after the chief health officer is satisfied the direction is no longer necessary to assist in containing, or to respond to, the spread of COVID-19 within the community.

New section 362F (Recommended actions in relation to facilities) provides that the chief health officer may, to respond to the COVID-19 emergency, publish a notice under this section directed to the owners or operators of businesses or undertakings of a stated class.

The notice may state the chief health officer's recommendation that the owners or operators should do one or more of the following, at a stated time, in a stated way or to a stated extent, in relation to any facility used by them in conducting the business or undertaking:

- (a) open the facility;
- (b) close the facility;
- (c) limit access to the facility.

The notice must state the period for which the recommendation applies and be published on the department's website.

As soon as reasonably practicable after the notice is published under subsection (3)(b), the chief health officer must take reasonable steps to ensure that persons likely to be directly affected by the notice are made aware of it.

A person does not commit an offence against the Public Health Act, or any other Act, if the act or omission that would otherwise constitute the offence was done, or made, in compliance with the recommendation given in a notice.

Division 3, Emergency officers

New section 362G (Power to give directions under this division) provides that if an emergency officer reasonably believes the direction is necessary to assist in containing, or to respond to, the spread of COVID-19 within the community, the emergency officer may give a person a direction under this division.

Also, an emergency officer may also give the person one or more further directions under this division. A direction given under this division must be in writing, and state that the person to whom the direction is given commits an offence if the person fails, without reasonable excuse, to comply with the direction, and state any other matters required under this division. To the extent of any inconsistency between a public health direction given by the chief health officer and a direction given by an emergency officer under this section, the public health direction prevails. Under this section, *reasonably believes* means believes on the grounds that are reasonable in the circumstances.

New section 362H (Directions to stay at particular places) provides that an emergency officer may give a person a direction to stay at or in a stated place for a stated period of not more than 14 days (the *isolation period*), unless the person is permitted under the direction to leave the place for stated purposes or in stated circumstances, and comply with stated conditions during the isolation period. The place may be the person's home or another place decided by the emergency officer. The conditions may provide for matters including:

- (a) whether other persons may enter the place; and
- (b) how the person's contact with any other persons is restricted; and
- (c) the purposes for which the person may leave the place.

New section 362I (Directions given in relation to particular facilities) provides that an emergency officer may give the owner or operator of any business or undertaking a direction under subsection (2). Subsection (2) provides that a direction may require the owner or operator to do one or more of the following, at a stated time, in a stated way or to a stated extent, in relation to any facility used in conducting the business or undertaking:

- (a) open the facility;
- (b) close the facility;
- (c) limit access to the facility.

A direction given under this section must be in writing and state the period for which it applies.

New section 362J (Failure to comply with direction) provides that it is an offence, with a maximum penalty of 100 penalty units, for a person to whom a direction is given under this division to fail to comply with the direction unless the person has a reasonable excuse.

New section 362K (When particular directions must be revoked) provides that an emergency officer must revoke a direction given under section 362I as soon as reasonably practicable after the officer is satisfied the direction is no longer necessary to assist in containing, or to respond to, the spread of COVID-19 within the community.

Division 4, Enforcement of directions

New section 362L (Enforcement) provides that if a person fails to comply with a requirement or direction under a public health direction or a direction given under division 3, an emergency officer may, with necessary and reasonable force, take action to enforce the requirement or direction. This provision is equivalent to existing section 345(3) of the Public Health Act which provides powers for emergency officers.

Division 5, Relationship with parts 6 and 7

New section 362M (Relationship with pts 6 and 7) provides that nothing in this part limits the powers an emergency officer may exercise under part 6 or an emergency officer (medical) may exercise under part 7, to respond to the COVID-19 emergency. Also, nothing in part 6 or 7 limits the powers an emergency officer may exercise under this part.

Amendment of s 366 (Entitlement to compensation)

Clause 37 amends section 366 of the Public Health Act to insert new subsection (2). New subsection (2) provides that the person is not entitled to be paid any compensation for the loss or damage if the power was exercised, or purportedly exercised, in relation to the COVID-19 emergency.

Insertion of new ch 12, pt 6

Clause 38 inserts new part 6 (Transitional provisions for Public Health and Other Legislation (Public Health Emergency) Amendment Act) into chapter 12 of the Public Health Act. New section 497 (Application of s 366) provides that section 366(2) applies, and is taken to have applied from 16 March 2020, in relation to loss or damage suffered on or after 16 March 2020.

Amendment of sch 2 (Dictionary)

Clause 39 amends schedule 2 to insert the definitions for *COVID-19 emergency* and *public health direction*.

Division 3 Amendments commencing 1 year after assent

Amendment of s 339 (Powers)

Clause 40 omits section 339(1)(c).

Amendment of s 340 (Identity cards)

Clause 41 omits section 340(3).

Amendment of s 341 (Failure to return card)

Clause 42 amends section 341 of the Public Health Act to remove the exemption for police officers from the offence of failure to return an identity card.

Amendment of s 342 (Production or display of identity card by emergency officer)

Clause 43 amends section 342 of the Public Health Act to remove the provisions in the section relating to the production or display of an identity card or supply of identifying details by an emergency officer who is a police officer.

Amendment of s 350 (Duration of order)

Clause 44 amends section 350 of the Public Health Act so that a detention order by an emergency officer (medical) ends 96 hours from the time it is given to the person the subject of the order.

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

Clause 45 omits chapter 8, part 7A.

Insertion of new s 498

Clause 46 inserts new section 498 for transitional provisions for proceedings that relate to repealed powers for COVID-19 under the Public Health and Other Legislation (Public Health Emergency) Amendment Act.

Amendment of sch 2 (Dictionary)

Clause 47 omits the definition for public health direction.

Part 12 Amendment of State Penalties Enforcement Regulation 2014

Regulation amended

Clause 48 provides that this part amends the *State Penalties Enforcement Regulation 2014*.

Amendment of sch 1 (Infringement notice offences and fines for nominated laws)

Clause 49 inserts infringement notice fine amounts (stated in penalty units) in schedule 1 under the entry for the Public Health Act for infringement notice fines for certain offence provisions under the Public Health Act.

Clause 49 also amends the schedule 1 entry for the Public Health Act to also allow the following authorised persons appointed as emergency officers (general), emergency officers (medical) or police officers to serve infringement notices under the Public Health Act for declared public health emergencies in accordance with the State Penalties Enforcement Regulation.