Community Services Industry (Portable Long Service Leave) Bill 2019

Explanatory Notes

For amendments to be moved during consideration in detail by the Honourable Grace Grace MP, Minister for Education and Minister for Industrial Relations

Short title

The short title of the Bill is the Community Services Industry (Portable Long Service Leave) Bill 2019.

Policy objectives and the reasons for them

It is proposed that section 2 of the Community Services Industry (Portable Long Service Leave) Bill 2019 (the Bill) be amended to provide that the portable long service leave (PLSL) scheme will commence on a date to be fixed by proclamation. The Office of Industrial Relations (OIR) and the stakeholder taskforce involved in developing the PLSL scheme jointly considered that it should commence on 1 July 2020. The impact of the COVID-19 pandemic, however, has meant that this start date is no longer feasible. The amendment will ensure sufficient time is available following the passage of the Bill to establish the administrative arrangements required to support the PLSL scheme's operation, including making a regulation, appointing a board and providing an appropriate and widespread information and awareness campaign prior to the commencement of the scheme proper. The commencement date will be the subject of stakeholder consultation.

The *COVID-19 Emergency Response Act 2020* (the Emergency Response Act), which commenced on 23 April 2020, enables regulations to be made for specified matters if the regulations are necessary for a purpose of the Act. The Act, and any regulations made under or in reliance on the Act, expire on 31 December 2020 and must be tabled within 14 calendar days of being notified by publication on the Queensland legislation website. Ordinarily, subordinate legislation is required to be tabled in the Legislative Assembly within 14 sittings days of being notified.

While made by Governor in Council and notified as required, two regulations were not tabled within 14 calendar days as required under the Emergency Response Act. These were the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020* and the *Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Amendment Regulation 2020.*

Section 49(2) of the *Statutory Instruments Act 1992* provides that if subordinate legislation is not tabled in the Legislative Assembly as required under section 49(1), it ceases to have effect.

The COVID-19 Emergency Response Act will be amended to validate the regulations and clarify that any acts, matters and things done (including documents made) in reliance on the regulations, before the commencement of these amendments, are taken to have been lawfully done.

On 21 May 2020, following the cancellation of this year's Royal Queensland Show (the Ekka), the Premier and Minister for Trade, the Honourable Annastacia Palaszczuk announced that the Ekka show day public holiday scheduled for Wednesday 12 August 2020 will be repealed and that a new public holiday on Friday 14 August 2020 will be declared as the 2020 People's long weekend. The move to a long weekend public holiday is anticipated to give people in Brisbane the chance for a mini-break and the tourism industry a much-needed boost. In addition, the Minister for Education and Minister for Industrial Relations (the IR Minister) invited other local government regions to participate in the People's long weekend holiday if the local government wished to exchange their own local show holiday where the local show has been cancelled due to COVID-19.

On 2 April 2020, in consideration of the employment impact of the COVID-19 health pandemic on everyday Queenslanders and on Queensland's fiscal position, Premier and Minister for Trade, the Honourable Annastacia Palaszczuk announced that Queensland public sector wage increases and bargaining for industrial agreements would be put on-hold.

On 29 January 2020, a public health emergency was declared under section 319 of the *Public Health Act 2005* (PH Act) for COVID-19.

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

Since 28 March 2020, a public health direction made by the Chief Health Officer has been in place requiring anyone arriving in Queensland from overseas to self-quarantine for a period of 14 days in a hotel or other premises nominated by an emergency officer appointed under the Public Health Act. The requirement for mandatory quarantine for international arrivals has been highly successful in reducing the transmission of COVID-19 in Australia and keeping case numbers low.

The Australian Health Protection Principal Committee (AHPPC), which consists of the Chief Health Officers of each State, Territory and the Commonwealth, has been providing expert advice to National Cabinet about COVID-19. The requirement for self-quarantine for international arrivals is based on advice from AHPPC and the direction of the Chief Health Officer implements AHPPC's advice in Queensland.

A significant proportion of cases of COVID-19 in Australia originated from overseas. Given this, it is important that Australia continue its policy of requiring mandatory quarantine for overseas arrivals, as this has provided significant protection to the Australian community and helped to lower the rate of transmission compared to other countries.

The existing quarantine model for international arrivals is mandatory quarantine in a hotel or other nominated premises. Mandatory quarantine requirements are enforced by emergency officers,

with security overlay at hotels provided by the Queensland Police Service, with support from the Australian Defence Force. Enforcement by police and defence ensures that strict quarantine is maintained, which minimises the risk of COVID-19 to the Queensland community.

From the commencement of the restrictions, Queensland has covered the cost of providing mandatory quarantine, including accommodation, food, cleaning, health care, transport and security.

Given the continued growth of COVID-19 cases globally and advice that international border restrictions are likely to be one of the last restrictions to be lifted, it is considered necessary to have a clear mechanism in place to sustainably manage the costs associated with increasing international arrivals returning to Australia. As such, it is proposed to provide a head of power for fees to be charged for quarantine.

Initially, it is proposed that the fee will apply to international arrivals requiring mandatory quarantine. In future, a fee may be payable for other types of quarantine. The introduction of the fee will be accompanied by a hardship scheme, which will be able to be accessed by vulnerable cohorts. In addition to offering a hardship scheme, it is proposed to offer payment plans so that persons can enter into an agreement to repay the quarantine fee over time.

The requirement for those returning from overseas to pay a fee for quarantine reflects the fact they are receiving the benefit of the services provided by the hotels and locations in which they are quarantined, including food and cleaning services being provided. It is considered appropriate for those receiving the benefit of these services to pay a fee for these services in order to protect the community from COVID-19.

In cases where government services are provided, it is standard practice for cost recovery to apply in appropriate cases. In this instance, it is considered a fee should be charged to ensure those being provided services are reimbursing the State for those costs.

It is also proposed to amend the *Work Health and Safety Act 2011* (WHS Act) to streamline right of entry dispute resolution processes. The WHS Act currently enables Workplace Health and Safety Queensland (WHSQ) inspectors to issue directions as to whether a right to enter a workplace exists. The WHS Act operates in such a way that it places a WHSQ inspector in a position to determine legally and factually complex issues 'on-the-spot' and lead challenging discussions in a highly adversarial environment where their directions can ultimately be ignored. The context of these disputes is often heightened tensions between the parties and even obstruction of inspectors. Further, the operation of this framework has taken WHSQ inspectors away from their critical role of enforcement of the WHS Act. A more efficient framework will be achieved by removing WHSQ inspectors from this role and for inspectors to instead direct parties to complex right of entry disagreements to the expertise and authority of the Queensland Industrial Relations Commission (QIRC) for resolution. In addition, it is proposed to increase particular penalty amounts under the WHS Act to provide a stronger deterrent to abusive and threatening behaviour towards WHSQ inspectors and WHS entry permit holders.

The Government has also identified a need to provide further clarity about the effect of some of the amendments made to the *Youth Justice Act 1992* (YJ Act) by the *Youth Justice and Other Legislation Amendment Act 2019*, particularly regarding the effect of new section 48AD. The amendments will streamline the bail decision-making process, with increased clarity that

community safety is a paramount consideration.

Achievement of policy objectives

The amendments to the COVID-19 Emergency Response Act provides that the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020* and the *Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Amendment Regulation 2020* are taken to have been validly made, notified and tabled and continue to have effect.

The amendment clarifies that the Legislative Assembly may still pass a resolution disallowing these regulations if notice of a disallowance motion is given by a member within fourteen sitting days after the date on which the regulations were tabled.

The amendments also clarify that any acts, matters and things done (including documents made) in reliance on the regulations, before the commencement of these amendments, are taken to have been as lawfully done as they would have been if the regulations had not ceased having effect under section 49(2) of the *Statutory Instruments Act 1992*.

To give effect to the Premier's announcement of the People's long weekend, the *Holidays Act 1983* (Holidays Act) will be amended to declare Friday, 14 August 2020 as a public holiday in the City of Brisbane and in those districts where the local government has requested that the day be observed in place of the district's show day public holiday. In the absence of a specific request from a local government for a change to their 2020 show holiday, the existing show holiday will be maintained.

The existing show day holidays for 2020 in the City of Brisbane and other requesting districts will be repealed through a notification by the Minister in the Gazette. The notification and repeal of show holidays in the Gazette is usual practice.

The Bill also makes a minor consequential amendment to the IR Act to ensure the public holiday is recognised for industrial relations purposes. A show holiday is also recognised as a public holiday for industrial relations and for allowable retail trading hours purposes.

To give effect to the Premier's announcement of a public service wage arrangements across Queensland's public sector, amendments ae proposed to the *Industrial Relations Act 2016* (IR Act), including temporary changes to the processes for the certification of bargained agreements.

Those amendments to the IR Act will:

- defer all headline wage increases scheduled to occur in the period from 1 July 2020 to 30 June 2021 (public service wage arrangements period) by one year for all General Government sector employees covered by State industrial relations jurisdiction certified agreements;
- defer all subsequent headline wage increases following the public service wage arrangements period and provide a six-month catch-up payment;
- for those agreements not having received an increase during 2019 due to bargains not being resolved in full through a replacement agreement, a 2.5% wages policy adjustment will be applied, backdated to the 2019 anniversary date of the agreement;
- extend the nominal expiry date of a certified agreement where required; and
- provide for a truncated agreement certification process to allow for the variation of an

existing agreement or a new agreement to be certified in the QIRC, including the suspension of a requirement to ballot and for certification to proceed on the consent of the employer and the majority of unions party to the agreement.

The amendments insert new provisions in the PH Act to:

- insert a head of power to allow a fee to be charged for quarantine;
- allow all or part of the fee to be waived, to enable a hardship scheme to apply.

The amendments specify the fees payable under the *Public Health Regulation 2018* for quarantine as $135 per night for accommodation and $65 for meals per adult per day and $32.50 for meals per child per day.

The amendments will expire on 18 March 2021, at the same time as other emergency powers under the PH Act for COVID-19.

The amendments include a new part 7AA in the PH Act to provide that fees may be charged for quarantine. The provisions will allow fees to be charged for any type of quarantine. However, initially it is only proposed the fee will be payable by international arrivals. The head of power in new sections 362MC and 362MD provide that fees must be paid for quarantine as prescribed by regulation.

New section 362ME provides a power for the chief executive to waive payment of all, or part of, a quarantine fee. This provision provides the necessary power for the hardship scheme. The hardship scheme is intended to apply to those facing financial hardship and vulnerable cohorts, such as those with English as a second language, pregnant women, those with newborn babies, unaccompanied minors, those with no home in Australia, and those with significant health issues.

A person will have 30 days to make an application for hardship. Once an application for hardship is made, the requirement to pay the fee will be placed on hold until a decision about the hardship application is made.

In addition to offering a hardship scheme, it is also proposed to offer payment plans so that persons can enter into an agreement to repay the quarantine fee over time.

The quarantine fee for international arrivals will apply from 1 July 2020. This will allow for public communication of the change prior to its introduction and help to manage expectations for those who are planning to return home.

New section 499 is a transitional provision which provides that the quarantine fee is not payable if, before 17 June 2020, a person had a confirmed arrival date into Queensland and can provide documentary evidence of that fact. This provision will ensure that those who had already committed to return to Queensland before these amendments were publicly announced will not be required to pay the quarantine fee.

To achieve improving right of entry dispute resolution processes and outcomes, it is proposed to remove sections 141A and 142A of the WHS Act. These provisions were introduced in 2017 to create a more efficient dispute resolution framework but have not had their desired effect. It is also proposed to increase penalty amounts under Part 7, Division 7 and Part 9, Division 6 of the WHS Act to strengthen the deterrence of abusive and threatening behaviour towards WHSQ inspectors and WHS entry permit holders.

The amendments to the YJ Act will ensure that a child is remanded in custody where there is an unacceptable risk that the child will commit an offence that endangers the safety of the community, or the safety or welfare of a person. They will also streamline the current two-decision process to one decision and relocate some considerations relevant to a decision about

bail to ensure that all considerations are together. These amendments will commence by proclamation and the date will be advised on the Department of Youth Justice website.

Alternative ways of achieving policy objectives

Legislative amendment is the only option available to alter the commencement date of the PLSL scheme, and to implement the Government's policy objectives for the public service wage arrangements, the declaration of the People's long weekend public holiday and improving right of entry dispute resolution processes. It is also required to validate the un-tabled Regulations, amend the bail decision-making process in the YJ Act and to provide a head of power to enable allow a fee to be charged for quarantine.

Estimated cost for government implementation

Implementation of the Government's policy objectives is not anticipated to bring any additional costs for government.

Queensland Health will collect and administer the quarantine fees and assess applications for hardship and payment plans. It is expected this will be done within existing resources.

Consistency with fundamental legislative principles

The amendment of the commencement date of the PLSL scheme is consistent with fundamental legislative principles.

Section 4(3)(g) of the *Legislative Standards Act 1992* (LSA) provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively. The amendments to the COVID-19 Emergency Response Act will operate retrospectively. However, without the amendments, individuals who made and used documents in accordance with the modified arrangements under the *Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Amendment Regulation 2020* would have done so unlawfully. Similarly, without the amendments, tenants, residents, lessors and agents who enforced their rights under the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020* would have done so unlawfully. Accordingly, any impacts on fundamental legislative principles are considered justified given the need to provide certainty to individuals who relied on those regulations having been validly made.

Section 4(2)(b) of the LSA provides that legislation must have sufficient regard to the institution of Parliament. The amendment promotes the institution of Parliament by preserving Parliament's power to disallow subordinate legislation within 14 days of the regulations being tabled.

The amendment of the IR Act in regard to the implementation of the public service wage arrangements in the Queensland Public Sector does raise inconsistency with fundamental legislative principles (FLP). The amendment provides for a transitional regulation-making power. The use of a regulation to amend an Act is a Henry VIII clause and a breach of section 4(4) of the Legislative Standards Act 1992: whether legislation has sufficient regard to the institution of Parliament. It is noted that the usual FLP protections are included; that is, sun-setting any transitional regulation and the head of power itself and limiting the scope of the

regulation-making power. The provision is considered appropriate to manage the risk of unintended consequences following the commencement of the amendment.

The amendments to the PH Act potentially breach the principle that legislation must have sufficient regard to an individual's rights and liberties by not retrospectively imposing obligations. New sections 362MC and 362MD of the PH Act allow a fee to be charged for quarantine. Some Australians returning from overseas may have already purchased their flights before the announcement of the policy to charge a fee for quarantine and may arrive after 1 July 2020 when the new fee takes effect. The potential breach is justified as a transitional provision has been inserted in new section 499 of the PH Act, which provides that if, before 17 June 2020, a person had a confirmed arrival date into Queensland, they are not required to pay the fee if they can produce documentary evidence of this fact.

The proposed amendments to the WHS Act to streamline right of entry dispute resolution processes and increase certain penalties are consistent with FLPs. In removing the responsibility of WHSQ inspectors to determine rights of entry on-the-spot under section 141A, rights are made less dependent on administrative power. Directing parties to a dispute to the relevant forum for resolution is consistent with the principles of natural justice. Increasing certain penalties under the WHS Act is consistent with the principles of natural justice as the penalties cannot be imposed except through the mechanism of the independent WHS prosecutor taking a matter before the appropriate forum (e.g. Queensland Industrial Relations Commission) for an impartial hearing.

The amendment of the current bail decision-making test from 'may' keep a child in custody to 'must' where there is a particular unacceptable risk potentially breaches fundamental legislative principles regarding the rights and liberties of individuals. It also raises questions regarding the appropriate balancing individual and community interests. However, any breach is justified as a rational and proportionate balance, and reasonably necessary to protect the safety or welfare of persons who would be at risk if the child were released. The process for making a decision to deprive a child of his or her liberty is clear and transparent, and subject to review.

The amendments to the PH Act also potentially breach the principle that legislation must have sufficient regard to the institution of Parliament as the legislation should only authorise the amendment of an Act by another Act. Section 461 of the PH Act provides a general regulation-making power to 'set fees payable under this Act'. The fees to be charged for quarantine are specified in regulation. The potential breach is justified as there is already a head of power to include fees in regulation and this is common practice as fees may change over time to reflect changes in costs. The fees may need to be adjusted if advice on the period of quarantine required for COVID-19 is reassessed.

Consultation

Unions have and continue to raise significant disquiet about the proposal for the public sector wage deferral and the stay on public sector wages bargaining. There has been no other community consultation on the Public service wage arrangements announcement.

The declaration the People's long weekend in 2020 is supported by the Royal National Agricultural and Industrial Association of Queensland (RNA) which also supports surrendering the traditional Ekka Wednesday show holiday in 2020, understanding that the arrangements

will be restored in 2021. The Brisbane City Council; Logan City Council; Gold Coast City Council; Burdekin Shire Council; Charters Towers Regional Council; Mackay Regional Council; Weipa Town Authority; Livingstone Shire Council; Rockhampton Regional Council; Cloncurry Shire Council; and the Whitsunday Regional Council in response to the invitation from the Minister for Education and Minister for Industrial Relations requested that the show holiday in their district be repealed and to observe the People's long weekend public holiday on Friday 14 August 2020.

Regarding amendments to the WHS Act, consultation has been conducted with relevant key stakeholders including the Queensland Council of Unions (QCU), the Australian Workers Union (AWU), the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU), the Shop, Distributive and Allied Employees Association (SDA), Master Builders Queensland (MBQ) and the Australian Industry Group (Ai Group).

The Department of the Premier and Cabinet and Queensland Treasury have been consulted on the amendments to the IR Act, the Holidays Act and the WHS Act. The Department of Justice and Attorney General, the Department of Employment and the Department of Small Business and Training and the Department of Local Government, Racing and Multicultural Affairs have been consulted on the amendments to the Holidays Act.

No consultation has been undertaken in relation to the validation of the un-tabled Regulations, or to the proposed amendments to the YJ Act or PH Act with stakeholders outside of government.

Public consultation was not undertaken on the amendments to the PH Act.

As part of the implementation of the scheme, Queensland Health will put in place systems to reduce the adverse impacts of the fee as much as possible. This will include operationalising a hardship scheme which will apply to vulnerable cohorts, as well as those who are experiencing financial hardship. Payment plans will also be available.

Consistency with legislation of other jurisdictions

On 26 March 2020, the Commonwealth Government applied a wage increase deferral to all senior executive Australian Public Service (APS) employees. On 9 April 2020, the Commonwealth Government, through the APC Commissioner, issued a Determination pursuant to the Public Service Act 1999 (Cth) pausing salary increases for non-senior executive Australian public service (APS) employees during the COVID-19 health pandemic. The deferral of wage increases commenced on 14 April and will remain in effect for 12 months. During this period, agencies will defer upcoming wage increases by six months as they fall due. On 9 April 2020, the NSW Treasurer, Mr Dominic Perrottet MP, announced that the NSW government would legislate a public service pay freeze before 30 June. NSW is continuing to pursue its public service wage arrangements despite an unsuccessful attempt to introduce a regulation in June 2020. A possible freeze on the Western Australian (WA) public sector wages was announced by WA Treasurer Ben Wyatt MP on 16 April 2020. The South Australian Government has ruled out a public service wage arrangements being applied to its public sector.

No other State or Territory is creating a public holiday which may be observed as a public holiday in districts in lieu of already appointed local/show public holidays affected by COVID-19 cancellations of regional shows.

The removal of sections 141A and 142A of the WHS Act will bring Queensland back into line with the relevant national model WHS laws. The increases to penalties in Part 7, Division 7 and Part 9, Division 6 will mean Queensland's penalties are higher than penalties for similar prohibited conduct in some other jurisdictions, but lower than similar penalties in Western Australia.

The amendments to bail proceedings under the YJ Act are broadly consistent with legislation in other jurisdictions. For example, under Victoria's *Bail Act 1977*, a decision maker must refuse bail for a person accused of any offence if the decision maker is satisfied that there is an unacceptable risk that the accused would, if released on bail, endanger the safety or welfare of any person. This includes children.

Under the *Bail Act 2013* in New South Wales, which applies to children, a bail authority must refuse bail if the authority is satisfied that there is an unacceptable risk of the person endangering the safety of victims, individuals or the community.

All jurisdictions provide factors that are to be considered by decision-makers when determining whether to grant bail to a child. The child-focussed factors included in previous section 48AD of the YJ Act have been retained in amended section 48AA and reflect those in Victoria's *Bail Act 1977* and the Northern Territory's *Bail Act 1982*. The factors in the Northern Territory's legislation were recommended by the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory.

To date, the only State or Territory to have implemented a fee for quarantine costs is the Northern Territory. It set a quarantine fee of $2,500 per person or $5,000 for a family of two or more people sharing accommodation.

Notes on provisions

Community Services Industry (Portable Long Service Leave) Bill 2019

Amendment 1 modifies Clause 2 of the Bill to add a subsection number.

Amendment 2 modifies Clause 2 of the Bill. Clause 2 will now provide that the Act will commence on a date to be fixed by proclamation, apart from the following provisions:

- Part 3
- sections 119, 120 and 125
- Part 13, divisions 2 to 4 and 7, and
- Schedule 2.

Amendment 3 modifies Clause 2 of the Bill to provide that divisions 2 to 4 and 7 commence on assent.

Amendment 4 inserts a new subsection (2), which provides that Part 13, divisions 5 and 6 commence on 1 July 2020.

Amendment 5 modifies the heading of part 13 to reflect that subordinate legislation is also amended by the Bill.

Bail Act 1980

Amendment 6 inserts a new division 1A into the Bill – Amendment of *Bail Act 1980* (the Bail Act). Division 1A makes consequential amendments to the Bail Act to reflect the changes made to the YJ Act by Amendment 13 below. Division 1A contains the following clauses:

Clause 128A provides that the division amends the Bail Act.

Clause 128B replaces the reference to YJ Act section 48AD in Bail Act section 19B(7) with a reference to YJ Act section 48AAA.

Clause 128C replaces the reference to YJ Act section 48AD in Bail Act section 19C(6) with a reference to YJ Act section 48AAA.

COVID-19 Emergency Response Act 2020

Amendment 7 inserts new Part 13, Division 3A into the Bill, which inserts new Part 8A of the *COVID-19 Emergency Response Act 2020*. The amendment provides that the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020* (Residential Tenancies Regulation) and the *Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Amendment Regulation 2020* (Documents Amendment Regulation) are taken to have been validly made, notified and tabled in the Legislative Assembly and not to have ceased having effect under the *Statutory Instruments Act 1992*, section 49(2). Sections 5(9) and 24(9) of the *COVID-19 Emergency Response Act 2020* changed the period by which the regulations must be tabled from 14 sitting days to 14 days after notification.

Further, the amendment clarifies that the Legislative Assembly retains its power under section 50 of the *Statutory Instruments Act 1992* to pass a resolution disallowing the regulations within 14 sittings days of the date that the regulations are tabled in the Legislative Assembly

The amendment also provides that all acts, matters and things done before the commencement (including documents made) are taken to have been as valid as they would have been if the regulations had not ceased having effect under the *Statutory Instruments Act 1992*, section 49.

This means, for example, that any affidavits, statutory declarations, deeds, general powers of attorney and other documents made, signed and witnessed in accordance with the modified arrangements prior to commencement in reliance on the Documents Amendment Regulation are taken to have been as valid as they would have been if the Documents Amendment Regulation had not ceased to have effect. It also means, for example, that the moratorium on evictions for residential tenancies and modified obligations and rights for tenants, residents, lessors and agents under the Residential Tenancies Regulation, including decisions made by the Queensland Civil and Administrative Tribunal, continued to have effect as if the Residential Tenancies Regulation had not ceased having effect.

Holidays Act 1983

Amendment 8 inserts a new **Division 3B Amendment of *Holidays Act 1983*** into the Bill after clause 132.

Clause 132C provides that the Division amends the *Holidays Act 1983*.

Clause 132D inserts a new section 13 in the *Holidays Act 1983* which provides that the People's long weekend public holiday is to be observed on 14 August 2020 in a participating district. That public holiday is to be observed only in 2020.

References to a public holiday in an industrial instrument (award or agreement) under the *Industrial Relations Act 2016* are taken to include the People's long weekend public holiday on 14 August 2020 in a participating district.

New sub-section 13(3) of the *Holidays Act 1983* defines the participating districts in which 14 August 2020 will be observed as a public holiday.

Participating districts are the local government areas of Burdekin, Charters Towers, Cloncurry, Gold Coast, Livingstone, Logan, Mackay, Rockhampton or the area of Brisbane, the Weipa Town Area or the Bowen area.

All of these participating districts have been included in the observance of the 14 August 2020 public holiday on the basis of requests for inclusion made by the local governments for those districts to the Minister for Education and Minister for Industrial Relations. The show holidays originally appointed for 2020 in these districts have been repealed by notice in the Queensland Government Gazette.

The participating districts are local government areas as described in the *Local Government Regulation 2012* or for the areas of Brisbane, Weipa Town or Bowen, are as defined in other legislation named in the Bill. The Bill also describes how a map of the defined Bowen area may be accessed.

Industrial Relations Act 2016
Public sector response to COVID-19 emergency: maximising employment security

Amendment 9 inserts, after clause 135 of the Community Services Industry (Portable Long Service Leave) Bill 2019, a new clause 136, clause 137 and clause 138 to amend the *Industrial Relations Act 2016.*

Clause 136 amends the *Industrial Relations Act 2016* to insert a new temporary Chapter 15A - Public sector response to COVID-19 emergency— maximising employment security.

New Chapter 15A, comprises seven parts: Part 1- Preliminary, Part 2 – Deferral of wage increases, Part 3 – 2019 Wage Adjustments, Part 4 – Other variations of certified agreements, Part 5 – Modified bargaining provisions, Part 6 – Miscellaneous and Part 7 - Expiry.

Part 1 – Preliminary addresses the main purpose and application of the chapter, as well as definitions for the chapter.

New section 952A provides that the main purpose of Chapter 15A is to maximise the protection of public sector employment and respond to the financial impact of the COVID-19 emergency by deferring the payment of certain wage increases, providing for 2019 wage adjustments and other variations to certified agreements, and temporarily modifying the collective bargaining process under Chapter 4 (Collective Bargaining).

New section 952B deals with the application of new Chapter 15A. By excluding application in relation to local government sector employers, parents and citizens associations and the Darling Downs-Moreton Rabbit Board (and their respective employees), the effect of the section is that Chapter 15A only applies to state government sector employers and employees.

New section 952C provides definitions for the chapter including 2020-2021 financial year, 2020-2021 wage increase, COVID-19 emergency, relevant agreement and wage increases for parts 2 and 4 of the chapter.

Part 2 - Deferral of wage increases addresses the deferral of 2020-2021 wage increases and the deferral of any immediately subsequent further wage increase where applicable.

New section 952D sets out the meaning of wage increase for Part 2 (Deferral of wage increases). The section provides that a wage increase under a certified agreement means an increase to wage rates contained in that certified agreement by an amount equivalent to 2.5% from a day stated in that agreement, being a day or days after the amendment commences. The section also provides that if an allowance payable to employees increases in conjunction with an increase in the wage rates, it is included in the meaning of a wage increase. The section also clarifies those matters that are not included in the meaning of a wage increase for the purpose of Part 2 (Deferral of wage increases). Examples are provided to illustrate matters the subject of this section.

New section 952E specifies that Part 2 (Deferral of wage increases) applies if a certified agreement (whether made before or after the commencement of the chapter) provides for a wage increase (as defined in section 952D) to take effect during the 2020-2021 financial year (being 1 July 2020 to 30 June 2021 inclusive). The section also establishes the meaning of a '2020-2021 wage increase'. Examples are provided to illustrate matters the subject of this section.

New section 952F varies a certified agreement that contains a 2020-2021 wage increase to provide that no wage increase is payable under the agreement during the 2020-2021 financial year. The section further provides that the 2020-2021 wage increase will instead take effect one year from the day the increase would have taken effect but for the operation of Part 2 (Deferral of wage increases). For example, the 2.5% increase to wage rates under clause 4.1.1(b) of the Department of Education State School Teachers' Certified Agreement 2019 is stated to take effect on 1 July 2020. Under section 952F, no increase is payable on 1 July 2020 and instead, the wage increase will take effect on 1 July 2021.

New section 952G applies if a certified agreement contains at least one further wage increase after the 2020-2021 wage increase. The section varies the agreement to provide that the wage increase immediately after the 2020-2021 wage increase is not payable on the day stated in the agreement and will instead take effect on the day six months from the day it would have taken effect but for the operation of Part 2 (Deferral of wage increases). For example, the 2.5% increase to wage rates under clause 4.1.1(c) of the Department of Education State School Teachers' Certified Agreement 2019 is stated to take effect on 1 July 2021. Under section

952G, that increase instead takes effect on 1 January 2022. The actual salary rates payable under the certified agreement, which will be amended, are usually reflected in an appendix, schedule or table within the certified agreement.

Part 3 - 2019 wage adjustments relates to new Schedule 4A.

New section 952H provides that Part 3 (2019 wage adjustments) applies in relation to a certified agreement mentioned in Schedule 4A, column 1 and clarifies that it does not matter if the nominal expiry date for the certified agreement had passed before the commencement.

New section 952I provides that the certified agreement is varied to provide for a 2.5% wage increase effective from the corresponding date stated in Schedule 4A, column 2. The section clarifies that the wage increase is only payable to employees covered by the agreement on commencement. Wage increase is defined for the section as meaning an increase to the wage rates (however described) provided under the relevant terms of the agreement, effective immediately before the commencement. The definition also includes an allowance payable under the agreement if the allowance increases in conjunction with the wage rates and the agreement provides for the amount of the allowance to be increased. The section also defines 'relevant terms' of a certified agreement as those terms mentioned in schedule 4A, column 3.

Part 4 – Other variations of certified agreements relates to new Schedule 4B.

Division 1 – Preliminary provides the meaning of wage increase for Part 4 (Other variations of certified agreements).

New section 952J defines a wage increase for this part, in relation to a certified agreement mentioned in Schedule 4B, as being a 2.5% increase to both wage rates and allowances as described. Relevant terms of certified agreements for this part are mentioned in column 4 of schedule 4B

Division 2 – Variations on commencement relates to part 1 of Schedule 4B.

New Section 952K stipulates that Division 2 (Variations on commencement) applies in relation to certified agreements mentioned in schedule 4B, part 1 regardless of whether the agreement had passed its nominal expiry date prior to commencement.

New Section 952L sets out how agreements mentioned in Schedule 4B, part 1 are varied on commencement in relation to their nominal expiry date and stated wage increase(s) and makes clear wage increases are payable only to employees covered by the agreement on the stated date. The term covered by the agreement has the normal meaning as if it was a date of certification - in that an employee must be a current employee covered by the agreement on the stated date for wage increases.

Division 3 – Deferred variations relates to part 2 of Schedule 4B.

New section 952M refers to a certified agreement mentioned in Schedule 4B, part 2 as a relevant agreement regardless of whether the agreement had passed its nominal expiry date before the commencement. The section provides for Division 3 (Deferred variations) to apply in relation to a relevant agreement in one of two ways:

New section 952M(1)(a) provides for Division 3 (Deferred variations) to apply if an application to certify a new agreement covering all of the employees covered by the relevant agreement is not made on or before 31 August 2020. Examples are provided to clarify that applications for more than one agreement can be made, so long as the collective scope of multiple agreements cover all of the employees of the relevant agreement. Where applications for one or more new agreements are made that do not cover the full scope of the relevant agreement, Division 3 (Deferred variations) only applies to employees not covered by the new agreements to which the applications relate.

New section 952M(1)(b) provides for Division 3 (Deferred variations) to apply if an application to certify a new agreement for employees covered by a relevant agreement is made by 31 August 2020, however the new agreement is not certified by the commission on or before 14 September 2020.

New section 952N specifies how and when relevant agreements are varied.

Where Division 3 (Deferred variations) applies to a relevant agreement under new section 952M(1)(a), the agreement is varied on 1 September 2020. Where Division 3 (Deferred variations) applies to a relevant agreement under new section 952M(1)(b), the agreement is varied on 15 September 2020. The section sets out how the relevant agreement is varied by reference to Schedule 4B, part 2. It is considered that a (minimum) two-week period between 31 August 2020 and 14 September 2020, is sufficient for the commission to hear and decide any applications for certification under the modified chapter 4 process.

Division 4 – Other provisions clarifies the effect of extending nominal expiry dates under Part 4.

New section 952O provides that if the nominal expiry date of a nominally expired agreement is extended under Part 4 (Other variations of certified agreements), upon the extension taking effect the agreement stops being nominally expired. This section effectively places the agreement back into term and renders steps taken in relation to the bargaining process of no effect. Examples of steps taken in relation to the bargaining process include notification of intention to bargain, application to the commission to help negotiating parties to reach agreement and notice of protected industrial action. It is clarified this part does not affect the validity of protected industrial action that was taken prior to the commencement of the Chapter. It is also clarified that new section 952O applies despite section 223 that requires a party to apply to the commission to extend a nominal expiry date.

Part 5 – Modified bargaining provisions

New section 952P – Interpretation provides that terms defined in Chapter 4 and used in the new Chapter 15A, Part 5 have the same meaning as given in Chapter 4.

New section 952Q – Modified application of Chapter 4 that provides the modifications to Chapter 4 provided within Part 5 of Chapter 15A only apply during the period from commencement to 30 September 2020.

Division 2 Modification of Chapter 4, Part 5, div 1

New section 952R – Modification of s189 (Application for certification of agreement) modifies Chapter 4, about making and hearing applications. It provides that sections 189 (1) and (2) of

Chapter 4 do not apply and provides that an application for certification is to be made only by an employer negotiating party.

It also provides that the application need not be signed by or for all of the parties if all employers who are negotiating parties (where there is more than one) agree on the terms of the agreement; and the majority of the negotiating parties have agreed on the terms of the agreement to which the application for certification relates. Where there is more than one employer negotiating party they will collectively count as 1 negotiating party for the purposes of assessing the majority of negotiating parties.

New section 952S – Commission must decide application without hearing provides that Chapter 4 sections 191 and 192 about notice of hearing and entities to be heard on application do not apply. Instead it provides that the Commission must decide the application without a hearing. This is intended to assist the Commission to issue expedient decisions about certifying agreements, such that they are to be made 'on the papers'.

Division 3 Modification of Chapter 4, Part 5, div 2

New section 952T – Application of division (Deciding applications) provides that Chapter 15A, Part 5, Division 3 modifies the provisions of Chapter 4, part 5, division 2.

New section 952U – Commissions decision of applications modifies Chapter 4, Part 5, division 2 so that sections 193(1)(b) and (3) and section 194 do not apply. The commission must grant the application for certification where the modified Chapter 4, Part 5, division 2, subdivision 2 requirements are satisfied and need not consider the provisions of Chapter 4, Part 5, division 2, subdivision 3. Notwithstanding this, relevant safeguards contained in the *Industrial Relations Act 2016* will continue to apply. For example – if an agreement is inadvertently certified which contains an objectionable term, section 301 will continue to operate with respect to the certified agreement, which states that a term of an industrial instrument, or an agreement or arrangement (whether written or unwritten), has no effect to the extent that it is an objectionable term.

New section 952V – Compliance with bargaining process requirement modifies Chapter 4, Part 5, division 2 section 195 so that it does not apply. This new section allows for expedited applications for certification to occur.

New section 952W – Agreement to be signed or agreed to by parties modifies Chapter 4, Part 5, division 2 section 196 so that it does not apply and provides that the commission must be satisfied that the agreement is in writing; and signed by or for all the parties. Where an agreement is not signed by or for all the parties the Commission must be satisfied if all employers who are negotiating parties (where there is more than one) agree on the terms of the agreement; and the majority of the negotiating parties have agreed on the terms of the agreement to which the application for certification relates. Where there is more than one employer negotiating party they will collectively count as 1 negotiating party for the purposes of assessing the majority of negotiating parties.

New section 952X – Approval by relevant employees modifies Chapter 4, Part 5, division 2 section 197 so that it does not apply. This new section allows for expedited applications for certification to occur.

New section 952Y – Other provisions that do not apply modifies Chapter 4, Part 5, division 2, subdivision 3 Refusal to grant applications (consistent with new section 952U) so that it does not apply. This new section relies on the requirement for the majority of negotiating parties to have agreed on the terms of the agreement to which the application for certification relates and allows for expedited applications for certification to occur.

Division 4 Modification of Chapter 4, Part 7

New section 952Z – Extension of nominal expiry date of certified agreement modifies Chapter 4, part 7 Division 1 section 223(2)(b) so that the maximum period beyond which a nominal expiry date can be extended (4 years after the date on which the instrument came into operation) does not apply. It also provides that section 223(4) requiring the Commission to be satisfied that the extension is approved by a valid majority of relevant employees, does not apply.

New section 952ZA - Modification of s 225 (Application to amend) modifies Chapter 4, part 7 Division 1 section 225(1) - (3) and (5)(c) so that they do not apply. It provides that an application to amend may be made only by an employer party to the certified agreement and that the commission must approve the application if the majority of the employers (who collectively count as 1 party) and the employee organisations who are parties to the agreement have agreed on the terms of the amendment. Where there is more than one employer who is party to the certified agreement, all employers must have agreed on the terms of the amendment. This new section allows for expedited applications for amendments to occur.

New section 952ZB – Modification of s228 (Termination after nominal expiry date) modifies Chapter 4, Part 7, Division 1 section 228(1)(b) and (c) so that they do not apply. This provision is intended to support the expedited termination of nominally expired certified agreements where they have been replaced by a new certified agreement under Chapter 15A.

Part 6 Miscellaneous

New section 952ZC – Particular terms of certified agreements of no effect provides that to the extent that a term of an agreement is inconsistent with Chapter 4 it is of no effect.

New section 952ZD – entitlements relating to deferred payments clarifies that a person is only entitled to receive a payment deferred by virtue of Chapter 15A if the person is an employee on the date to which the payment is deferred and there is no entitlement to a payment of an amount for the period of the deferral.

New section 952ZE – relationship of chapter with other provisions about variations clarifies that despite an instrument being varied in accordance with modified chapter 4, part 7 division 1 or 2 the variation does not prevent it being terminated in accordance with Chapter 4, part 7, division 3.

New section 952ZF – Publication of certified agreement as varied provides that where a certified agreement is varied under Chapter 15A the registrar must as soon as practicable after the variation takes effect publish the certified agreement on the QIRC website and give the parties notice of the variation. It also provides that the registrar may ask the employer party for information reasonably required by the registrar in complying with this provision.

Part 7 Expiry

New section 952ZG provides that schedules 4A and 4B as introduced in clause 138 expire on 30 September 2020.

Clause 137 amends the *Industrial Relations Act 2016* to insert a new Part 4 at Chapter 18.

New part 4 – Transitional provisions for Community Services Industry (Portable Long Service leave) Act 2020

New section 1087 – Existing proceedings not affected by Chapter 15A, Part 2 provides that the outcome of proceedings started but not completed before the commencement and which are related to employees' wage entitlements before the commencement will not be affected by Chapter 15A, Part 2. For example, the Queensland Corrective Services arbitration CB2019/41.

New section 1088 – No double payment of 2019 wage adjustment clarifies that where a certified agreement is varied under Chapter 15A, Part 3 2019 Wage Adjustments to provide for a 2.5% wage increase effective from the date stated for the agreement in schedule 4A, column 2 and is subsequently replaced by a certified agreement, made under Chapter 4 as modified by Chapter 15A part 5, the replacement agreement must not provide for any additional wage increase in relation to 2019. That is, the Part 3 2019 wage adjustment is to be absorbed in any replacement agreement made under the modified Chapter 4 provisions.

New section 1089 – Application of modified collective bargaining process clarifies that Chapter 15A, part 5 applies in relation to an application made to certify an agreement on or after commencement regardless of when agreement was made, that is, the in-principle agreement.

New section 1090 – Transitional regulation-making power provides for the ability for a regulation to be made about a matter to allow or facilitate the operation of Chapter 15A and for which the Act does not make provision or sufficient provision. It also provides that the regulation may have retrospective operation to a day no earlier than commencement. The regulation-making power will expire on 30 September 2020.

Clause 138 amends the *Industrial Relations Act 2016* to insert **new Schedules 4A; 4B, Part 1 and 4B, Part 2**

Schedule 4A 2019 Wage adjustments specifies the adjustments to which Part 3 2019 wage adjustments varying certified agreements for 2.5% wage increases in accordance with new sections 952H and 952I apply.

Schedule 4B Variations of certified agreements provides for the variations to occur, with reference to new section s952J and 952N, in two parts: variations on commencement and deferred variations.

The variations on commencement schedule specifies particular public sector certified agreements that on commencement will have their nominal expiry dates extended; and the introduction of particular wage increases including after 6 months following the deferral of wage increases

The deferred variations schedule specifies particular public sector certified agreements that will have their nominal expiry dates extended; and the introduction of particular wage increases including after 6 months following the deferral of wage increases where an application to the

QIRC is not made for a certified agreement under the modified chapter 4 provisions by 31 August 2020, and the agreement is not certified by 14 September 2020.

The variations specified under schedules 4A and 4B are intended to become terms of the instrument and continue to operate until varied or replaced by a future instrument, including as varied, or replaced by an instrument made or varied under the new sections modifying the chapter 4 provisions.

Industrial Relations Act 2016

Amendment 10 inserts a new clause 139 into the Bill which amends the definition of public holiday in schedule 5 (Dictionary) of the *Industrial Relations Act 2016* to include the People's long weekend public holiday on 14 August 2020 in participating districts. The amendment provides for a reference to new section 13 in the *Holidays Act 1983*.

This is a minor consequential amendment to ensure the public holiday is recognised for industrial relations purposes in the *Industrial Relations Act 2016*.

Public Health Act 2005

Amendment 11 inserts new clauses 140 to 144 of the Bill. These clauses insert new part 13, division 5 (Amendment of Public Health Act 2005) and new division 6 (Amendment of Public Health Regulation 2018).

Clause 140 provides that division 5 amends the *Public Health Act 2005*.

Clause 141 inserts new chapter 8, part 7AA (Fees for quarantine during COVID-19 emergency). Part 7AA comprises new sections 362MA to 362MG.

Part 7AA Fees for quarantine during COVID-19 emergency

Section 362MA (Definitions for part) defines the terms *parent*, *quarantine* and *relevant invoice*.

Section 362MB (Meaning of *quarantine*) sets out the meaning of quarantine. It provides a person is required to quarantine if the person is required, under a public health direction or a direction given under section 362H(1)(a), to stay at or in a stated place, or the person is a child and a parent of the child is given a direction under section 362H(1A)(a) to keep the child at or in a stated place.

Section 362MC (Fees payable) states that a regulation may prescribe the fees payable for a person who is required to quarantine at a place other than the person's home. This may be, for example, a hotel or a motel.

Section 362MC(2) provides that, without limiting subsection (1), a regulation may prescribe amounts as fees by reference to:

- the types of costs associated with a person's quarantine, for example, the cost of accommodation or the cost of meals; or
- whether a person is required or permitted to quarantine with one or more other persons in shared accommodation.

Section 362MD (Persons liable to pay fees) provides that a person required to quarantine is liable to pay the fees prescribed by regulation for the person's quarantine.

Section 362MD(2) provides if the person is a child, the parents of the child are jointly and severally liable to pay the fees prescribed by regulation for the child's quarantine.

Section 362MD(3) provides that despite subsections (1) and (2), if two or more adults are required or permitted to quarantine in shared accommodation, whether or not with any children, all the adults are jointly and severally liable to pay the fees prescribed by regulation for the quarantine of each person quarantined in the shared accommodation. This has the effect that those quarantining together are each liable for the fees.

Section 362MD(4) provides that the chief executive must give a person liable to pay fees under this section an invoice. The invoice must state the date of the invoice, the name/s of the person/s to whom the invoice relates and the amount of fees payable for the quarantine.

Section 362MD(5) provides that if two or more adults are jointly and severally liable to pay fees under subsection (2) or (3), the chief executive may give any one of the adults an invoice for the fees and the invoice is taken to have been given to each of the adults.

Section 362ME (Waiver of fees) provides that a person liable to pay fees under section 362MD may apply to the chief executive for the waiver of all or part of the fees.

Section 362ME(2) requires the application to be in the approved form and made within 30 days after the date of the relevant invoice or within a longer period agreed by the chief executive and the person.

Section 362ME(3) provides the chief executive may ask the person to give any further information the chief executive reasonably needs to decide the application.

Section 362ME(4) provides the chief executive must decide to waive payment of all or part of the fees, or refuse to waive payment of the fees.

Section 362ME(5) provides the chief executive may decide to waive payment of the fees, only if the chief executive considers it appropriate after having regard to the circumstances of the person or another person to whom the invoice relates. Examples of when a waiver of payment of fees may be appropriate include if the person is experiencing financial hardship or the person is a vulnerable person.

Section 362ME(6) provides that, if the chief executive decides to waive payment of the fees to the extent sought under the application, the chief executive must give the person a notice stating if the application is for the waiver of payment of all or part of the fees, that payment of either all or part of the fee is waived.

Section 362ME(7) provides that, if the chief executive decides to refuse to waive payment of the fees to the extent sought under the application, the chief executive must give the person a notice stating the decision, reasons for the decision and if any part of the fees are waived, that payment of that part is waived.

Section 362MF (Payment and recovery of fees) provides a person liable to pay fees under section 362MD must pay the fees, or any part of the fees not waived under section 362ME, within the later of the following periods:

- 30 days after the date of the invoice for the fees; or
- if the person made an application under section 362ME(1) for waiver of part or all of the fees, 14 days after the person receives a notice under section 362ME(6)(b) or (7) about the outcome of the application.

Section 362MF(2) provides that, if the fee is not paid by the person under subsection (1), it may be recovered from the person as a debt due to the State.

Section 362MG (Expiry of part) provides that this part expires on 18 March 2021. This will coincide with the omission of chapter 8, part 7A from the Public Health Act as provided for in the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020*.

Clause 142 (Insertion of new Chapter 12, Part 7)

Clause 142 inserts new chapter 12, part 7 (Transitional provisions for Community Services Industry (Portable Long Service Leave) Act 2019. New part 7 inserts new Division 1 (Provision applying on commencement) and Division 2 (Provisions applying on expiry of chapter 8, part 7AA).

Part 7 Transitional provisions for Community Services Industry (Portable Long Service Leave) Act 2019

Division 1 Provision applying on commencement

Section 499 (Application of s 362MD) provides that section 362MD applies to a person required to quarantine only if the requirement for the person's quarantine is made on or after the commencement, namely 1 July 2020.

Section 499(2) provides that, if the requirement for the person's quarantine is made on the person's arrival in Queensland from overseas, section 362MD does not apply to the person if the chief executive:

- is satisfied, having regard to documentary evidence given by or for the person, that, on or before midnight on 17 June 2020, the arrival date for the person's travel to Queensland was confirmed; and
- gives the person, or a person who would otherwise be liable to pay fees under section 362MD for the person's quarantine, a notice that payment of the fees is waived.

Division 2 Provisions applying on expiry of chapter 8, part 7AA

Section 500 (Application of division) provides that the division applies on the expiry of chapter 8, part 7AA.

Section 501 (Definitions for division) defines the terms *expiry* and *former*.

Section 502 (Words have meaning given by former Chapter 8, Part 7AA) provides that the words defined under former chapter 8, part 7AA and used in the division have the same meaning as they had under the former part.

Section 503 (Continued application of former s 362MD) provides that former section 362MD continues to apply to a person who was required to quarantine before the expiry.

Section 503(2) provides that, without limiting subsection (2), an invoice may be given under former section 362MD(4), on or after the expiry, to a person mentioned in subsection (1).

Section 504 (Existing entitlement to apply for waiver under former s 362ME) provides that this section applies if, immediately before the expiry, a person was entitled to apply under former section 362ME(1) for the waiver of payment of fees, but had not applied and the period under former section 362ME(2)(b) for making an application had not ended.

Section 504(2) provides that the application may be made under former section 362ME as if section 362ME had not expired.

Section 505 (Deciding applications for waiver under former s 362ME) provides that this section applies if:

- an application for the waiver of payment of fees was made under former section 362ME; and
- immediately before the expiry, the chief executive had not given a notice about the application under former section 362ME(6) or (7).

Section 505(2) provides that this section also applies if an application for the waiver of payment of fees is made on or after the commencement under former section 362ME, as provided for under section 504.

Section 505(3) provides the chief executive may deal or continue to deal with the application under former section 362ME as if section 362ME had not expired.

Section 506 (Application of former s 362MF) provides that despite its expiry, former section 362MF continues to apply to a person liable to pay fees before the expiry under former section 362MD, or under former section 362MD as applied under section 503.

Section 506(2) provides that for applying subsection (1), a reference in former section 362MF to particular matters under section 362ME includes a refence to those matters under former section 362ME as applied under section 505.

Division 6 Amendment of Public Health Regulation 2018

Clause 143 provides this division amends the *Public Health Regulation 2018*.

Clause 144 inserts new section 61A (Fees for quarantine during COVID-19 emergency—Act, s 362MC).

Section 61A(1) provides that for section 362MC of the Act, section 61A prescribes the fees for a person's quarantine.

Section 61A(2) provides that the fees for an adult are:
- $135 for each night of quarantine for accommodation, including cleaning; and
- $65 for each day of quarantine for meals.

Section 61A(3) provides that the fees for a child are:
- $135 for each night of quarantine for accommodation, including cleaning; and
- $32.50 for each day of quarantine for meals.

Section 61A(4) provides that if two or more persons are required or permitted to quarantine together in shared accommodation, the fee under subsection (2)(a) or 3(a) applies for only one of the persons and the fee under subsection (2)(a) or (3)(a) for each additional person is nil.

Section 61A(5) provides that section 61A expires on 18 March 2021. This aligns with the date of expiry under section 362MG of the Public Health Act. This will coincide with the omission of chapter 8, part 7A from the Public Health Act as provided for in the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020*.

Work Health and Safety Act 2011

Amendment 12 inserts a new Division 7 into the Bill.

Clause 145 states that this part amends the *Work Health and Safety Act 2011*.

Clause 146 omits section 141A.

Clause 147 omits section 142A.

Clause 148 changes the maximum penalty for section 144 from 100 penalty units to 500 penalty units.

Clause 149 changes the maximum penalty for section 145 from 100 penalty units to 500 penalty units.

Clause 150 changes the maximum penalty for section 146 from 100 penalty units to 500 penalty units.

Clause 151 changes the maximum penalty for section 147 from 100 penalty units to 500 penalty units.

Clause 152 changes the maximum penalty for section 148 from 100 penalty units to 500 penalty units.

Clause 153 changes the maximum penalty for section 188 from 100 penalty units to 500 penalty units.

Clause 154 changes the maximum penalty for section 189 from 100 penalty units to 500 penalty units.

Clause 155 changes the maximum penalty for section 190 from 500 penalty units to 1000 penalty units.

Clause 156 allows for transitional provisions for the amendments to the *Work Health and Safety Act 2011*, by inserting a new division (Division 6) into Part 16 of the *Work Health and Safety Act 2011* (sections 321 to 324).

New section 321 sets out definitions for the division, namely defining the "amending Act" to mean the *Community Services Industry (Portable Long Service Leave) Act 2020*, and defining "former" to mean the provision as in force from time to time before the commencement.

New section 322 allows for a review by the Queensland Industrial Relations Commission of a section 141A direction issued immediately before commencement of the amending Act, under section 142A as in force immediately before commencement, as if the amending Act had not commenced.

New section 323 allows for the continuation of reviews of right of entry disputes involving the issuing of a section 141A direction that had begun but had not been finally dealt with by the Queensland Industrial Relations Commission immediately before commencement. Further, the new section allows for an appeal of the Commission's eventual decision under section 142A(4) as if the amending Act had not commenced.

New section 324 clarifies that the maximum penalty to be applied for a WHS civil penalty provision under section 259 is the maximum penalty at the time of contravention (not the maximum penalty at the time of the imposition of the penalty).

Youth Justice Act 1992

Amendment 13 inserts a new Division 5 into the Bill – Amendment of Youth Justice Act 1992. These amendments will commence by proclamation and the date will be advised on the Department of Youth Justice website. Division 5 contains the following clauses:

Clause 157 provides that Division 5 amends the *Youth Justice Act 1992*.

Clause 158 omits subsections 48(2) to (7) and inserts a new subsection (2), streamlining the current subsections (2) and (3) into one provision. The notes following subsection (3) are retained, but the note following current subsection (2) referring to youth justice principle 18 is omitted. Decision-makers should have regard to all of the principles that are relevant to a decision about release. The matters addressed in subsections (4) to (6) are addressed in a new provision inserted by clause 4. The definition of 'keep the child in custody' in subsection (7) is relocated to the dictionary by clause 27.

Clause 159 inserts a new section 48AAA which describes the scenarios in which a decision-maker must or may keep a child in custody in connection with a charge.

New subsections 48AAA(2) and (3) are effectively a re-statement of the current section 48(4), with an amendment to achieve the policy objective that a child must be kept in custody where there is an unacceptable risk of an offence that endangers community safety.

New subsection 48AAA(2) provides that the child *must* be kept in custody where there is an unacceptable risk that the child will commit an offence that endangers the safety of the community or the safety or welfare of a person, and it is not practicable to mitigate that risk with conditions.

New subsection 48AAA(3) provides that the child *may* be kept in custody where there is an unacceptable risk of the other matters referred to in current section 48(4): fail to surrender into custody; commit an offence other than an offence mentioned in subsection (2); or interfere with

a witness or obstruct the course of justice. The risk in current section 48(4)(b)(ii), endanger the safety or welfare of a person, is effectively dealt with in new section 48AAA(2).

New subsections 48AAA(4) to (6) replicate the current section 48(5) to (7), with the necessary consequential amendment reflecting that the current section 48(4) will be replaced with two subsections, new subsections 48AAA(2) and (3).

Clause 160 amends section 48AA, including to bring in all the matters currently listed under section 48AD(2), so that all matters to be considered in making most bail decisions (not including, for example, cases involving terrorism (s.48AB) or a risk to the child's safety (s.48AE)) are together in the one section.

Subclauses (1) to (3) amend section 48AA(1) following the amendments to earlier sections.

Subclause (4) omits the current section 48AA(4), which is redundant given the new section 48AAA(2) and (3). It also inserts a new subsection containing all the matters to which a court or police officer may have regard when considering release. Paragraph (a) applies for all release decisions, and contains the matters currently in section 48AA(5). Paragraph (b) contains the matters currently in section 48AD(2), and applies for decisions other than those where there is a risk that the child will commit an offence that endangers the safety of the community or the safety or welfare of a person. This is consistent with the current section 48AD(2) position which expressly excludes release that would be inconsistent with community safety.

Clause 161 makes a consequential amendment to section 48AC.

Clause 162 omits section 48AD. The intent of section 48AD will be included in section 48AA, pursuant to clause 5.

Clause 163 makes a consequential amendment to section 48A.

Clause 164 makes a consequential amendment to section 50.

Clause 165 makes a consequential amendment to section 52A.

Clause 166 makes a consequential amendment to section 289.

Clause 167 makes a consequential amendment to section 301A.

Clause 168 amends the dictionary to relocate the definition of 'keep the child in custody' from current section 48.

Long Title

Amendment 14 inserts "the *Bail Act 1980*, the *Building and Construction Industry (Portable Long Service Leave) Act 1991*, the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*, the *COVID-19 Emergency Response Act 2020*, the *Holidays Act 1983*, the *Industrial Relations Act 2016*, the *Public Health Act 2005*, the *Public Health Regulation 2018*, the *Work Health and Safety Act 2011* and the *Youth Justice Act 1992*" into the long title of the Bill.