



Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022

**Report No. 24, 57th Parliament
Health and Environment Committee
October 2022**

Health and Environment Committee

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Acknowledgements

The committee acknowledges the assistance provided by Queensland Health and Queensland Corrective Services.

All web address references are current at the time of publishing.

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Chair's foreword

On behalf of the Health and Environment Committee, I present this report on the committee's examination of the Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

This report summarises the committee's examination of the Bill, including the views expressed in submissions and by witnesses at the committee's public hearing.

Since the introduction of the Bill, the National Cabinet has agreed to end the requirement for mandatory isolation for COVID-19 cases from 14 October 2022. At the time of preparing this report, specific details about the implementation of that decision in Queensland were still being finalised and may impact some elements of the Bill.

On behalf of the committee, I thank those who made written submissions to the inquiry into the Bill, and provided evidence at the public hearing. I also thank Queensland Health, Queensland Corrective Services, and our Parliamentary Service staff.

I commend this report to the House.

A handwritten signature in blue ink, appearing to read 'Aaron Harper'.

Aaron Harper MP
Chair

Recommendations

Recommendation 1

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The committee recommends the Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022 be passed.

Executive Summary

The objective of the Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022 (Bill) is to provide for continued management of COVID-19 in Queensland by replacing the temporary emergency legislative framework which was enacted to manage the response to the pandemic with:

- new temporary powers to make and enforce public health directions to manage COVID-19 as a notifiable condition under the *Public Health Act 2005* until 31 October 2023, and new procedures and safeguards for issuing public health directions for COVID-19
- an extended expiry date, of up to 12 months to 31 October 2023, for the temporary COVID-19 emergency measures in the *Corrective Services Act 2006*.

The Health and Environment Committee (committee) received 57 submissions to its inquiry. There was general support for the Bill. Submissions from organisations in the health care sector all supported the Bill, although some specific and separate issues were raised by these stakeholders. Most of the submissions opposing the Bill in its entirety considered emergency powers were not required for various reasons including the emergency situation no longer exists, the previous measures deployed through the use of emergency powers were ineffective, and that rules about mandatory isolation, quarantine, and mask wearing are a breach of human rights.

Some submitters were concerned about ‘serious risk’ not being defined in the Bill. Empowering the Chief Health Officer to give a public health direction, rather than a Minister or an elected representative, was a concern for some submitters. There were also concerns that extension of the emergency powers under the *Corrective Services Act 2006* would have an impact on prisoners’ wellbeing and access to legal and health services.

Human rights concerns related to exemptions from health directions, the right of review, disproportionate restrictions on the human rights of residents of care facilities, enforcement powers, and the proposed extension of the emergency powers under the *Corrective Services Act 2006*.

The committee identified and considered issues of fundamental legislative principle in the Bill but is satisfied that sufficient regard has been given to the rights and liberties of individuals and the institution of parliament and that potential breaches of fundamental legislative principle are justified, given the need to manage COVID-19.

Having considered the issues raised by submitters and the explanations provided in the statement of compatibility the committee is satisfied that the Bill is compatible with the *Human Rights Act 2019* and that it achieves a balance between enabling necessary public health powers to protect the community, particularly the vulnerable, and the capacity of the health system, while protecting human rights to the fullest extent possible.

The committee has made one recommendation, that the Bill be passed.

Subsequent to the introduction of the Bill, on 30 September 2022, National Cabinet agreed to end the requirement for mandatory isolation for COVID-19 cases from 14 October 2022. At the time of preparing this report, specific details about the implementation of that decision in Queensland were not available.

1 Introduction

1.1 Policy objectives of the Bill

The policy objective of the Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022 (Bill) is to provide for continued management of COVID-19 in Queensland by replacing the temporary emergency legislative framework which was enacted to manage the response to the pandemic (due to expire by 31 October 2022) with:

- new temporary powers to make and enforce public health directions to manage COVID-19 as a notifiable condition under the *Public Health Act 2005* (Public Health Act) until 31 October 2023, and new procedures and safeguards for issuing public health directions for COVID-19
- an extended expiry date, of up to 12 months to 31 October 2023, for the temporary COVID-19 emergency measures in the *Corrective Services Act 2006* (Corrective Services Act).

1.2 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examining the Bill, including its policy objectives, and the evidence and information provided by Queensland Health, Queensland Corrective Services (QCS), submitters and witnesses, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022 be passed.

2 Examination of the Bill

2.1 Background

A public health emergency was declared for all of Queensland under s 319 of the Public Health Act on 29 January 2020, as a result of the outbreak of COVID-19. Although COVID-19 was prescribed as a controlled notifiable condition under the Public Health Act¹ on 30 January 2020, the disease has been managed as a public health emergency since that time. The following legislation has been enacted to support the public health, institutional and economic response to COVID-19 in Queensland:²

- *Public Health (Declared Public Health Emergencies) Amendment Act 2022* – to enable a declared public health emergency to be extended, or further extended, for up to 90 days
- *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* – providing for temporary amendments to the Public Health Act to provide broad powers for the Chief Health Officer (CHO) and emergency officers to contain and respond to the spread of COVID-19 in the community, including the power to issue directions restricting movement and gatherings, limiting physical contact, and amending other Acts with provisions to protect public health

¹ *Public Health Act 2005*, s 64.

² For detailed chronology of authorising legislation for temporary COVID-19 measures see: Community Support Services Committee, *Report No. 17, 57th Parliament - Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022*, and Economics and Governance Committee, *Report No. 11, 57th Parliament - Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021*.

- *COVID-19 Emergency Response Act 2020* – establishing a ‘modification framework’ to apply generally across the Queensland statute book, under which a number of extraordinary regulations and statutory instruments were made that modified timeframes, procedures and requirements under a wide range of Acts
- *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* – amending the Public Health Act to provide additional temporary powers such as authorising sharing of confidential information for contact tracing
- *Community Services Industry (Portable Long Service Leave) Act 2020* – authorising fees for quarantine for people arriving in Queensland
- *Corrective Services and Other Legislation Amendment Act 2020* – increasing penalties for failure to comply with public health directions
- *COVID-19 Emergency Response and Other Legislation Amendment Act 2020* – extending the expiry of most COVID-19 emergency provisions other than amendments to the Public Health Act and *Mental Health Act 2016* (health response amendments) by replacing specific expiry date references with ‘COVID-19 legislation expiry day’, set at 30 April 2021, and providing for transitional arrangements to facilitate the return to normal operations
- *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* – extending the dates of the health response amendments until 30 September 2021
- *COVID-19 Emergency Response and Other Legislation Amendment Act 2021* – amending the ‘COVID-19 legislation expiry day’ applicable to those measures other than the health response amendments, to 30 September 2021, and amending other Acts to support local government operations
- *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021* – amending the ‘COVID-19 legislation expiry day’ to 30 April 2022 and clarifying quarantine fee payment arrangements, that quarantine directions may be given electronically, and other matters
- *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2022* – extending some temporary provisions until 31 October 2022, including measures to respond to the risks of COVID-19 in corrective service facilities under the Corrective Services Act; for disaster arrangements under the *Disaster Management Act 2003*; and to allow patients subject to the *Mental Health Act 2016* to be granted leave to comply with public health directions.

Most temporary amendments expired on 30 April 2022, including extraordinary regulations and statutory instruments made in accordance with the modification framework under the *COVID-19 Emergency Response Act 2020*. In its present form, the temporary legislative framework is due to expire on 31 October 2022, or earlier if the Minister for Health and Ambulance Services (Minister) ends the public health emergency.

The explanatory notes advise that given the current trajectory of the COVID-19 pandemic, the Queensland Government considered it unlikely that the full suite of emergency powers and public health directions would be needed after October 2022 to manage the public health response. Consequently, rather than further extend the current declared public health emergency for COVID-19, the Bill:

- provides additional temporary powers for the management of COVID-19 as a controlled notifiable condition under the Public Health Act, until 31 October 2023
- extends the emergency powers under the Corrective Services Act until 31 October 2023
- amends the State Penalties Enforcement Regulation 2014 to prescribe penalties for infringement notice offences for failing to comply with public health directions.

The Bill does not further extend amendments made to other legislation such as the *Disaster Management Act 2003* and the *Mental Health Act 2016*, which expire on 31 October 2022.

Expiry of the emergency powers will mean the CHO will not be able to issue public health directions to, for example:

- restrict the movement and gathering of people, through widespread lockdowns and restrictions on particular businesses and individual gatherings
- enable Queensland's borders to be closed to other Australian States and Territories
- require quarantine for international and domestic arrivals
- require vaccinations for the general public, for example, when entering hospitality venues
- restrict access to vulnerable facilities, such as aged care facilities and hospitals, unless necessary to support the effectiveness of a direction about isolation or quarantine, masks or vaccination.

According to the explanatory notes, these changes are aimed at maintaining health system capacity and protecting vulnerable members of the community as COVID-19 continues to circulate in Queensland.

Subsequent to the introduction of the Bill, on 30 September 2022, National Cabinet agreed to end the requirement for mandatory isolation for COVID-19 cases from 14 October 2022.³ At the time of preparing this report, specific details about the implementation of that decision in Queensland were not available.

2.2 Submissions to the inquiry

The committee received 57 submissions to the inquiry.⁴ In summary:

- there was general support for the Bill
- submissions from organisations in the health care sector all supported the Bill, although some specific and separate issues were raised by these stakeholders
- some submitters were concerned that 'serious risk' is not defined in the Bill
- human rights concerns mostly related to exemptions from health directions, the right of review, and the proposed extension of the emergency powers under the *Corrective Services Act*
- empowering an officer to give a public health direction, rather than a Minister or an elected representative, was a concern for some submitters
- most of the submissions opposing the Bill in its entirety considered the provisions were an overreach of government power, arguing that emergency/special powers are not required as the emergency situation no longer exists, previous measures deployed through the use of emergency powers were ineffective, and rules about mandatory isolation, quarantine, and mask wearing are a breach of human rights.

Issues raised by submitters to the inquiry in relation to specific aspects of the Bill are outlined in sections 2.3 and 2.4 below.

2.3 Amendment of the *Public Health Act 2005*

The Bill amends the *Public Health Act* to:

- repeal some provisions of the *Public Health Act* which provided for additional powers, enforcement of directions, and other matters in relation to the COVID-19 emergency. Expiry will restore other provisions of the *Public Health Act* to pre-pandemic operation

³ See <https://www.pm.gov.au/media/meeting-national-cabinet-1>.

⁴ See <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=169&id=4196>.

- enable the CHO to continue to issue public health directions outside of a declared public health emergency by supplementing the existing powers to manage COVID-19 as a controlled notifiable condition with temporary powers which enable the CHO to make and enforce public health directions. The Bill would enable the CHO to issue public health directions⁵ about the following matters —
 - requiring masks to be carried or worn in specified circumstances, such as vulnerable and high-risk settings
 - isolating people who have COVID-19 for up to 7 days (a direction may provide for more than one isolation period)
 - quarantining close contacts of people with COVID-19 if they have symptoms, for up to 7 days (a direction may provide for more than one quarantine period)
 - requiring that workers at specified places not enter or remain in those places unless they have been vaccinated against COVID-19
- provide that a public health direction may be given only if the CHO reasonably believes the direction —
 - is necessary to prevent or respond to a serious risk to the public health system, or to the community, as a result of COVID-19⁶ or
 - gives effect to a decision or agreement of National Cabinet or to the advice or recommendations of national COVID-19 advisory bodies, such as the Australian Health Protection Principal Committee (AHPPC) and the Australian Technical Advisory Group on Immunisation (ATAGI)⁷
- include requirements in a public health direction to support the direction⁸ including —
 - requiring workers at specified workplaces, such as vulnerable settings, to show proof of vaccination
 - requiring people to travel in a specified way if they are permitted to leave isolation or quarantine
 - requiring people who have been in isolation or quarantine to not enter specified places, such as vulnerable settings, for a period after leaving isolation
 - requiring operators of specified places to take steps in relation to compliance with mask-wearing directions or vaccination directions for their workers
- require the CHO to prepare and publish a justification statement explaining the reasons for a health direction and its compatibility with human rights, within 5 days of the direction being issued⁹
- require the CHO to table a public health direction and justification statement in the Legislative Assembly within 21 days of giving a direction, and for them to be scrutinised by a portfolio committee¹⁰
- provide for the enforcement of public health directions, including power to enter places, seize evidence, and use reasonable force,¹¹ and make it an offence to contravene a direction. (A person must be given the opportunity to voluntarily comply with a direction before an

⁵ Bill, cl 9, s 142E.

⁶ Bill, cl 9, s 142E(3)(a).

⁷ Bill, cl 9, s 142E(3)(b).

⁸ Bill, cl 9, s 142F.

⁹ Bill, cl 9, ss 142G, 142H.

¹⁰ Bill, cl 9, s 142L.

¹¹ Bill, cl 9, ss 142N–142Q.

authorised person can take steps to enforce compliance. A person who fails to comply with a direction does not commit an offence if they have a reasonable excuse.)¹²

- exclude entitlement to compensation for loss or damage in connection with a public health direction.

2.3.1 Concerns about amendment of the *Public Health Act 2005*

2.3.1.1 Need for special powers

Some submitters objected to the on-going use of any emergency or extended powers, arguing that there is no longer a public health emergency and evidence of health risks of COVID-19 do not support the powers proposed.¹³ The Queensland Council for Civil Liberties (QCCL) also submitted that the emergency situation which justified the granting of emergency powers to the CHO no longer exists as there are effective vaccines and treatments for COVID-19 available.¹⁴

Central to the QCCL's opposition to the amendments to the Public Health Act is the fact that there continues to be no specific criteria the government will use to decide when all COVID-19 specific powers will no longer be necessary. The QCCL stated its concern that 'the long-term intervention into the lives of Queenslanders to micromanage them, is a norm changing arrangement' and that the continuing use of these powers over a long period will be used as justification for the micromanagement of people's lives in other areas.¹⁵

The Chief Health Officer, Dr Gerrard, told the committee that at this time he did not expect that the powers will be used often, or possibly at all, but that it was 'important that Queensland has the ability to respond immediately if required, if something unexpected happens or the cumulative effects of successive waves of COVID-19 create a serious risk to the community'.¹⁶ Dr Gerrard further advised:

... There would have to be a very significant change in the virus and its epidemiology for us to consider implementing measures [lockdowns and gathering restrictions] like that again. ... If there was some unexpected major change or shift in the virus such that it became much more contagious and/or much deadlier, which is unlikely, then that would need parliament's involvement, and I think that is appropriate.¹⁷

2.3.1.2 Definition of 'serious risk'

The Bill provides for the CHO to decide on a case by case basis if a public health direction is necessary to prevent or respond to a 'serious risk' to the public health system, or to the community, as a result of COVID-19. A primary concern of submitters was how 'serious risk' would be determined by the CHO as the term is not defined in the Bill.¹⁸

The Chief Health Officer, Dr Gerrard, advised the committee about what he considered constitutes a serious risk to the community or the public health system and his process for determining when public health directions are required:

There is no simple formula that determines when I as Chief Health Officer consider protective measures are needed. Rather I am continually assessing a range of epidemiological data, the likely efficacy of existing protective measures, expert advice from national bodies, community behaviour and public health system impacts.

¹² Bill, cl 9, s 142K.

¹³ See for example submissions 3, 6, 20, 21, 22, 24, 26, 27, 30, 31, 33, 34, 36, 40, 52.

¹⁴ Submission 47.

¹⁵ Submission 47.

¹⁶ Public briefing transcript, Brisbane, 28 September 2022, p 4.

¹⁷ Public briefing transcript, Brisbane, 28 September 2022, p 6.

¹⁸ See submissions 13, 14, 19, 21, 29, 31, 38.

In terms of serious risk to the public health system, I expect that I would be considering matters like the number of hospital beds occupied by COVID-19 patients, ICU numbers and staff furlough numbers to determine if the threshold of serious risk is met. For example, if the number of staff furloughed as a result of COVID-19 means that our ability to provide critical healthcare services is under threat, I may consider that particular directions are necessary.

A new variant may also pose a serious threat both to the community and to the public health system. This could include, for example, a new variant with high immune escape and/or high mortality rate. If such a variant were to emerge, it may be necessary to impose public health directions to protect the Queensland community.¹⁹

2.3.1.3 Public health directions – human rights issues

Associated with the general concern of some submitters about the extension of emergency powers for another year were the human rights ramifications of the Bill's provisions, particularly in relation to the power of the CHO to give directions imposing restrictions on movement and on people who are unvaccinated.²⁰

Submitters made the following specific recommendations about human rights issues in the proposed amendments of the Public Health Act:

Exemptions to directions

- There should continue to be a process to apply for an exemption to a requirement under a public health direction and decisions made under this process should be reviewable and made in a timely manner.²¹
- The Bill should include an automatic exemption for any person subject to a direction to leave their principal place of residence or move freely to obtain medical treatment to preserve the person's quality of life. An automatic exemption would provide more meaningful protection for persons who may be disproportionately affected by restrictions on movement, such as persons with a disability who need to access care or support.²²
- The Bill should clarify that public health directions will provide for exemptions to enable access to legal advisers and advocacy services, end-of-life visitors, medical and other healthcare appointments.²³
- The government should develop an accessible process for individuals to demonstrate they are exempt from a direction to avoid confusion and confrontation, particularly regarding people exempted from wearing a face mask.²⁴

Limitations on human rights of residents of care facilities

- In exercising authority under the proposed ss 142E (Power to give public health direction) and 142F (Public health direction may include related requirements) operators of institutions implementing the requirements of a public health direction may limit the human rights of people residing or temporarily staying in residential aged care facilities, hospitals and health care settings, and disability accommodation. The Bill should be amended to include appropriate

¹⁹ Public briefing transcript, Brisbane, 28 September 2022, p 4.

²⁰ See for example submissions 23, 29, 34, 35, 38, 55.

²¹ Submission 13.

²² Submission 9.

²³ Submission 48.

²⁴ Submission 9.

safeguards (including oversight of the practices of operators) to prevent inappropriate or disproportionate restrictions.²⁵

Right of review

- While the requirement for the CHO to publish a statement of compatibility with human rights is welcome, the Queensland Parliament should put it beyond doubt that a decision to issue a direction by the CHO is reviewable under ss 58 and 59 of the HRA.²⁶
- The detention of persons should be the subject of review, with an appeal mechanism to a Magistrates Court.²⁷
- Consideration should be given to providing a right of review to persons subject to worker vaccination requirements under a public health direction.²⁸
- The government should provide further justification for why the Bill does not include mechanisms for a person to seek an independent review of how a public health direction applies, particularly for those subject to isolation or quarantine directions.²⁹

Tabling timeframe

- The Bill should be amended to require a public health direction and the human rights analysis (contained in the justification statement) to be tabled in parliament in less than the proposed 21 days — 5 days would be more appropriate and would align with the proposed timeframe of the human rights justification statement.³⁰

Limits on human rights from enforcement powers

- The government should provide additional information to justify the limitation on rights arising from powers of authorised persons to enter premises, seize items and use force, as the powers to enter, seize and use force are significant powers that should only be exercised to respond to serious public health risks rather than the proposed threshold of ‘reasonable suspicion’.³¹

In its response to submissions to the inquiry, Queensland Health suggested that ‘the range of safeguards and limitations provided by the Bill recognises the impact public health measures may have on human rights and responds to stakeholder feedback on this Bill and previous COVID-19 legislation’.³² Details of the safeguards in the Bill that are intended to ensure that any potential impact on human rights is minimised are outlined in sections 4.1.1 and 4.1.2 of this report.

Queensland Health also provided the following information about the specific matters listed above.

Exemptions to directions

... it is expected that where appropriate, public health directions under the new framework will continue to provide exceptions as part of the direction.³³

The proposed power to give public health directions retains the flexibility to provide exceptions that apply in stated circumstances or to provide a process for individuals to seek an exemption from the

²⁵ Submission 48.

²⁶ Submission 47.

²⁷ Submission 47.

²⁸ Submission 9.

²⁹ Submission 9.

³⁰ Submission 9.

³¹ Submission 9.

³² Queensland Health, correspondence, 23 September 2022, p 4.

³³ Queensland Health, correspondence, 23 September 2022, p 1.

requirements of a direction based on their individual circumstances. Whether a direction includes exceptions or exemptions will depend on the purpose and specific requirements of the direction. These considerations will need to be addressed in the justification statement for the direction, which will provide transparency and accountability regarding the criteria and rationale for exceptions or exemptions, as well as an assessment of the human rights impacts.³⁴

Limitations on human rights of residents of care facilities

Queensland Health did not provide specific advice in relation to concerns about disproportionate impacts on the human rights of residents of care facilities but noted that:

... the Bill includes a range of safeguards and procedural protections to ensure that the power to issue public health directions is used appropriately and in a manner that does not unnecessarily or arbitrarily infringe individual rights.³⁵

Right of review

The Bill does not include a specific process for individuals to seek review of decisions made under a public health direction. However, in administering the legislative provisions, the Chief Health Officer and Queensland Health must comply with relevant legal requirements, including requirements of natural justice and procedural fairness. Also, the Bill does not prevent a person from seeking review under the *Judicial Review Act 1991*. ...

Based on Queensland's current approach to isolation and quarantine, which is based on national recommendations, it is unlikely that individuals will be required to quarantine or isolate in government-operated premises as occurred during earlier stages of the pandemic. In this context, it is considered that providing additional statutory review mechanisms or conferring extraordinary jurisdiction on Magistrates Courts to review individual isolation or quarantine arrangements is not reasonably necessary to protect human rights and is not justified in light of the administrative burden and costs this would impose for government agencies and the courts.³⁶

Tabling timeframe

The proposed timeframe of 21 calendar days is considerably shorter than the 14 parliamentary sitting days by which most other types of legislative instruments must be tabled. Although directions must be tabled within 21 calendar days, it is expected they will be tabled earlier when practicable.³⁷

Limits on human rights from enforcement powers

... the Bill includes the minimum powers necessary to ensure compliance with public health directions. The enforcement provisions are similar to existing enforcement powers in chapter 9 of the Public Health Act, with some modifications tailored to the new temporary COVID-19 powers in the Bill.³⁸

Committee comment

Provisions of the Bill do potentially limit human rights, particularly in regard to the right to freedom of movement for people who are subject to an isolation or quarantine direction. However, the committee notes the recent decision by National Cabinet to end mandatory isolation from 14 October 2022 because of low rates of COVID-19 transmission and high vaccination rates in the community. The committee is also reassured by the CHO's statement to the committee that it is unlikely the powers will be used often, or at all. The committee agrees that the government is responsible for protecting the health, safety and wellbeing of people in the Queensland community from the risks posed by

³⁴ Queensland Health, correspondence, 23 September 2022, p 10.

³⁵ Queensland Health, correspondence, 23 September 2022, p 7.

³⁶ Queensland Health, correspondence, 23 September 2022, pp 6-7; see further pp 4-7.

³⁷ Queensland Health, correspondence, 23 September 2022, p 6.

³⁸ Queensland Health, correspondence, 23 September 2022, p 11.

COVID-19 and considers the safeguards in the Bill attenuate potential limitations on human rights as much as possible.

2.3.1.4 Decision making power

A significant proportion of submitters objected to the power to make a decision about whether to give a public health direction being provided to the CHO. They contended that the powers should be exercised by a democratically elected individual, preferably the Minister, and not by an appointed public servant.³⁹

Other stakeholders were unconcerned by this aspect of the arrangements in the Bill. As the Queensland Law Society (QLS) explained, it is the 'normal operation' of government for officers to make decisions under powers that are given to them by legislation and to have certain responsibilities and obligations in regard to using those powers.⁴⁰

The QLS also noted that the Bill provides for more oversight of decisions to issue public health directions concerning COVID-19 than the current emergency powers. The requirement for a direction issued by the CHO to be treated as if it were subordinate legislation provides for parliamentary scrutiny, including review through the portfolio committee process and disallowance, as occurs with all subordinate legislation.⁴¹

The Queensland Nurses and Midwives' Union (QNMU), whose submission raised concerns that the powers of the CHO proposed in the Bill may not be sufficient to respond to future public health emergencies, were concerned by the possibility that Parliament could disallow a public health direction.⁴²

2.3.1.5 Enforcement

West Moreton Health noted the provisions in the Bill which allow authorised persons to enter places to check and enforce compliance with public health directions may be difficult to enforce without ongoing support from the Queensland Police Service.⁴³

Queensland Health provided the following information in regard to enforcement of public health directions:

- Monitoring and enforcement activities for public health directions made under the new temporary powers will be carried out by authorised persons under the Public Health Act, including Queensland Health officers deployed in public health units throughout the state. This workforce has experience enforcing public health directions and is well positioned to engage in targeted monitoring and enforcement activities in the current environment.
- At this stage of the pandemic, the community is generally aware of the need to comply with public health directions and to take reasonable precautions to limit the preventable spread of COVID-19. With only limited restrictions in place, enforcement of public health directions is expected to be primarily reactive, with authorised persons responding to breaches that are particularly serious or that could place the health system or the community at serious risk.
- If the Bill is passed, authorised officers will be provided with sufficient training to support implementation of the new enforcement provisions in the Bill.⁴⁴

³⁹ Submissions 14, 16, 17, 19, 20, 21, 23, 24, 26, 27, 28, 31, 38, 39, 45, 46, 47.

⁴⁰ Public hearing transcript, Brisbane, 28 September 2022, p 16.

⁴¹ Public hearing transcript, Brisbane, 28 September 2022, pp 16-17.

⁴² Submission 8.

⁴³ Submission 7. See also Bill, cl 9, ss 142N–142Q.

⁴⁴ Queensland Health, correspondence, 23 September 2022, p 11.

2.3.1.6 *Compensation*

While some submitters supported the Bill's provision for no entitlement for individuals to seek compensation for loss or damage due to the public health directions,⁴⁵ others objected to this provision⁴⁶ contending that ordinary compensation provisions contained in the Public Health Act should apply to people who suffer loss as a result of the public health directions made under the provisions proposed in the Bill.⁴⁷

Queensland Health advised that the provision is justified on the basis that 'during an ongoing and unpredictable pandemic, the State of Queensland should not be potentially liable for uncapped compensation claims arising from the exercise of powers that are necessary to protect public health and the capacity of the health system'.⁴⁸ Further, Queensland Health anticipated that the Bill's 'targeted nature' and safeguards in the Bill, 'will reduce the potential costs of compliance for individuals and minimise the potential for loss or damage resulting from the exercise of temporary COVID-19 powers'.⁴⁹

2.4 Amendment of the *Corrective Services Act 2006*

The Bill amends and extends existing provisions of the Corrective Services Act, with some variations, for up to 12 months until 31 October 2023. The existing provisions rely on the continuation of the public health emergency declaration. Given the emergency declaration will expire on 31 October 2022, the amendments in the Bill align provisions with the new approach of managing COVID-19 as a controlled notifiable condition. The Bill will allow:

- an emergency declaration to be made about a corrective service facility for up to 90 days,⁵⁰ instead of 3 days as is ordinarily stipulated in the Corrective Services Act,⁵¹ if COVID-19 is a controlled notifiable condition
- QCS to screen persons for COVID-19 on entry, and refuse entry to persons exhibiting COVID-19 symptoms.⁵²

In making an emergency declaration under s 268 of the Corrective Services Act, the Commissioner has broad powers to restrict activity in, and access to, a prison or part of a prison, order prisoners' privileges be withheld, and authorise police officers to perform the functions and powers of a corrective services officer under the supervision of a senior police officer.⁵³

According to the explanatory notes, continuation of the current measures to manage COVID-19 in correctional facilities is required to protect vulnerable prisoners and staff while there continues to be community transmission. In addition to screening individuals entering facilities for COVID-19 symptoms and excluding visitors that are exhibiting COVID-19 symptoms (or offering non-contact visits), measures include mask wearing and isolating prisoners who have tested positive or who are symptomatic.⁵⁴

⁴⁵ Submissions 8, 57.

⁴⁶ Submissions 34, 46, 47.

⁴⁷ Submission 47.

⁴⁸ Queensland Health, correspondence, 23 September 2022, p 12.

⁴⁹ Queensland Health, correspondence, 23 September 2022, p 12.

⁵⁰ Bill, cl 6.

⁵¹ *Corrective Services Act 2006*, s 268.

⁵² *Corrective Services Act 2006*, s 351D.

⁵³ *Corrective Services Act 2006*, ss 268(4), 268(5).

⁵⁴ Explanatory notes, p 5.

2.4.1 Concerns about amendment of the *Corrective Services Act 2006*

2.4.1.1 Emergency declarations for up to 90 days

The Prisoners' Legal Service (PLS) accepted the proposal to extend the use of certain measures to prevent the spread of COVID-19 in correctional facilities. However the PLS opposed the Bill's extension of emergency powers in s 268 of the *Corrective Services Act* until October 2023 which would continue to allow emergency declarations for up to 90 days, submitting the following reasons:

- there is no justification provided for a Commissioner's declaration to impose a centre-wide lockdown for up to 90 days in the absence of a public health declaration imposing similar restrictions in relation to institutional environments
- there is no justification for the Commissioner's use of the powers, despite the Bill recognizing that a more targeted approach to managing COVID-19 is necessary as Queensland transitions out of the pandemic
- an emergency declaration only requires the Commissioner's reasonable belief that a situation exists and the Commissioner receiving Ministerial approval
- the Bill does not introduce any new procedures, limitations or safeguards in relation to the powers, or enhance transparency or scrutiny of the Commissioner's use of the powers
- the continued use of these powers will have a disproportionate impact on prisoners' wellbeing, access to legal and health services, and human rights, and may increase the time people spend in prison.⁵⁵

The QLS recommended that an emergency declaration under s 268 of the *Corrective Services Act* be restricted to a period of 30 days instead of 90 days and be revoked as soon as it is no longer needed. The QLS and the QNMU also recommended that measures be applied on a case by case basis depending on circumstances at individual facilities rather than across all correctional facilities.⁵⁶ In addition the QNMU suggested the practicalities of allowing a declaration of emergency be made for up to 90 days in corrective facilities be considered in relation to the availability of a surge workforce (corrective facility nurses and the corrective facilities general workforce) to cover these days.⁵⁷

In the statement of compatibility tabled with the Bill, the Minister stated that extension of the application of the declaration for up to 90 days 'ensures QCS can continue to respond as necessary to the unique risks surrounding COVID-19, and ensure the safety of staff, prisoners and visitors, without having to re-make the same declaration under section 268 every three days'.⁵⁸

QCS also advised that 'flexibility already exists for declarations and directions to apply to specific or all corrective services facilities. The Bill would continue this flexibility which allows approaches at centres to be tailored to the specific circumstances'.⁵⁹ In regard to continuing to allow emergency declarations for up to 90 days, QCS provided the following information:

The ability for the Commissioner of Queensland Corrective Services to make a declaration of emergency under the *Corrective Services Act* for a period of up to 90 days has proven to be an effective and necessary amendment.

... Queensland Corrective Services is committed to ensuring the least restrictive approach is implemented in responding to COVID-19 across the custodial environment.

The health, safety and well-being of staff, prisoners and the broader community are important considerations. The timeframe proposed for the declaration of emergency is considered appropriate to

⁵⁵ Submission 42.

⁵⁶ Submission 13.

⁵⁷ Submission 8.

⁵⁸ Statement of compatibility, p 28.

⁵⁹ Queensland Corrective Services, correspondence, 6 October 2022, p 1.

respond to the level of risk that COVID-19 presents within the correctional environment and the ability to ensure that appropriate mitigation strategies are able to be implemented. ...⁶⁰

2.4.1.2 Impacts of emergency declarations on prisoners' wellbeing and human rights

The PLS submitted that it has observed that since 2020 'medical segregation' of new admissions to prisons, those returning from temporary absences, COVID-19 positive prisoners, close contacts, and vulnerable prisoners, has involved prisoners being locked down in their cells for at least 22 hours a day with limited or no association with other prisoners, for anywhere between 14 days and 11 weeks. Prisoners have also had limited access to legal and health services.⁶¹

The PLS noted that restricting access to lawyers has significant implications for the outcomes of prisoners' criminal charges or parole decisions. The PLS also observed that the use of COVID-19 emergency powers in prisons 'has impeded access to rehabilitative programs, which are often essential to a prisoner being granted parole and regaining liberty'.⁶²

The Queensland Human Rights Commission (QHRC) and QLS also raised concerns about restrictions on visits to facilities:

- the QHRC suggested that the Bill include provisions to clarify that key oversight agencies (Ombudsman, Inspector of Detention Services, Official Visitors and the United Nations Subcommittee on the Prevention of Torture) may visit a facility if it is subject to an emergency declaration⁶³
- the QLS opposed any continued power to restrict access to corrective services facilities, as 'it is critical ... that any temporary measures do not impede prisoners' access to legal representation and health care and further, that prisoners can continue on programs so they can meet parole eligibility dates'.⁶⁴

In regard to access to legal and other services, QCS stated that it had:

... ensured the rights of people in our care are upheld to the greatest extent possible. QCS has enabled prisoner privileges, continued programs, facilitated access to legal representatives and permitted access for family and other visitors, including official visitors, where possible throughout the COVID-19 public health emergency.

...

To ensure QCS' response to COVID-19 is more sustainable, a new Custodial Operations Pandemic Response Planning Tool has been implemented. This moves QCS away from the former four response stages to three response levels – Baseline, Standard and Elevated. This approach has utilised targeted strategies, in consultation with Queensland Health, to reduce the need for centre-wide lockdowns and other restrictions that have previously impacted visits and service delivery.⁶⁵

Committee comment

The committee acknowledges the human rights limitations in the Bill's extension of COVID-19 provisions in the Corrective Services Act.

The committee recognises the government's obligation to protect the health, safety and wellbeing of people in the Queensland community, including those in corrective facilities, from the risks posed by COVID-19. The continued use of safety measures, such as screening people entering facilities for

⁶⁰ Queensland Corrective Services, correspondence, 6 October 2022, p 1.

⁶¹ Submission 42.

⁶² Submission 42.

⁶³ Submission 9.

⁶⁴ Submission 13.

⁶⁵ Queensland Corrective Services, correspondence, 6 October 2022, p 2.

symptoms and mask wearing, to manage the risk and avoid the spread of COVID-19 in corrective facilities is a sensible and responsible way of managing those risks.

The committee notes the CHO's advice about the likely trajectory of COVID-19, from an epidemiological perspective. The recent decision by National Cabinet to end mandatory isolation in the community because of low rates of COVID-19 transmission and high community vaccination rates is also relevant. It is expected that these factors will be carefully considered in any decisions about the use of the COVID-19 emergency powers under the Corrective Services Act.

2.5 Other matters

2.5.1 Consultation on the Bill

Some individuals submitted that there had been insufficient consultation in the drafting of the Bill.⁶⁶

The explanatory notes state that a confidential consultation paper about the proposed changes was distributed to 'targeted stakeholders' including 'representative bodies from the health, aged care, disability, tourism, business, union and legal sectors', and that Queensland Health also provided briefings to some stakeholders to receive verbal feedback and 'to facilitate more informed written feedback'.⁶⁷

2.5.2 Retention of authorities to provide pharmacy services currently under emergency orders

The Pharmacy Guild of Australia, Queensland Branch (Pharmacy Guild) requested amendments to other legislation to continue some authorisations given under emergency orders during the declared public health emergency. The Pharmacy Guild sought support for pharmacies to be able to continue to deliver services permitted by emergency orders made under the *Medicines and Poisons Act 2019*:

- *COVID-19 Vaccine and Influenza Vaccine* — to administer vaccinations, to administer vaccinations off site, to possess and prepare, to enable trainee pharmacists to administer vaccinations
- *Schedule 4 Medicines - Enabling access without a prescription Pharmacist - Supply* — to supply the smallest available pack of a Schedule 4 medicine without a prescription.⁶⁸

Queensland Health advised that the issue raised by the Pharmacy Guild 'is under consideration and will be the subject of separate consultation in due course'.⁶⁹

Committee comment

The committee recognises that from large cities to small towns, Queensland's community pharmacies played an integral role in supporting Queenslanders across the state during the pandemic by ensuring continuing community access to medicines and medication advice, primary health care services, information about COVID and vaccination services.

The Pharmacy Guild's concern that key advancements in the scope of pharmacy practice, made in response to the pandemic under the authority of emergency orders, will cease with the end of the declared public health emergency and cessation of the emergency orders. Those advancements, as detailed in the Pharmacy Guild's submission, relate to access to, and administration of, vaccinations, as well as access to emergency supplies of medication without a prescription. The Pharmacy Guild was concerned that if people cannot access their GP for a prescription they will opt to go without their medication and potentially exacerbate a chronic health condition or will make a (preventable) presentation at a hospital emergency department. Similarly, some routine vaccinations that have been

⁶⁶ See for example submissions 14, 16, 19, 35.

⁶⁷ Explanatory notes, p 18.

⁶⁸ Submission 10.

⁶⁹ Queensland Health, correspondence, 23 September 2022, p 12.

being given at community pharmacies during the pandemic will, following the cessation of the declared public health emergency, require a visit to a GP.

The committee encourages the government to consider the broader service scope currently offered by community pharmacies as a way to facilitate easier access to medications, vaccinations and health services, especially in rural and remote communities, and as a means of relieving unnecessary pressure on hospital emergency departments, medical centres and GPs.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

3.1.1 Rights and liberties of individuals

3.1.1.1 *Rights and liberties of individuals—Clause 9 (new section 142E)*

Clause 9 inserts new section 142E in the Public Health Act authorising the CHO to issue a public health direction, which may require persons to wear or carry a face mask, quarantine or isolate, or not enter or remain at certain places unless vaccinated against COVID-19. The direction may be issued if COVID-19 is a controlled notifiable condition, that is, without a public health emergency being declared.

A public health direction:

- may include related requirements, such as giving documentary evidence of vaccination status⁷⁰
- takes effect when published and expires 90 days after it takes effect (unless revoked sooner)⁷¹
- must be tabled in the Legislative Assembly within 21 days after being given, and may be disallowed⁷²
- must be given by the CHO; the power cannot be delegated.⁷³

General rights and liberties—ordinary activities should not be unduly restricted

Directing persons to remain in their homes or to not visit other places breaches an individual’s right not to have their ordinary activities, including operating a business, unduly restricted.⁷⁴

In relation to the requirement to quarantine or isolate, the explanatory notes provide that:

... the impact on the rights and liberties of individuals is justified, given the need to protect the health of the public by managing the risks of COVID-19 and in particular to ensure the latest health and medical advice about isolation of suspected or confirmed cases of COVID-19 can be implemented. Mask wearing, vaccination, isolation and quarantine requirements have contributed to Queensland’s success at managing COVID-19 by allowing rapid and tailored responses to transmission of COVID-19. The [CHO’s]

⁷⁰ See Bill, cl 9, s 142F.

⁷¹ See Bill, cl 9, ss 142G, 142I.

⁷² See Bill, cl 9, s 142L.

⁷³ See Bill, cl 9, s 142M.

⁷⁴ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: The OQPC Notebook*, p 118.

power to issue directions is confined to these limited categories, is clearly defined and is subject to strict limitations and safeguards.⁷⁵

Administrative power is sufficiently defined and subject to review

Vesting powers in the CHO could amount to a breach of fundamental legislative principles if the administrative powers are not sufficiently defined and not subject to review.⁷⁶ In this context, the explanatory notes state:

The power of the [CHO] to issue public health directions is limited in many ways including that a direction can only be given if the [CHO] reasonably believes the direction:

- is necessary to prevent or respond to a serious risk posed to the public health system or to the community as a result of COVID-19; or
- gives effect to an agreement or decision of National Cabinet or advice or recommendations of COVID-19 advisory bodies such as [Australian Health Protection Principal Committee] and [Australian Technical Advisory Group on Immunisation].⁷⁷

National Cabinet means ‘the committee comprising the Prime Minister and the Premier or Chief Minister of each State known as National Cabinet, or if the name of the committee changes, however described’.⁷⁸

The explanatory notes also point out that the limited scope of power:

... reflects the evolution of Queensland’s response to COVID-19, which is now focused on managing the impacts of COVID-19 on the health system and on vulnerable members of the community in a targeted manner that avoids imposing broad restrictions and places greater onus on individuals and organisations to manage ongoing risks.

Delegation of administrative power

Powers should be delegated only to appropriately qualified officers or employees.⁷⁹ The appropriateness of a limitation on delegation depends on all the circumstances including the nature of the power, its consequences and whether its use appears to require particular expertise or experience.⁸⁰

The explanatory notes provide the following justification for the delegation of power:

The delegation of powers to the [CHO] is considered appropriate to allow for a rapid, but proportionate, response to implement measures to respond to a serious risk posed to the public health system or community as a result of COVID-19 in a non-emergency context. For example, the ability to implement advice from COVID-19 advisory bodies like [the Australian Health Protection Principal Committee] and [the Australian Technical Advisory Group on Immunisation], for vaccination and isolation requirements, ensures Queensland will be able to maintain a consistent approach in line with other jurisdictions and adopt current clinical advice in a timely manner.

The delegation of powers to the [CHO] is consistent with the approach taken in other jurisdictions across Australia, such as Western Australia, Northern Territory, and Australian Capital Territory, which give some or all their directions powers to [CHOs]. Tasmania and Western Australia also provide some or all their directions powers to other senior public servants, such as the Director of Public Health.

... The Bill also provides for safeguards to require the [CHO] to revoke a public health direction once the relevant criteria for their introduction no longer apply. Given the new context, where a public health

⁷⁵ Explanatory notes, p 15.

⁷⁶ *Legislative Standards Act 1992*, s4(3)(a).

⁷⁷ Explanatory notes, p 14.

⁷⁸ Explanatory notes, p 25.

⁷⁹ The *Acts Interpretation Act 1954*, s 27A contains extensive provisions dealing with delegations.

⁸⁰ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 33.

direction can be given outside of a declared public health emergency, the Bill provides additional safeguards compared to those included in the previous temporary COVID-19 legislative emergency framework. These include that a direction expires 90 days after it takes effect and a direction must be tabled in Parliament and is subject to disallowance.⁸¹

The explanatory notes point out that the more limited scope in the CHO's power:

... recognises that while the nature of COVID-19 is still subject to rapid change, it is more stable than during the emergency phase, so it is appropriate to place more limits on the scope of delegated power.

Committee comment

The committee notes that the new power to issue a public health direction is not as extensive as the current powers under s 362B of the Public Health Act, which allow for border closures, quarantine of international and domestic arrivals, and restrictions on gatherings and access to vulnerable facilities.

The committee is satisfied that the proposed power shows sufficient regard for the rights and liberties of individuals and that the breach of fundamental legislative principle is justified, given the need to manage COVID-19. The committee is also satisfied that the administrative power is sufficiently defined, and the delegation of administrative power is appropriate, noting its reduced scope.

3.1.1.2 Rights and liberties of individuals—Clause 9 (new section 142K)

New section 142K makes it an offence to contravene a public health direction, unless a person has a reasonable excuse. A maximum penalty of 100 penalty units (currently, equal to \$14,375) applies. The Bill also amends schedule 1 of the State Penalties Enforcement Regulation 2014 to allow an authorised person to issue a penalty infringement notice for the new offence.

Authorised persons are appointed under section 377 of the Public Health Act by the chief executive, or the chief executive of a local government, and are public service officers or employees, health service employees or; employees or contractors of the local government.

Proportionality and relevance of penalties

A penalty should be proportionate and relevant to the offence.⁸²

The explanatory notes provide the following justification for the offence and its penalty:

The new offence provision will form part of the compliance framework for notifiable conditions under the Public Health Act. For more serious breaches, there is an existing provision under chapter 3 of the Public Health Act that makes it an offence to recklessly spread a controlled notifiable condition. This offence carries a maximum penalty of 200 penalty units or 18 months imprisonment and applies to all controlled notifiable conditions, not only COVID-19.

The penalty for non-compliance with a public health direction is considered reasonable, proportionate and appropriate to protect the community from the risk of transmission of COVID-19 by those who violate public health directions and, thereby, put the community at risk.⁸³

Committee comment

The committee is satisfied that the penalty imposed under s 142K is proportionate and relevant, given the need to enforce public health directions issued by the CHO.

Reversal of onus of proof

Legislation should not reverse the onus of proof in criminal proceedings without adequate justification.⁸⁴ For a reversal to be justified, the relevant fact must be something inherently

⁸¹ Explanatory notes, p 14.

⁸² OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

⁸³ Explanatory notes, pp 15–16.

⁸⁴ *Legislative Standards Act 1992*, s 4(3)(d).

impractical to test by alternative evidential means and where the defendant is particularly well positioned to disprove guilt.⁸⁵

New section 142K effectively reverses the onus of proof as the onus is on the person to prove that they had a reasonable excuse for contravening a public health direction. The explanatory notes do not address the issue of the reversal of the onus of proof.

If legislation prohibits a person from doing something ‘without reasonable excuse’ it would seem in many cases appropriate for the accused person to provide the necessary evidence of the reasonable excuse.⁸⁶ In Queensland, offences providing for an exemption from liability where a reasonable excuse exists tend to be drafted on the basis that the *Justices Act 1886* (s 76) would apply, placing the onus on the defendant to prove the existence of a reasonable excuse.⁸⁷ In this case, it seems likely that facts giving rise to a reasonable excuse would be within the particular knowledge of the person.

Committee comment

The committee considers the potential breach of fundamental legislative principle is justified because the reasons for the contravention would normally be wholly within the knowledge of the person alleged to have not followed the public health direction.

3.1.1.3 Rights and liberties of individuals—Clause 9 (new sections 142N–142Q)

As COVID-19 will be managed as a controlled notifiable condition, emergency officers will no longer enforce a public health direction. Instead, authorised persons will enforce directions under existing monitoring and enforcement powers in the Public Health Act, with some modifications.⁸⁸

One modification is new s 142N, which allows an authorised person who reasonably suspects a person is, or may be, contravening a public health direction to enter a place without a warrant or consent. An authorised person may seize evidence, direct persons to go to, and stay in, stated places, or direct workers to leave a place.⁸⁹

Rights and liberties of individuals

As noted above, an individual’s rights and liberties will be affected by being directed to do certain things or by not being able to perform their ordinary activities without interference.

The explanatory notes offer the following justification:

The powers are clearly defined and subject to both existing and new safeguards, so that the risk of infringement of individual rights and liberties under these powers is considered to be low. The impact on the rights and liberties of individuals is justified given the need to protect the health of the public by managing the response of COVID-19 through enforcement of targeted public health directions around mask-wearing, isolation and quarantine, and vaccination of certain workers in vulnerable settings.

The power to enforce compliance with a public health direction is also appropriately limited. It requires an authorised person to give a person an opportunity to voluntarily comply with a public health direction before enforcing the direction.⁹⁰

⁸⁵ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 36.

⁸⁶ OQPC, *Principles of good legislation: OQPC guide to FLPs*, Reversal of onus of proof, p 25.

⁸⁷ OQPC, *Principles of good legislation: OQPC guide to FLPs*, Reversal of onus of proof, pp 8, 25.

⁸⁸ Explanatory notes, p 10.

⁸⁹ Bill, cl 9, ss 142O, 142Q.

⁹⁰ Explanatory notes, p 16.

Administrative power is sufficiently defined and subject to review

As noted above, whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.⁹¹ Giving new powers to authorised persons raises the issue of whether the powers are appropriately defined.

Delegation of administrative power

As noted above, powers should be delegated only to appropriately qualified officers or employees.⁹² The delegation of these powers to authorised persons raises the issue of whether the powers have been appropriately delegated.

Power to enter premises or seize property

Legislation should confer power to enter premises, and search for or seize documents or other property, with the occupier's consent or under a warrant issued by a judge or other judicial officer. This principle supports a long-established rule of common law that protects the property of citizens.⁹³

Fundamental legislative principles are particularly important when powers of inspectors and similar officials are prescribed in legislation because these powers are very likely to interfere directly with the rights and liberties of individuals.⁹⁴

The explanatory notes set out the scope of the power to enter premises:

The Bill includes limitations on the powers of authorised persons. Regarding entry to places without a warrant, the authorised person must reasonably suspect a person is, or may be, contravening a public health direction at the place. Further, the power does not extend to dwellings or a part of a place where a person is undergoing a health procedure or consulting with a health practitioner, where there is a greater expectation of privacy. Also, an authorised person must, if reasonably practicable, inform the occupier of the place of a proposed entry and advise them the authorised person is legally permitted to enter the place.⁹⁵

Committee comment

The committee is satisfied the impact on an individual's rights and liberties in regard to the proposed powers for an authorised person to enter premises, seize property, direct persons to isolate or quarantine, or direct workers to leave a place, have been sufficiently justified.

3.1.1.4 Rights and liberties of individuals—Clause 9 (new section 142R)***Compulsory acquisition of property***

Legislation should provide for the compulsory acquisition of property only with fair compensation.⁹⁶

⁹¹ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 18.

⁹² The *Acts Interpretation Act 1954*, s 27A contains extensive provisions dealing with delegations.

⁹³ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 44.

⁹⁴ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 45.

⁹⁵ Explanatory notes, p 16.

⁹⁶ *Legislative Standards Act 1992*, s 4(3)(i).

New section 142R provides that a person is not entitled to be paid any compensation for any loss or damage suffered because of the exercise or purported exercise of a public health direction or an enforcement power. This maintains the bar to compensation established in 2020 when s 366 of the Public Health Act was amended to specify compensation did not apply to the COVID-19 emergency.⁹⁷ The explanatory notes state:

This breach is considered justified as, due to the extensive economic impacts of managing COVID-19, uncapped and unpredictable compensation claims for damage and loss suffered may place further economic pressure on the State. The impact on the rights and liberties of individuals is justified given the need to protect the health system capacity and vulnerable members of the community through the ongoing management of COVID-19.⁹⁸

Committee comment

The committee considers the impact on an individual's rights and liberties from the exclusion from compensation has been sufficiently justified.

3.1.1.5 Rights and liberties of individuals—Clause 6 (Corrective Services Act)

Clause 6 amends part 15A of chapter 6 of the Corrective Services Act to extend its expiry to 31 October 2023, ensuring that an emergency declaration can continue to be made about corrective services facilities. As noted above, the amendments align with the policy of managing COVID-19 as a controlled notifiable condition.

General rights and liberties—ordinary activities should not be unduly restricted

Extending the expiry of amendments to the Corrective Services Act allows the chief executive to require a person entering a corrective services facility to be screened for COVID-19 and to refuse entry to a person exhibiting flu-like symptoms. The chief executive's declaration power limits individuals' rights and liberties.

The explanatory notes are framed in the context of delegation of administrative power, not rights and liberties generally. Nonetheless, the justification offered in that context is relevant here:

Continuation of the temporary extension of the emergency declaration timeframe will provide greater certainty for QCS officers, and for prisoners and visitors to corrective services facilities. Applying the emergency declaration to all corrective services facilities will ensure protective measures can be applied in any facility that may be impacted by COVID-19, such as work camps and the Helana Jones Centre. Given the unprecedented challenges of managing the risks associated with COVID-19 in the correctional environment, these temporary measures are aimed at protecting the health and safety of staff, prisoners, offenders and the broader community. They are therefore considered acceptable and necessary to support QCS's ongoing management of COVID-19 in corrective services facilities.⁹⁹

Administrative power is sufficiently defined and subject to review

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.¹⁰⁰

The explanatory notes provide the following justification:

... the Corrective Services Act already allows the chief executive to make an emergency declaration. The only change made by the temporary amendments is to extend the application of the declaration to a broader number of facilities, and to extend the timeframe for the declaration.

⁹⁷ Explanatory notes, p 11.

⁹⁸ Explanatory notes, p 17.

⁹⁹ Explanatory notes, p 18.

¹⁰⁰ *Legislative Standards Act 1992*, s 4(3)(a).

The power to issue an emergency declaration is subject to the Minister's approval, a time limit of 90 days, and to instances where the chief executive reasonably believes a situation exists at a corrective services facility that threatens or is likely to threaten the security or good order of the facility, the safety of a prisoner, or another person in the facility. Further, the expansion of the declaration-making power is temporary. In line with other temporary COVID 19 legislative measures, part 2 of the Bill ensures the amendments will cease on 31 October 2023 or if COVID-19 ceases to be a controlled notifiable condition under the Public Health Act.¹⁰¹

The explanatory notes argue that extending the emergency declaration to corrective service facilities:

... will ensure protective measures can be applied in any facility that may be impacted by COVID-19, such as work camps and the Helana Jones Centre. Given the unprecedented challenges of managing the risks associated with COVID-19 in the correctional environment, these temporary measures are aimed at protecting the health and safety of staff, prisoners, offenders and the broader community. They are therefore considered acceptable and necessary to support QCS's ongoing management of COVID-19 in corrective services facilities.¹⁰²

Delegation of administrative power

As noted above, powers should be delegated only to appropriately qualified officers or employees.¹⁰³

The explanatory notes provide the following justification for the delegation of power to the chief executive:

... it is necessary and appropriate that the chief executive, with the approval of the Minister, can make such a declaration to appropriately respond to the pandemic in the correctional environment and ensure the safety of staff, prisoners and the community. The chief executive is best placed to understand the impact of COVID-19 on corrective services facilities.¹⁰⁴

Committee comment

The committee is satisfied that the restrictions on rights and liberties of individuals are justified by the need to lessen the risk of spreading COVID-19 in an environment that is uniquely vulnerable. Further, the committee considers the delegation of administrative power is appropriate and that the administrative power vested in the chief executive is sufficiently defined and appropriate given the need for ongoing management of COVID-19 in corrective facilities.

3.1.2 Institution of Parliament

3.1.2.1 Delegation of legislative power—Clause 9 (new section 142E)

Section 142E delegates from the Parliament to the CHO the power to issue a public health direction in specific circumstances. The power cannot be delegated by the CHO.¹⁰⁵ Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons. The justification provided in the explanatory notes for the delegation of power is outlined above.

Committee comment

The committee considers the power to issue a public health direction is delegated appropriately to the CHO, taking into account the way the power is defined under s 142E(3) and balanced against the need to continue to manage the spread of COVID-19.

¹⁰¹ Explanatory notes, pp 17-18.

¹⁰² Explanatory notes, p 18.

¹⁰³ The *Acts Interpretation Act 1954*, s 27A contains extensive provisions dealing with delegations.

¹⁰⁴ Explanatory notes, p 18.

¹⁰⁵ Bill, cl 9, s 142M.

3.1.2.2 Scrutiny of the Legislative Assembly—Clause 9 (new section 142E)

A Bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.¹⁰⁶ The Bill delegates power to the CHO to make public health directions. As noted above, unlike a current public health direction, a new public health direction must be tabled in the Legislative Assembly within 21 days after being given and may be subject to disallowance as if it were subordinate legislation. The CHO must also publish on the Queensland Health website a justification statement for the public health direction within 5 days after giving the direction. The justification statement is to be tabled with the public health direction and treated as a human rights certificate.

Committee comment

The committee is satisfied there is a sufficient level of parliamentary oversight and scrutiny as the tabling and disallowance requirements under the LSA apply, enabling the Legislative Assembly to disallow a direction.

3.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Committee comment

Explanatory notes were tabled with the introduction of the Bill. The explanatory notes do not address the issue of the reversal of the onus of proof in relation to proposed new s 142K. Otherwise the notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.¹⁰⁷

A Bill is compatible with human rights if the Bill:

- (a) does not limit a human right, or
- (b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the HRA.¹⁰⁸

The HRA protects fundamental human rights drawn from international human rights law. Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

4.1 Human rights compatibility

The statement of compatibility which was tabled by the Minister when introducing the Bill identified a number of limitations on human rights arising from provisions of the Bill.

4.1.1 Amendment of the *Public Health Act 2005*

In the statement of compatibility, the Minister advised that the most significant human rights limitations relate to the right to freedom of movement, particularly for persons who are subject to an isolation or quarantine direction. To a lesser extent, restrictions on movement will also limit rights to

¹⁰⁶ *Legislative Standards Act 1992*, s 4(4)(b).

¹⁰⁷ *Human Rights Act 2019*, s 39.

¹⁰⁸ *Human Rights Act 2019*, s 8.

freedom of thought, conscience, religion and belief; freedom of expression; peaceful assembly and freedom of association; and cultural rights. The limitation on the right not to be subjected to medical treatment without consent is also significant, particularly for those who have an objection to being vaccinated against COVID-19.¹⁰⁹

The Minister stated that ‘the purpose of the limitations on human rights in the Bill is to protect Queenslanders from serious risks to health and safety, including the potential for loss of life that could occur without an effective public health response to COVID-19’.¹¹⁰

The Minister noted that the Bill contains safeguards to ensure that any potential impact on human rights is minimised and no greater than necessary to respond to the COVID-19 pandemic.¹¹¹ These include:

- When making public health directions, the CHO is required to consider the impact on human rights.
- The public health direction powers may only be exercised by the CHO and cannot be delegated.
- Before issuing a direction, the CHO must have a reasonable belief that the direction is necessary to prevent or respond to a serious risk to the public health system or the community as a result of COVID-19, or is needed to give effect to a decision or agreement of National Cabinet or advice or recommendation of a COVID-19 advisory body, such as AHPPC.
- The CHO must publish a justification statement containing a summary of the rationale for each public health direction and an assessment of the direction’s compatibility with human rights.
- A public health direction must be tabled in Parliament within 21 calendar days after it is notified on the Queensland Health website or in the gazette and is subject to referral to a parliamentary committee and disallowance.
- If at any time the CHO is satisfied that a direction is no longer necessary to prevent or respond to a serious risk to the public health system or community, or the direction is no longer needed to give effect to a decision or agreement of National Cabinet or advice or recommendation of a COVID-19 advisory body, the direction must be revoked.
- Directions to isolate or quarantine can only apply to persons who have tested positive to COVID-19 or are a symptomatic close contact, and only for periods of up to 7 days.
- Vaccination-related requirements included in a direction must be limited to workers in particular settings. Personal visitors and family members visiting residents of aged care facilities will not be required to be vaccinated in order to enter the facility.
- Directions must state the period during which they apply and that non-compliance with the direction is an offence.
- A direction will expire 90 days after it takes effect.
- A person must be given an opportunity to voluntarily comply with a direction before an authorised person can enforce a public health direction.
- A person who fails to comply with a direction does not commit an offence if they have a reasonable excuse for not complying.
- Directions may include exceptions and safeguards to minimise adverse impacts on human rights and other interests. For example, a person who is required to isolate may be permitted to obtain medical supplies.¹¹²

¹⁰⁹ Statement of compatibility, p 21

¹¹⁰ Statement of compatibility, p 18.

¹¹¹ Statement of compatibility, p 20.

¹¹² Statement of compatibility, pp 20-21.

4.1.2 Extension of emergency powers under the *Corrective Services Act 2006*

In the statement of compatibility, the Minister advised that the amendment to the Corrective Services Act ‘is for the purpose of protecting the health, safety and wellbeing (and right to life) of staff, prisoners and visitors’.¹¹³ The Minister also stated that there are sufficient safeguards in place to minimise any human rights limitations associated with the amendment and exercise of the power to make a declaration,¹¹⁴ including:

- The Commissioner must reasonably believe a situation exists at a corrective services facility that threatens or is likely to threaten the security or good order of the facility or safety of a prisoner or another person in the facility, to make a declaration.
- The making of a declaration is subject to the approval of the Minister.
- All decisions made under a declaration, such as decisions to restrict visits or cancel activities, are themselves decisions that must be made in a way that is compatible with human rights in accordance with the Human Rights Act.
- The expanded declaration-making power is only available while COVID-19 is declared to be a controlled notifiable condition under the Public Health Act.
- A declaration can only be made for a set period of time after which it must cease or a new declaration must be made.
- While not required by statute, all declarations made under s 268 in response to COVID-19 have been made publicly available. This will continue to occur.
- The amendment is a temporary measure and will expire on 31 October 2023.¹¹⁵

Committee comment

The committee is sensitive to the need for balance between enabling necessary public health powers to protect the community, particularly the vulnerable, and the capacity of the health system, while protecting human rights to the fullest extent possible.

Having considered the explanations provided in the statement of compatibility and the relevant clauses of the Bill, the committee considers the Bill achieves an appropriate balance. The committee is satisfied that the Bill is compatible with the HRA, as the human rights limitations identified are reasonable and justified, having regard to s 13 of the HRA.

4.2 Statement of compatibility

The HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill’s compatibility with human rights. The committee is required to consider the statement of compatibility and report to the Legislative Assembly about the statement.¹¹⁶

Committee comment

The committee considers that the statement of compatibility tabled with the Bill on its introduction generally contains a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

¹¹³ Statement of compatibility, p 29.

¹¹⁴ Statement of compatibility, p 28.

¹¹⁵ Statement of compatibility, pp 28-29.

¹¹⁶ *Human Rights Act 2019*, ss 38, 39.

Appendix A – Submitters

Sub #	Submitter
1	Name Withheld
2	Carers Queensland Ltd
3	Nerida Barrett
4	Australian Dental Association Queensland Branch
5	AMA Queensland
6	Youssef Youssef
7	West Moreton Health
8	Queensland Nurses and Midwives' Union
9	Queensland Human Rights Commission
10	The Pharmacy Guild of Australia, Queensland Branch
11	Australian Retailers Association
12	Office of the Health Ombudsman
13	Queensland Law Society
14	Adriana Marsh
15	Jean Koek
16	Jannisse Phillis
17	Mark Ruge
18	Name Withheld
19	Sarah Ryan
20	Name Withheld
21	Kym Woods
22	Name Withheld
23	Marilyn and Richard Kulpinski
24	Name Withheld
25	Confidential
26	Name Withheld
27	Name Withheld
28	Latisha Ryder
29	Name Withheld
30	Name Withheld
31	Name Withheld

Sub #	Submitter
32	Name Withheld
33	Name Withheld
34	Queensland Peoples' Protest
35	Bee Cassidy
36	Juliana Guinane
37	Confidential
38	Name Withheld
39	Jayson Daldy
40	Name Withheld
41	Confidential
42	Prisoners' Legal Service
43	The Royal Australian and New Zealand College of Psychiatrists Queensland Branch
44	Australian College of Nurse Practitioners
45	Kerri-Ann Watson
46	Natalie Monos
47	Queensland Council for Civil Liberties
48	ADA Australia
49	Garry Nichols
50	Name Withheld
51	Christine Keys
52	Amanda Elliott
53	Rhonda Marriage
54	Libby Ward
55	Adrian Vasington
56	Royal Australian College of General Practitioners
57	Australian College of Nursing

Appendix B – Officials at public briefings

Brisbane – 28 September 2022, 9.30am

Queensland Health

- Dr John Gerrard, Chief Health Officer
- Ms Jasmina Joldić PSM, Associate Director-General, Strategy, Policy and Reform Division
- Mr David Harmer, Senior Director, Social Policy, Legislation and Statutory Agencies
- Mr Karson Mahler, Manager, Legislative Policy Unit
- Mr Tom Humphreys, Acting Assistant Commissioner, Professional Standards and Governance Command, Queensland Corrective Services

Brisbane – 28 September 2022, 2.00pm

Queensland Health

- Dr John Gerrard, Chief Health Officer
- Ms Jasmina Joldić PSM, Associate Director-General, Strategy, Policy and Reform Division
- Mr David Harmer, Senior Director, Social Policy, Legislation and Statutory Agencies
- Mr Karson Mahler, Manager, Legislative Policy Unit

Appendix C – Witnesses at public hearing

Brisbane – 28 September 2022

Queensland Nurses and Midwives' Union

- Ms Kellie Dwyer, Professional Officer
- Mr Daniel Prentice, Professional Research Officer

Queensland Human Rights Commission

- Ms Neroli Holmes, Deputy Commissioner
- Mr Sean Costello, Principal Lawyer (via teleconference)

The Pharmacy Guild of Australia

- Mr Gerard Benedet, Branch Director
- Ms Amanda Seeto, Queensland Branch Vice President and Branch Committee Member for Brisbane

Queensland Law Society

- Ms Kara Thomson, President
- Mr Matt Dunn, General Manager of Advocacy, Guidance and Governance
- Mr Yale Hudson-Flux, Graduate Solicitor

Prisoners' Legal Service

- Ms Vanessa Krulin, Acting Principal Solicitor

ADA Australia

- Ms Karen Williams, Principal Solicitor

Queensland Council for Civil Liberties

- Mr Michael Cope, President

Dissenting reports

DISSENTING REPORT

As with all legislation which has dealt with Queensland's response to COVID-19, Opposition members of the Committee have sought to engage respectfully in the Committee's consideration of this Bill.

It would be remiss if we did not acknowledge that the COVID-19 pandemic has caused significant disruption and upheaval to the lives of Queenslanders. There can be no escaping from the fact that COVID-19 took away many things from many people. We have previously expressed that sentiment when examining similar legislation – and it should rightly be acknowledged again on this occasion.

Despite the changes made by the government to this Bill as compared to its previous iterations, the provisions contained in this Bill do remain extraordinary.

The current state of the pandemic has shifted so greatly since a Bill of this nature was last introduced to the Parliament, that as Opposition Members of the Committee, we cannot support the legislation as it currently stands.

We acknowledge and accept that COVID-19 still circulates widely among our community. We also acknowledge we must be prepared for a potential new variant of the virus and the risks which that could bring.

However, we cannot go on living indefinitely with these type of legislative frameworks in place. That cannot and should not happen.

As it stands, there are now very few COVID-19 restrictions which impact Queensland life. With more restrictions being wound back, both in Queensland and nationally, we believe it is extremely difficult to justify to the community why legislation, like this Bill, should be passed in the Queensland Parliament.

If a situation were to arise where a new variant of the virus begins spreading through the community which poses a significant threat, action can, and should be taken.

We believe that if this were to occur, the Parliament can do its job and be recalled swiftly to pass emergency legislation.

We have recently seen how quickly this can be done. Just last month, the Parliament was recalled to pass legislation for a public holiday following the passing of the late Queen Elizabeth II.

If it were required, the Parliament should be recalled to pass emergency legislation. In doing so, the Opposition would judiciously review and consider any such legislation.

Queenslanders have learned to live with the virus. They have learned to take careful personal responsibility in going about their daily lives. As such, we believe the time for legislation like this has come and gone – until such a time that a new public health emergency arises.



Rob Molhoek MP
Deputy Chair
Member for Southport



Sam O'Connor MP
Member for Bonney

DISSENTING REPORT

**RE: HEC REPORT ON THE PUBLIC HEALTH AND OTHER LEGISLATION
(COVID-19 MANAGEMENT) AMENDMENT BILL 2022**

BY: STEPHEN ANDREW, MP (HEALTH & ENVIRONMENT COMMITTEE)

Date – 11 October 2022

I do not concur with the Committee's recommendation that the Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022 be passed.

I acknowledge the Bill's replacement of the current emergency framework with a new set of more "targeted powers", which allows the Chief Health Officer to only issue public health directions across a few key areas.

Those directions will now only be issued if the CHO believes it is "reasonably necessary" to:

- respond to a "serious risk" to the public health system or community;
- give effect to a National Cabinet decision; or
- give effect to advice from national advisory bodies (eg. AHPPC).

This narrowing of the State's emergency powers and improved 'checks and balances', allows for greater parliamentary scrutiny and oversight.

However, on principle, I cannot support the ongoing use of emergency powers in Queensland, in any form.

I continue to believe that the use of these powers is unnecessary and completely inappropriate in a free and open democracy such as ours.

I strongly concur with the views of the President of the Queensland Council for Civil Liberties' submission that ALL Queensland's emergency powers should be allowed to expire on 31 October 2022 as they are scheduled to do.

I also believe that these extraordinary powers are ones that should ONLY be exercised by a democratically elected representative of the people, such as the Minister, who is fully ACCOUNTABLE to the people for all actions taken.

The CHO is neither elected OR accountable to the people and therefore, his/her role should be as an advisor only.

There are also a number of broadly worded phrases in this Bill which concern me.

For example, references to “serious risk” are not properly defined in the Bill. Instead their meaning has been left entirely up to the CHO’s own discretion, which is not appropriate.

I also strongly oppose the Bill’s proposal to extend the full suite of emergency power provisions at all of Queensland’s corrective services facilities for another year.

A handwritten signature in blue ink, appearing to read "S. Andrew".

Stephen Andrew, MP
Member for Mirani