

15 September 2022

Our ref: LP:MC

Confidential

Committee Secretary
Health and Environment Committee
Parliament House
George Street
Brisbane Qld 4000

By email: [REDACTED]

Dear Committee Secretary

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

Thank you for the opportunity to provide feedback on the Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022 (**Bill**). The Queensland Law Society (QLS) appreciates being consulted on this important piece of legislation.

We commend the Queensland Government for the introduction of legislative and other measures over the last 21 months to respond to the COVID-19 pandemic, specifically those measures which allowed for flexibility and compliance with the health directives arising from the pandemic and consequential closures and restrictions. We also commend Queensland Health for its management of the ongoing and fluctuating transmission of COVID-19 and the impact this has had, and continues to have, on Queensland's hospital and health system, and Queensland Corrective Services for its management of the pandemic in the custodial environment.

Our submission deals with the proposed amendments to the *Public Health Act 2005* (**PHA**) and the *Corrective Services Act 2006* (**CSA**) separately. We set out our comments below for your consideration.

Proposed amendments to the PHA

We acknowledge it is likely there will be a need for a further extension of at least some of the public health measures under the PHA over the next 12 months, and that it is necessary to retain the ability to invoke certain measures quickly if circumstances change. While the ability

to respond to a change in circumstances surrounding the pandemic is important, it is critical to ensure there is appropriate scrutiny of, and safeguards for, these type of public health measures.

QLS has been broadly supportive of previous extensions of the public health COVID-19 measures, with the caveat that any such extensions must include: sunset clauses and/or expiry provisions; regular review of the measures by a parliamentary committee; and, public consultation on any proposed changes. In this context, we strongly support the move to replace the COVID-specific emergency framework with temporary amendments to the PHA to provide more targeted measures with higher thresholds and greater scrutiny and transparency of decisions. We welcome the targeted nature of the directions which can be issued by the Chief Health Officer and generally agree with the proposed threshold conditions.¹

We note, however, that the Bill does not provide a definition of 'serious risk'. We understand that 'serious risk' has intentionally not been defined in the Bill on the basis that an assessment of risk is best left to the expert judgment of the Chief Health Officer, acting on the most current evidence and public health advice.² Although we appreciate that this information may be difficult to provide in advance of changing circumstances relating to COVID-19 and community spread and impact, we consider it important that as much information as possible is provided to the public to justify decisions and directions. To that end, we would welcome further information as to how the Chief Health Officer or Queensland Health will determine when COVID-19 poses a 'serious risk' to the public health system or community. In any event, once a decision is made, the rationale for the decision or direction should be made public.

We also welcome the proposal to enhance transparency and scrutiny of decisions, including the requirement to publish a summary of the rationale for each direction that considers the impact of the direction on human rights and that a direction must be tabled in the Legislative Assembly within 21 days of being given and is subject to disallowance by Parliament.³ We consider these steps go some way to addressing concerns we have previously raised in relation to extension of certain public health measures. We suggest such directions also include the basis on which the threshold condition/s have been met, and recommend directions expire after 60 days (instead of the proposed 90 days).⁴

Further, we consider it appropriate that there remains a process by which a person may be granted an exemption from a requirement under a public health direction. Queensland Health should continue to provide information about the application and decision process and decisions made under this process should be reviewable. Decisions on exemption application should be made in a timely manner due to the nature of the exemption required; for example, where a person seeks an exemption from the requirement to isolate for a period of 7 days.

¹ Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022 ss 142E(1), 142E(3).

² Explanatory Memorandum, Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022 19.

³ Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022 ss 142C, 142H, 142L(1)-(2).

⁴ Ibid s 142I(2).

We understand there are likely to be exceptions to requirements to, for example, isolate and wear masks and that the exemption process may not be continued with due to the short and temporary nature of the measures proposed to be extended.

We consider both exceptions and an exemption process to be appropriate, noting that even if the latter takes some time to process, it still may be necessary for an individual to obtain.

Proposed amendments to the CSA

We agree there may be a need for a further extension of the temporary provisions under the CSA over the next 12 months, and that it is necessary to retain the ability to invoke certain measures quickly if circumstances change. In this context, we are broadly supportive of the proposal to extend the three temporary amendments under the CSA for a period of up to 12 months.⁵ However, we do not support the continued ability to make directions relating to visit restrictions. We also recommend that any declaration made under s 268 of the CSA be restricted to a period of 30 days (as opposed to 90 days).

Further, we acknowledge the increased vulnerability of those in the custodial environment, along with the increased risk posed by COVID-19 to frontline corrective services officers. As such, we support removing the requirement that a public health emergency declaration be in place for the temporary provisions under the CSA to apply. It is critical, however, 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. Accordingly, we would not support any continued power to restrict access to correctional facilities.

We would also welcome some increased transparency in relation to when and how such measures will be implemented in the absence of a public health emergency declaration. For example, we recommend:

- the thresholds which will trigger any temporary measures be made publicly available (or communicated to relevant stakeholders);
- any temporary measure must expire after 30 days unless it is remade;
- a summary of the rationale for each temporary measure be published (or communicated to relevant stakeholders) that considers the impacts of the measure on human rights; and,
- any measure must be revoked as soon as it is no longer needed.

Finally, we caution against implementing blanket temporary measures across all correctional facilities and would recommend that measures only be introduced on a case by case basis dependent on the circumstances at individual facilities.

⁵ Ibid s 351E.

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Thank you again for the opportunity to provide feedback on the proposed amendments to the PHA and CSA. If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Kara Thomson
President