

7 July 2021

Our ref: LP-MC

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: [REDACTED]

Dear Committee Secretary

Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021

Thank you for the opportunity to submit to the inquiry examining the Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021 (Bill). The Queensland Law Society (QLS) appreciates the opportunity to comment on this legislation.

The Bill proposes to further extend (and make some minor changes to) a number of the legislative measures implemented in response to the COVID-19 pandemic as well as introduce new measures for quarantine payment costs. In addition to the specific provisions in the Bill, the explanatory notes provide information about the measures contained in subordinate legislation which will also be extended.

Ongoing need for some measures

We note that the *COVID-19 Emergency Response and Other Legislation Amendment Act 2021* amended the expiry date of certain temporary measures in the *COVID-19 Emergency Response Act 2020* and the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* so that these will expire on 30 September 2021 unless there is further amendment.

The Bill would extend this legislative expiry date to 30 April 2022, or an earlier date to be prescribed by regulation.

QLS was broadly supportive of the previous extensions and agrees that it is likely there will be a need for a further extension of at least some of these measures beyond 30 September 2021.

Accordingly, while it may be appropriate for some specific measures to expire, it may be necessary to retain the ability to invoke these measures quickly if circumstances change; for example, if there are changes to public health directives that force business closures.

In addition, we are aware that consideration is being given to making some of the COVID-19 related measures permanent. This reform should occur in accordance with the usual process for amending legislation, which includes consultation with relevant stakeholders. However, where there has been evidence to demonstrate the positive impact of these reforms on the community, such as modernising the way documents are created, there would be adverse impacts from ending the temporary measures abruptly, thereby creating a gap in time between the ending of these measures and the permanent change. This could lead to uncertainty and disputes.

Therefore, QLS expresses broad support for the extension of the legislative COVID-19 measures subject to:

1. appropriate scrutiny and oversight as outlined below; and
2. the comments we make below in relation to specific measures.

Scrutiny and oversight for temporary measures

While the ability to respond to a change in circumstances surrounding the pandemic is important, as noted in our submission to the Economics and Governance Committee in relation to the COVID-19 Emergency Response and Other Legislation Amendment Bill 2021 (as it then was), it is critical to ensure there is appropriate scrutiny of, and safeguards for, this extraordinary emergency legislation.

Sunset clauses and expiry provisions

One way to ensure this legislation remains appropriate and proportionate to the current circumstances, and does not exceed or give rise to abuse of powers, is to set time limits by including sunset clauses and expiry provisions in the legislation. This will require the Government to return to the Parliament with amending legislation which can then be assessed in light of the impact of the laws and the current health and economic environment.

We note that the Bill amends provisions in existing legislation to extend expiry dates using specific dates. This is our preferred approach. Most of these list the new expiry date as 30 April 2022.

We would urge that expiry dates are clearly identifiable in the legislation, noting that there have now been a number of amending and extension acts.

Ongoing scrutiny and oversight

While expiry provisions/sunset clauses are effective oversight tools, we submit that it is also necessary to give a parliamentary committee oversight powers in respect of all COVID-19 related legislation and executive implementation of this legislation.

Inquiries by this committee would therefore not need to wait for the referral of new legislation to replace expiring legislation, but rather, the committee could set review dates and have inquiries triggered by other events. For example, the Economics and Governance Committee or Health and Environment Committee could review measures to ensure there is an ongoing health

justification and make recommendations each quarter about whether the measures can cease, depending on the health and related advice.

1. We support the specific expiry date provisions in the Bill.
2. There should be regular review of the COVID-19 measures by a parliamentary committee.

Continuation of specific measures

The Bill and Explanatory Notes identify the specific measures that will and will not be extended. In relation to these, QLS:

- generally supports the measures identified as expiring on 30 September 2021, noting however, that it is outside of the remit of QLS to comment on some of these;
- generally supports the extension of the measures which are proposed to be extended in the Bill and as noted in the Explanatory Notes, noting again that some of these matters are outside of the expertise of our members;
- strongly urges the legislation and/or directives to either permit lawyers to attend upon their clients in residential aged care facilities, hospitals and disability accommodation or, alternatively, permit the modified arrangements for making enduring documents as set out in the *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020 (Documents and Oaths Regulation)* to be extended for a further, limited period;
- submits that the Government should consider the impact of the vaccine rollout when issuing directives about visits to aged care facilities, hospitals and disability centres. The impact of the vaccination rollout on persons in prison and in youth detention facilities (as well as legal and other professionals visiting these centres) should also be considered, particularly where prison lockdowns have impeded the ability of those in custody to access legal representation;
- makes other comments below on the impact of the Documents and Oaths Regulation;
- makes comments below on specific measures for body corporates.

Documents and Oaths Regulation

This regulation has been of particular importance to our members, providing the ability to complete documents electronically and remotely when, due to the effects of the pandemic, this may not have otherwise have been possible. The regulation enabled individuals and business to exercise legal rights, progress legal proceedings and continue with business operations.

We have made previous submissions about the ongoing need for some of the measures provided for in the Documents and Oaths Regulation. So far in 2021 we have had three 'lockdowns' in Queensland which came into effect with relatively short notice. We have also

experienced border closures between states and territories and continuing international travel restrictions that are expected to extend into 2022. Some of these restrictions, notably international travel, will remain beyond September 2021 and some may be lifted before that time, but could be reinstated if there is community transmission in Queensland or within Australia.

The temporary measures in the regulation should be retained until such time as permanent reforms can be made to enable electronic signing and remote witnessing of affidavits, statutory declarations, some mortgages, general powers of attorney for companies and deeds (though we note deeds are not required to be witnessed under the current measures).

As to wills and enduring documents, we note that the measures applicable to these documents in the Documents and Oaths Regulation expired on 30 June 2021. While there were many benefits from these measures, members of our legal policy committees were concerned about the potential risks and difficulties associated with someone (the witness) not being physically present at the time of signing these types of documents for the purpose of assessing capacity, verifying identity and ensuring, so far as is reasonable, there was no duress or undue influence.

To further assess the impacts of these measures, we consider that a review should be undertaken of the available data during the period the regulation was in force for these documents, and during the pandemic generally which shows how the documents were signed, what barriers were faced and what the consequences were. These issues should be the subject of ongoing consultation and review to determine whether electronic signing and remote witnessing can be safely implemented. Our members would be happy to contribute to this process.

Currently, lawyers are not included in the list of visitors allowed to enter certain restricted areas, including residential aged care facilities, hospitals and disability accommodation. QLS considers it imperative that legal practitioners be able to these facilities for the purpose of providing legal services to resident clients. This is particularly so in light of the recent expiration of the modified provisions relating to wills and enduring documents. It is unacceptable that patients and residents in these facilities do not have access to legal representatives.

A person's legal representative needs to be able to assist them to create and execute documents such as wills and ending powers of attorney, which can be very time sensitive documents. Lawyers must be able to facilitate the signing of these documents, either by way of in person visits to restricted areas, or via the arrangements provided for in the Documents and Oaths Regulation. We urge the Government to take immediate action to resolve this issue.

In addition, given the fluctuating status of the COVID-19 pandemic (as highlighted above) and considering the vital role that nurse practitioners play in the provision of healthcare in clinical settings (not only in regional and remote areas), QLS has no objection to the extension of the measure that permits nurse practitioners to sign the doctor's certificate on an advance health directive (**AHD**) to confirm that the principal has capacity to make the AHD.

Specific measures for bodies corporate

In the current environment, QLS considers that a further extension of some of the measures relating to bodies corporates are not necessary for the following measures:

- chapter 7, part 3 of the *Body Corporate and Community Management Act 1997 (BCCM Act)* - financial relief measures for bodies corporate regulated under the BCCM Act: allowing reduced sinking fund budgets, relaxing debt recovery timeframe requirements, allowing contribution due dates to be postponed, preventing changing of penalty interest on outstanding contributions, increasing maximum body corporate borrowing;
- part 6A of the *Building Units and Group Titles Act 1980 (BUGT Act)* - financial relief measure for bodies corporate regulated under the BUGT Act: allowing contribution due dates to be postponed; and
- part 2 of the *Justice Legislation (COVID-19 Emergency Response—Community Titles Schemes and Other Matters) Regulation 2020* - measures to provide bodies corporate regulated under the BCCM Act and BUGT Act with flexibility to adopt modified arrangements for meetings and inspection of documents.

However, QLS would support a further the extension of the measures described as provisions titled "Further exception to restricted issues for committee — COVID-19 public health directions" in the:

- *Body Corporate and Community Management (Accommodation Module) Regulation 2020*;
- *Body Corporate and Community Management (Commercial Module) Regulation 2020*,
- *Body Corporate and Community Management (Small Schemes Module) Regulation 2020*; and
- *Body Corporate and Community Management (Standard Module) Regulation 2020*.

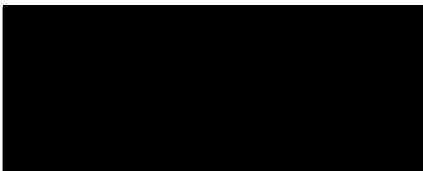
being measures to allow committees to make decisions about the use of common property and body corporate assets to ensure compliance with public health directions.

Ongoing consultation

We would welcome the opportunity to continue to consult with the Government on both the need for temporary measures and the permanent retention of specific reforms.

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
Vice President