

2 March 2022

Our ref: LP-MC

Committee Secretary
Community Support and Services Committee
Parliament House
George Street
Brisbane Qld 4000
By email: [REDACTED]

Dear Committee Secretary

Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022

Thank you for the opportunity to provide comments on the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022. The Queensland Law Society (QLS) has welcomed the extensive consultation by the Queensland Government on legislative amendments and other measures taken to respond the effects of the COVID-19 pandemic.

We note the purpose of the Bill is to:

- further extend the operation of essential public health measures implemented to facilitate Queensland's response to the COVID-19 pandemic
- extend amendments to the *Corrective Services Act 2006* (**Corrective Services Act**), *Disaster Management Act 2003* (**Disaster Management Act**) and *Mental Health Act 2016* (**Mental Health Act**) to support the public health response.

The explanatory notes to the Bill state that most of the associated COVID-19 measures, including extraordinary regulations and statutory instruments made pursuant to the modification framework under the *COVID-19 Emergency Response Act 2020*, will not be extended from expiring, except for the limited savings and transitional arrangements necessary to facilitate the return to normal operations.

The temporary measures which are to be further extended include:

- amendments to the *Public Health Act 2005* (**Public Health Act**) to increase powers for emergency officers and the Chief Health Officer to limit, or respond to, the spread of COVID-19 in Queensland, support testing and quarantine requirements and authorise other public health measures;
- amendments to the *Corrective Services Act*, *Disaster Management Act* and *Mental Health Act* to support the public health response;

Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022

- a head of power in the *COVID-19 Emergency Response Act 2020* to make regulations to facilitate transitional arrangements for the temporary framework.

The explanatory notes also outline the rationale for the further extension of some of these emergency provisions.

QLS agrees there is some ongoing need for these legislative measures. COVID-19 remains present in the community, even if the current infection and hospitalisation rates due to the Omicron variant of the virus have eased from the rates seen earlier this year, coupled with the increased vaccination rates.

However, these measures must be accompanied by formal and robust processes that facilitate appropriate scrutiny and oversight.

Scrutiny and oversight

In our previous comments about extending the emergency provisions, including in our response to the Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021, we advocated for better scrutiny and oversight of the COVID-19 emergency measures legislated by this Government.

Specifically, we called for a parliamentary committee to be given oversight powers in respect of all COVID-19 related legislation and executive implementation of this legislation. This has not occurred outside of the two initial inquiries into the economic and health responses and in respect of the specific extending legislation. It is imperative that Parliament has proper oversight of all delegated legislation and statutory instruments arising from this legislation.

If a single parliamentary committee is not to have a COVID-19 response oversight mandate, then we recommend that:

- (a) each and every parliamentary committee should be given the power to inquire into any relevant emergency measure on its own volition; and
- (b) any parliamentarian should also be able to make a referral to a committee.

It may also be appropriate for a committee to have clear authority to set specific review dates independent of a specific referral.

This committee oversight and scrutiny will ensure:

- the legislative measures remain justified based on the health and other evidence;
- the use of these measures is appropriate and consistent with frameworks such as the *Human Rights Act 2019* (**Human Right Act**); and,
- there are no unintended consequences arising from the measures and their implementation.

Right of review and appeal

In addition to parliamentary scrutiny, decisions flowing from powers granted under these emergency measures should be subject to appropriate review by and appeal to a court or tribunal.

Part 7 of the Public Health Act relates to powers of emergency officers (medical) to issue detention and isolation orders and pre-dates the COVID-19 emergency. It contains several provisions allowing for review by a magistrate, and subsequent appeal to a higher court, of detention orders made by medical officers.

However, Parts 7A, 7AA and 7B, introduced into the Public Health Act by the emergency legislation, do not contain these provisions. There is no mechanism in the legislation for a person to appeal a direction, issued in respect of COVID-19, to isolate at a particular place by an emergency officer.

QLS expressed concerns about the removal of this fundamental right for someone to appeal the merits of a decision of this nature at the public hearing for the inquiry into the Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021 and we note these concerns have also been raised by the Queensland Human Rights Commission (**QHRC**) and other bodies.

It appears that a policy rationale for the removal of this right was the sheer volume of people who might be directed to isolate. This may not, in itself, have been an appropriate justification to limit such rights. However, even if that argument could be made in 2020 and 2021, the situation in Queensland is now vastly different. The Government has stated that there are to be no more “lockdowns” and restrictions have been removed for arrivals into the state. In addition, the national change to the definition of a “close contact” has also led to fewer people in Queensland being required to isolate. Therefore, if the number of people who could be subjected to these orders presented a barrier to review by a court, then we submit this barrier has been largely removed.

However, regardless of numbers, it is imperative that an individual has a right of review and appeal and a clear process by which to exercise this right.

To assist in hearing these matters promptly, certain types of decisions could be reviewable by a magistrate, while other types of decisions might be better suited to determination by the Queensland Civil and Administrative Tribunal (**QCAT**). Both the Magistrates Court and QCAT will require additional resources to hear these matters, but ultimately extending these rights to COVID-19 related decisions is necessary to ensure all emergency powers are being lawfully applied and that there remains a sense of public confidence in the Government’s actions in respect of this pandemic.

Human rights consideration

Related to the issues of parliamentary scrutiny and the fundamental right to appeal Government decisions, is the importance of ensuring the protection of individuals’ human rights.

In our appearance at the public hearing on the previous extension bill, we agreed with the QHRC’s recommendation that there should be published human rights considerations for all public health directions. The QHRC has provided further particulars in its submission to the inquiry examining that bill.¹

¹<https://documents.parliament.qld.gov.au/committees/EGC/2021/PHOLFEEPAB2021/submissions/506.pdf>

We remain of the view that an ongoing assessment of possible human rights infringements arising from the emergency measures is warranted.

Modified arrangements for wills and enduring documents

We welcome the most recent Aged Care Direction No. 13 which provides an exemption to restricted residential aged care facilities for fully vaccinated legal practitioners to undertake essential legal services that must be done face to face. At a minimum, we consider that a similar exemption is required under the equivalent hospital and disability accommodation directions, to ensure equitable access to essential legal services in those settings.

Our members also raise the need for the re-enlivening of the modified arrangements for wills and enduring documents in a broader sense. With COVID-19 now circulating widely in our community, both lawyers and their clients may be in isolation because they are a positive case, a close contact, or immunocompromised and needing to limit in person contact with others. While access must be facilitated for legal practitioners to aged care settings, hospitals and disability accommodation, there are other circumstances where essential legal services (including the making of wills and enduring documents) are unable to be provided because of COVID-19.

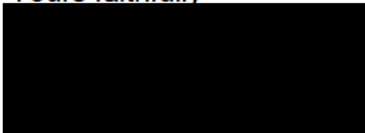
Re-enlivening the modified arrangements for wills and enduring documents would ensure the continuity of these essential legal services in cases where lawyers or their clients are simply unable to leave isolation. We would recommend that such arrangements are in place until the end of the COVID-19 public health emergency date which is set out under the Bill.

Ongoing consultation

We would welcome the opportunity to continue to consult with the Government on both the need for temporary measures and proper oversight processes.

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