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

Explanatory Notes

Short title

The short title of the Bill is the Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022 (Bill).

Policy objectives and the reasons for them

On 29 January 2020, a public health emergency was declared under section 319 of the *Public Health Act 2005* due to COVID-19. The public health emergency has been extended on several occasions by regulation, most recently until 22 September 2022.

To support Queensland's response to the public health emergency, temporary amendments were made to the Public Health Act to provide the Chief Health Officer and emergency officers with extraordinary powers to contain and respond to the spread of COVID-19. This temporary legislative framework has been integral to Queensland's successful response to COVID-19, including immediate efforts to eliminate and suppress the virus, and ongoing strategies to manage the endemic risks of COVID-19. The ability to respond quickly and flexibly over the course of the public health emergency has enabled Queensland to avoid significant disruption to daily life while preventing thousands of cases, keeping the community safe, and ultimately saving lives.

Unless further extended by an Act of Parliament, the temporary emergency framework will expire on 31 October 2022 or earlier if the Minister for Health and Ambulance Services ends the public health emergency. Based on the current trajectory of COVID-19 and Queensland's strategy for managing the next stage of the public health emergency, it is unlikely the full suite of emergency powers will be necessary after October 2022 to manage the public health response. Accordingly, it is proposed not to further extend the current emergency legislative framework for COVID-19.

In place of the current framework, it is proposed to insert temporary and more targeted powers to manage COVID-19 as a notifiable condition under the Public Health Act until 31 October 2023. This will provide a step-down approach to managing the pandemic response, enabling Queensland to continue to respond to serious risks to the community, protect the capacity of the health system and implement national decisions and advice about the ongoing management of COVID-19. The proposed powers would be subject to new procedures, limitations and safeguards to enhance transparency and scrutiny of public health directions, including potential limitations on human rights.

The policy objectives and reasons for the proposed approach are explained in more detail below.

Overview of Queensland's temporary legislative framework to respond to COVID-19

In March 2020, temporary amendments were made to the Public Health Act to support Queensland's public health response to COVID-19.[1] The amendments provided broad powers for the Chief Health Officer and emergency officers to contain and respond to the spread of COVID-19 in the community, including the power to issue directions restricting the movement of persons, limiting physical contact and instituting other requirements necessary to protect public health. Subsequent amendments to the Public Health Act provided additional temporary powers to facilitate contact tracing, strengthen enforcement of public health directions, support quarantine arrangements for persons arriving in Queensland and address other urgent or critical needs identified in the course of the public health response.[2]

Temporary amendments were also made to legislation across the statute book to support Queensland's public health response and the broader institutional and economic response to the COVID-19 pandemic. Most of these other temporary amendments expired on 31 April 2022 as they no longer formed part of the COVID-19 response, including extraordinary regulations and statutory instruments made pursuant to the modification framework under the *COVID-19 Emergency Response Act 2020*. The *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2022* extended some temporary amendments until 31 October 2022, due to their ongoing need as part of the public health response. This included measures to:

- respond to the risks of COVID-19 in corrective service facilities under the *Corrective Services Act 2006*;
- manage disaster arrangements under the *Disaster Management Act 2003*; and
- allow patients subject to the *Mental Health Act 2016* to be granted leave to comply with public health directions.

The Bill extends the amendments to the Corrective Services Act to support the ongoing management of COVID-19 in the corrective services environment. The Bill does not propose to further extend amendments made to other portfolio legislation.

Expected trajectory of COVID-19 in Queensland

COVID-19 cannot be eliminated. The instability of the virus and non-specific symptoms, which are similar to many other viral illnesses, mean that it will persist in the community, eventually becoming less severe and less disruptive to society. COVID-19 disproportionately affects the unvaccinated, under-vaccinated and cohorts with waning immunity.

The path from pandemic to endemic is not expected to be linear, with the risk of COVID-19 scaling up and down over time. While the emergence of new variants of concern would normally take years, for COVID-19 it has taken only months. This rapid emergence of new

[1] *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* part 11 (amending existing provisions for public health emergencies and inserting particular powers for the COVID-19 emergency).
[2] See, for example, *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* section 64 (authorising sharing of confidential information for contact tracing); *Community Services Industry (Portable Long Service Leave) Act 2020* (authorising fees for quarantine during COVID-19 emergency); *Corrective Services and Other Legislation Amendment Act 2020* section 55X (increasing penalties for persons who fail to comply with public health directions); *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021* section 31 (clarifying that quarantine directions may be given electronically).

variants is a distinguishing feature of COVID-19 compared to many other controlled notifiable conditions. It is this characteristic of COVID-19 which makes a future response, and predictive modelling, challenging. Experience has shown that each new variant is better at evading treatments and vaccination, even though vaccination continues to provide strong protection against serious disease.

Other factors that remain unknown include the long-term efficacy of vaccination against severe disease given waning immunity, whether more effective vaccines will be developed, and the interplay between COVID-19 and other illnesses leading to more moderate to severe outcomes (such as influenza and COVID-19 infections). Further, there are a range of post-infection impacts that, although not well understood, are likely to have considerable impact on the health system and workforce. These include 'long COVID' and other cardiovascular, neurologic, hematologic, and pulmonary outcomes. It is generally believed that repeated waves of COVID-19 will decrease in severity over time. However, with high levels of ongoing infection with each new wave of infections, the pool of people living with long COVID and other long-term outcomes is growing. All of these factors could shift the COVID-19 landscape and place the community and public health system at risk.

Expiry of temporary provisions to support the public health response

The temporary legislative framework supporting Queensland's response to the COVID-19 public health emergency will expire on 31 October 2022, or when the Minister for Health and Ambulance Services ends the public health emergency declaration, whichever is earlier. The Minister must end the public health emergency as soon as the Minister is satisfied that it is no longer necessary to exercise powers under chapter 8 of the Public Health Act to prevent or minimise serious adverse effects on human health.

The current temporary emergency powers have supported Queensland through each phase of the public health response, from elimination, to suppression, to management of COVID-19. Over the 21 months of Queensland's elimination strategy, Queensland has been successful in allowing the community to largely continue activities of daily life despite an ongoing global pandemic. The cases of COVID-19 in Queensland prior to 13 December 2021 were extraordinarily low, despite modelling suggesting that Queensland was on the same trajectory as other jurisdictions in terms of cases and deaths. For example, according to the Australian Bureau of Statistics, of the deaths caused by COVID-19 in Australia up until 31 May 2022, Queensland accounted for 11.4% compared to 43.6% in Victoria and 37.5% in New South Wales. Queensland's strong elimination strategy, including broad public health directions and other extraordinary measures, prevented thousands of cases, keeping the community safe, and ultimately saving lives.

From 13 December 2021, following the opening of Queensland's borders, the public health strategy shifted from elimination to suppression of COVID-19, seeking to prevent uncontrolled spread of the virus to protect both the hospital system's capacity and the community. This shift was in response to the high rates of COVID-19 vaccination across the eligible population.

Approximately two weeks prior to the border opening, the Omicron variant was detected in Australia and quickly became the dominant variant. The emergence of Omicron accelerated Queensland's shift from suppression to the management of COVID-19's spread within the community. Through the first and second Omicron waves, from December 2021 to February 2022 and in April 2022 respectively, the number of hospitalisations and admissions to intensive

care units was below expectations. Accordingly, Queensland's hospital system was able to cope within current capacity with the numbers of COVID-19-positive cases.

Because of Queensland's demonstrated capacity to manage the successive Omicron waves of infection while retaining health system capacity, it was possible for the Chief Health Officer to significantly ease restrictions. Since January 2022, most public health directions have been revoked or significantly eased, including:

- changes to test, trace, isolation and quarantine requirements for close contacts;
- removal of mask-wearing requirements in most settings;
- revocation of public health and social measures differentiating between vaccinated and unvaccinated persons in a wide range of discretionary venues (pubs, clubs and restaurants);
- easing of vaccine requirements for visitors to certain settings and for workers in certain high-risk settings; and
- removing check-in requirements for all venues.

As at 29 August 2022, only five public health directions remain in effect. These measures are targeted at protecting the hospital system capacity and vulnerable cohorts from COVID-19.

Given the current trajectory of the COVID-19 pandemic, it is unlikely the full suite of emergency powers and public health directions will be necessary after October 2022 to manage the public health response. During the initial stages of the pandemic, when little was known about COVID-19 and there was no or limited protection from vaccine and infection-derived immunity, it was appropriate to define these emergency powers broadly and with limited constraints. At this stage, however, while COVID-19 continues to present serious risks to the health system and community, these risks have become more manageable and predictable, even through multiple waves of infection. As this trend is expected to continue, further extending the COVID-19 public health emergency declaration may no longer be necessary, and continued reliance on broad emergency powers is no longer considered a proportionate approach to managing the ongoing public health response.

For these reasons, it is proposed not to further extend the current emergency legislative framework for COVID-19. This means the current emergency powers and measures will expire on 31 October 2022, or earlier if the declared public health emergency ends.

Targeted measures to support the ongoing management of COVID-19

The expiry of the temporary legislative framework will restore the Public Health Act to its pre-pandemic operation. This means the Chief Health Officer will no longer have the power to issue public health directions to manage COVID-19, as the power to issue directions will be repealed. COVID-19 will however continue to be a controlled notifiable condition under the Public Health Act.

The powers to deal with controlled notifiable conditions under the Public Health Act were not designed to manage prolonged widespread transmission of a novel disease such as COVID-19. As such, these provisions are not considered fit for purpose to support the next phase of Queensland's response to COVID-19. It is therefore proposed to supplement the pre-pandemic notifiable condition framework with time-limited, targeted powers that are considered necessary to support Queensland's ongoing management of COVID-19 for the next twelve months.

The proposed temporary powers to deal with COVID-19 as a controlled notifiable condition will provide a step-down approach to managing the pandemic response. This recognises that as Queensland moves out of an emergency context, and eventually out of the pandemic, it will remain necessary to retain some public health restrictions and to have the flexibility to respond proportionately to the ongoing risks posed by COVID-19 to the community and the public health system. It will also allow the Chief Health Officer to make public health directions that adopt a nationally consistent approach to managing COVID-19 by giving effect to decisions or agreements of National Cabinet and to advice or recommendations of COVID-19 advisory bodies such as the Australian Health Protection Principal Committee (AHPPC) and the Australian Technical Advisory Group on Immunisation (ATAGI). For example, a nationally consistent approach to isolation for diagnosed cases and quarantine for close contacts, based on clinical advice, has been and remains an important component of the ongoing response to COVID-19.

Managing COVID-19 in the correctional environment

A COVID-19 outbreak in a custodial setting presents a significant risk to Queensland Corrective Services' (QCS) capacity to achieve its core function to provide for the humane containment and rehabilitation of prisoners. Corrective services facilities are uniquely vulnerable to the spread of COVID-19 due to the close proximity of prisoners and staff, transience of prisoners and staff into and out of facilities, and limited ability to maintain social distancing or other controls such as remote work. Effective risk mitigation strategies are therefore essential to the delivery of frontline operations, ensuring the health and safety of prisoners, staff and visitors and to the proper administration of the correctional system.

Despite these inherent challenges, QCS has successfully managed and responded directly to the risks posed by COVID-19 with a targeted approach developed specifically for the custodial environment. The controls used to respond to these risks are regularly reviewed by QCS, including the stepping down from some measures that have previously been relied on, such as centre-wide restrictions on visitors, or requiring all visitors to be fully vaccinated against COVID-19.

QCS has determined that given the operational environment, a baseline level of controls is still required while there continues to be community transmission of COVID-19, with the flexibility to increase controls alongside escalating risk. This includes screening individuals entering facilities for COVID-19 symptoms, excluding visitors that are exhibiting COVID-19 symptoms (or offering non-contact visitation), mask wearing and isolating prisoners who have tested positive or who are symptomatic.

To support continuation of this approach, it is necessary to extend temporary COVID-19 measures in the Corrective Services Act for up to twelve months. This extension will ensure QCS can continue to take action to protect vulnerable prisoners, and its workforce, by managing COVID-19 in the correctional environment with control measures that have proven to be effective and are clearly authorised under law.

Achievement of policy objectives

The Bill will ensure the most critical measures needed to respond to the ongoing risks of COVID-19 are available as Queensland moves to the next phase of its public health response, the ongoing management of COVID-19.

The Bill amends the Public Health Act to provide temporary powers to deal with COVID-19 outside of a declared public health emergency. The amendments supplement the existing powers to manage controlled notifiable conditions with limited powers to make and enforce public health directions targeted at maintaining health system capacity and protecting vulnerable members of the community as COVID-19 continues to circulate in Queensland. The powers will also enable the Chief Health Officer to issue public health directions to implement national decisions and expert public health advice.

The amendments will achieve the intended step-down approach to managing COVID-19. The new framework includes the baseline powers necessary to mitigate serious risks to the health system and the community, particularly vulnerable persons, after the current emergency legislation expires. The powers are those most likely to be needed over the next twelve months as Queensland continues the transition to living with COVID-19. As such, the powers are time-limited and will expire on 31 October 2023.

Targeted measures to support the ongoing management of COVID-19

Queensland has an existing framework for managing notifiable conditions and controlled notifiable conditions in chapter 3 of the Public Health Act. These provisions are designed to protect persons from notifiable conditions by providing mechanisms that strike an appropriate balance between public health and the right of individuals to liberty and privacy.[3]

Controlled notifiable conditions include avian influenza, coronaviruses (COVID-19, MERS-CoV, SARS), influenza, measles and tuberculosis. While COVID-19 was prescribed as a controlled notifiable condition under the Public Health Act on 30 January 2020, to date it has been managed as a public health emergency given the ongoing nature of the pandemic and significant threat posed by the spread of the virus.

The Bill amends chapter 3 of the Public Health Act to insert a new part specific to COVID-19. The new part provides temporary, targeted powers to ensure protective measures can be implemented, if and when needed, to support the shift from suppressing to managing the virus.

The targeted powers proposed are those that have the highest impact on protecting vulnerable cohorts within the community, and preserving hospital system capacity.

Details of the provisions inserted by the Bill are provided below.

Public health directions

Over the course of the pandemic, measures required to respond to the spread of COVID-19 within the community have differed, with the emergency powers being exercised proportionate to the risks at the time. Since Queensland's borders opened on 13 December 2021 and COVID-19 began to circulate widely within the Queensland community without overwhelming

[3] Public Health Act section 65.

the health system, most public health directions that were necessary during earlier stages of the pandemic have been eased or revoked. The directions that remain are relatively limited in scope and primarily focus on:

- isolating persons who have COVID-19 and quarantining their close contacts, if they have symptoms;
- requiring masks to be carried or worn in specified vulnerable and high-risk settings; and
- requiring workers in vulnerable and high-risk settings to be vaccinated.

The Bill amends the Public Health Act to provide that the Chief Health Officer may continue to issue public health directions about these particular matters, outside of a declared public health emergency, subject to certain limitations and safeguards.

i. Isolation and quarantine

The ability to isolate or quarantine persons with COVID-19 or their symptomatic close contacts prevents people who have the virus, or are at high risk of having the virus, from further spreading COVID-19 in the community. This has been shown to have a significant impact on overall transmission, which could otherwise put the health system at risk from uncontrolled spread of COVID-19.

Under the Bill, the Chief Health Officer will be able to make public health directions requiring persons to stay at or in a stated place, such as their home, if they have tested positive for COVID-19, or if they have had contact with a person who has tested positive for COVID-19 and have symptoms of COVID-19. A public health direction made under this provision may prescribe an isolation or quarantine period of up to seven days. In limited circumstances, such as where a person who is in isolation continues to experience fever or acute respiratory symptoms of COVID-19 at the end of the prescribed isolation period, or where a person who is required to quarantine is exposed to another positive case of COVID-19 during the prescribed quarantine period, a direction could provide for an additional isolation or quarantine period of up to seven days. A direction may also require a symptomatic close contact to isolate for a further seven days if they test positive for COVID-19 during their period of quarantine.

The proposed isolation and quarantine powers are consistent with Queensland's current approach to managing diagnosed cases and close contacts based on national guidelines developed by the AHPPC Communicable Diseases Network Australia. Limiting the duration for which persons can be required to isolate or quarantine to seven days will ensure that public health directions about these matters are narrowly tailored to managing ongoing risks to the community and do not unnecessarily infringe human rights.

ii. Masks

The Bill provides that the Chief Health Officer may make public health directions requiring persons to wear or carry a face mask in particular settings or circumstances such as high-risk settings. A direction may also require persons who occupy or operate premises where masks must be worn to take steps to ensure compliance with mask requirements.

Masks are a key protective measure to reduce the risk of people contracting and transmitting COVID-19, particularly in indoor spaces where physical distancing cannot be maintained. Mask mandates have applied more broadly as needed during the pandemic, to manage

increased risk of transmission from highly transmissible variants. At times of serious risk to the community, the requirement to wear a mask has applied in other indoor public settings and outdoors when unable to remain physically distant from others.

Mask requirements can be implemented more rapidly, with relatively less impact, than other and more prescriptive measures used to respond to serious risks posed by COVID-19. The power to give directions about mask-wearing will support targeted measures to protect the community and health system, particularly in circumstances where there is a higher risk of transmission, including, for example, in healthcare settings; for a close contact visiting a vulnerable setting; for a diagnosed person permitted to leave isolation to receive urgent medical treatment; and, where nationally agreed, for persons travelling on domestic flights.

iii. Vaccination

Vaccination has proven to be an important factor in protecting the community, especially vulnerable cohorts, from the severity of COVID-19. The Chief Health Officer will be able to make public health directions requiring persons who work in vulnerable or high-risk settings to be vaccinated against COVID-19. A direction may also require employers and persons who operate workplaces to take reasonable steps to monitor and enforce compliance with vaccine requirements for their workers. Retaining the ability to require vaccination for workers in these circumstances is proportionate to the ongoing risk posed by COVID-19, particularly to vulnerable cohorts.

The Bill provides that a public health direction may include requirements that are related to, and support the effectiveness, of the direction. Related requirements may include, for example, requiring workers to produce documentation of their vaccination status, and requiring operators of workplaces to keep a record of the vaccination status of each worker.

Matters that cannot be the subject of public health directions

While the Chief Health Officer will retain the power to give public health directions about isolation and quarantine, masks, and vaccination of workers, the Chief Health Officer will no longer be able to give directions about other matters, including many directions that were integral to containing and suppressing COVID-19 during the initial emergency stages of the public health response. For example, the Chief Health Officer will no longer be able to give directions to:

- enable Queensland's borders to be closed to other Australian States and Territories;
- require quarantine for international and domestic arrivals;
- restrict the movement and gathering of people, through widespread lockdowns and restrictions on particular businesses and individual gatherings;
- require vaccinations for the general public, for example, when entering hospitality venues; or
- 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.

The more limited scope of the new public health direction 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.

Threshold test for making public health directions

In addition to limiting the scope of public health directions that may be given, the Bill introduces a new threshold test for when the power to give a direction may be exercised. Under the new test, a public health direction may be given only if the Chief Health Officer 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-19; 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 AHPPC or ATAGI.

This new test is stricter than the current threshold for giving a public health direction, which requires only that the Chief Health Officer reasonably believe that the direction is necessary to assist in containing, or to respond to, the spread of COVID-19 in the community. Again, this amendment is consistent with the current public health focus on managing COVID-19 within the community, given its widespread nature, rather than seeking to contain or eliminate it.

To provide additional protections for the community when this power is exercised, the Chief Health Officer is prohibited from delegating the direction-making power. Also, the Chief Health Officer must revoke a public health direction if at any time the relevant criteria for making the direction no longer apply.

Transparency and scrutiny of public health directions and human rights

A range of measures are proposed to enhance transparency of decision-making and ensure appropriate parliamentary scrutiny of public health directions, including consideration of human rights.

The Bill requires a public health direction be tabled in Parliament within 21 days from when the direction is given. If the direction is not tabled within this timeframe, it ceases to have effect. Once the direction is tabled, it will be referred to the relevant portfolio committee of Parliament, under section 93 of the *Parliament of Queensland Act 2001*, so that the committee may examine the lawfulness of the direction, the policy to be given effect by the direction and whether the direction is compatible with human rights. The direction will be subject to disallowance in accordance with the procedures for disallowing subordinate legislation under section 50 of the *Statutory Instruments Act 1992*.

In addition to these tabling and disallowance provisions, within five days of giving a public health direction, the Chief Health Officer must publish a statement justifying the direction and the reasons for it. The justification statement must include a summary of the Chief Health Officer's rationale for giving the direction and assess whether the direction is compatible with human rights. The justification statement must also be tabled in Parliament within 21 days so that the portfolio committee may consider it when examining the direction.

The requirements to publish and table a justification statement for each public health direction will provide transparency and enable members of Parliament and the public to better understand the Chief Health Officer's basis for making the direction and how human rights

considerations have been balanced. In deciding whether to make a public health direction, the Chief Health Officer considers and gives relative weight to a range of factors including epidemiological information, the capacity of the hospital and health system, the latest evidence about the course of the virus, available treatments, impacts on human rights and community behaviour.

A public health direction will expire after 90 days, unless it is sooner revoked. However, the expiry of a public health direction does not prevent the Chief Health Officer giving a further direction in the same terms. Regular review of public health directions will ensure directions only remain in place if they are needed, with the Chief Health Officer required to actively reassess and remake a direction after 90 days if it is still required. These provisions will also ensure directions are subject to regular parliamentary scrutiny through the tabling and disallowance process.

Enforcement and offence provisions

The current emergency legislative framework relies on emergency officers to operationalise and enforce public health directions. Emergency officers include police and ambulance officers, health service employees, public service officers and other persons appointed under chapter 8 of the Public Health Act specifically to respond to a public health emergency.

The Bill changes this approach to enforcement. As COVID-19 will now be managed as a controlled notifiable condition, enforcement of public health directions will no longer be the responsibility of emergency officers and will instead be accomplished through the existing monitoring and enforcement powers in chapter 9 of the Public Health Act, with some modifications tailored to the new temporary COVID-19 powers in the Bill.

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.

To monitor and enforce compliance with public health directions, authorised persons will be able to exercise their existing powers under chapter 9 of the Public Health Act, including powers to enter places, inspect documents, ask questions and collect evidence. These powers will be supplemented with more specific powers to ensure that authorised persons can respond immediately to potential breaches and take reasonable actions to enforce requirements of public health directions. In particular, authorised persons will be able to enter places to check and enforce compliance with public health directions, provided they reasonably suspect an offence is being committed. Entry is authorised without advance notice or a requirement that consent or a warrant be obtained. However, where practicable, before entering a place, an authorised person must inform the operator of the proposed entry and that the entry is authorised under the Public Health Act without a warrant or the consent of the occupier.

The Bill empowers authorised persons to take specific actions to directly enforce public health directions in certain circumstances where an individual's ongoing failure to comply with a public health direction could pose serious risks to other individuals, the community or the health system. An authorised person may take action to enforce a direction if:

- a person who is subject to a public health direction about isolation or quarantine is failing to comply with the direction by not staying at or in a stated place; or
- a person who is subject to a public health direction about vaccination of workers in particular settings is failing to comply with the direction by entering or remaining at a workplace without having been vaccinated against COVID-19 in the required way.

In these circumstances the authorised person may directly enforce the public health direction by requiring a person to go to and stay at a stated place, or to leave a stated workplace, in accordance with the direction. If necessary, an authorised person may also use reasonable force in the circumstances to make a person go to or remain at a stated place or to leave a workplace as required under a public health direction. Before taking steps to enforce a direction, an authorised person must give the person an opportunity to voluntarily comply.

Failure to comply with a public health direction will be an offence punishable by a fine of up to 100 penalty units. This is consistent with the penalty that has applied for failing to comply with a public health direction issued by the Chief Health Officer during the COVID-19 emergency phase, under temporary section 362D of the Public Health Act, except that a term of imprisonment will no longer apply.

The Bill amends the *State Penalties Enforcement Regulation 2014* so that the offence of contravening a public health direction may be enforced by issuing a penalty infringement notice. Infringement notices have been a highly effective tool for obtaining individuals' compliance with public health directions during Queensland's pandemic response. The prescribed fines payable under an infringement notice will remain at the levels currently in place for analogous contraventions under chapter 8, part 7A of the Public Health Act. The following fines will apply:

- 1.5 penalty units for an individual who contravenes a direction about masks;
- 10 penalty units for an individual who contravenes a direction about other matters; and
- 50 penalty units for a corporation that contravenes a direction.

Existing offence provisions for notifiable conditions, including the offence of recklessly spreading a controlled notifiable condition, will be unchanged and may also apply.

Compensation for loss or damage from the exercise of temporary COVID-19 powers

In 2020, a permanent amendment was made to section 366 of the Public Health Act to provide that the compensation provisions of that Act do not apply to the COVID-19 emergency. This provision was necessary given the possibility for a significant proportion of the population to be directly affected by the exercise of powers to respond to COVID-19. It also recognised that compliance with public health measures is critical to managing the risks of COVID-19 and protecting the health and safety of the community.

The Bill preserves the bar to compensation to the extent that a person suffers loss or damage as a result of the exercise of the new temporary powers in the Bill. This 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.

It is anticipated that the targeted nature of the Bill, in conjunction with the safeguards included, 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. In addition, Government has invested significantly in supporting individuals, businesses and organisations who have been financially disadvantaged as a result of the public health response to COVID-19.

Extension of COVID-19 provisions in the Corrective Services Act

QCS's targeted response to COVID-19 in corrective services facilities is mainly authorised under a declaration of emergency made under section 268 of the Corrective Services Act. The making of this declaration enables the QCS Commissioner to make directions to put in place controls that mitigate the risk of COVID-19 spreading in correctional facilities. These controls include COVID-19 vaccination requirements for staff entering or working in corrective services facilities, visitor restrictions, mandatory wearing of face masks and implementation of COVID-19 policies for the management of prisoner receptions, employee health risks and vulnerable prisoners.

A key aspect supporting this framework has been temporary legislative amendments made to chapter 6, part 15A of the Corrective Services Act to:

- provide for an emergency declaration under section 268 to be made about any corrective services facility, not only a prison, so that a declaration can be made about the Helana Jones Centre (a community corrections centre) and work camps;
- provide for a declaration under section 268 to be made for up to 90 days, instead of three days as is ordinarily required by the Act; and
- authorise QCS to temperature check and refuse entry to any person exhibiting COVID-19 symptoms.

The Bill will extend the operation of these temporary amendments for up to twelve months. As currently enacted, these provisions are reliant on the continuation of the public health emergency declaration. To align with the approach for managing COVID-19 in the broader community, the Bill replaces this requirement with a requirement for COVID-19 to be a controlled notifiable condition under the Public Health Act.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Estimated cost for government implementation

There are no significant costs to the State for implementation of the amendments. Any costs will be met from within existing budget allocations.

Consistency with fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that *fundamental legislative principles* are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'.

Section 4(2)(a) of the Legislative Standards Act provides that fundamental legislative principles include requiring that legislation has sufficient regard to rights and liberties of individuals. This includes, for example, whether the legislation:

- makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (section 4(3)(a) of the Legislative Standards Act);
- allows delegation of administrative power only in appropriate cases and to appropriate persons (section 4(3)(c) of the Legislative Standards Act);
- confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer (section 4(3)(e) of the Legislative Standards Act); and
- provides for the compulsory acquisition of property only with fair compensation (section 4(3)(i) of the Legislative Standards Act).

Section 4(2)(b) of the Legislative Standards Act provides that legislation must have sufficient regard to the institution of Parliament. Whether legislation has sufficient regard to the institution of Parliament depends on whether, for example:

- the delegation of legislative power is allowed only in appropriate cases and to appropriate persons (section 4(4)(a) of the Legislative Standards Act); and
- the exercise of the delegated power is sufficiently subjected to the scrutiny of the legislative assembly (section 4(4)(b) of the Legislative Standards Act).

The Bill contains several clauses that may impact these fundamental legislative principles, as discussed below.

Amendments to the *Public Health Act 2005*

Amendments to allow the Chief Health Officer to issue public health directions

Clause 9 of the Bill (new section 142E of the Public Health Act) authorises the Chief Health Officer to give public health directions, without a public health emergency being declared, in relation to:

- isolating persons who have COVID-19 for a period of up to seven days;
- quarantining symptomatic contacts of persons with COVID-19 for a period of up to seven days;
- requiring masks to be worn in specified circumstances, such as vulnerable and high-risk settings; and
- requiring workers at stated workplaces, such as vulnerable settings, to be vaccinated.

This provision may be seen to infringe on fundamental legislative principles as it delegates powers to make directions to the Chief Health Officer (sections 4(3)(c) and 4(4)(a) of the Legislative Standards Act).

The content of the directions that may be issued under these provisions are technical and detailed in nature and subject to change due to the fluctuating risks of COVID-19, so are more appropriately prescribed by a public health direction than being included in the Public Health Act or a regulation.

The Chief Health Officer's directions power in the Bill is considerably more limited than the directions power exercised by the Chief Health Officer under the temporary COVID-19 legislative framework during the COVID-19 public health emergency. This 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. Limiting the scope of the delegated power afforded to the Chief Health Officer ensures an appropriate and timely response to the fluctuating risk profile of COVID-19 while also recognising that legislation should have sufficient regard to the rights and liberties of individuals and the institution of Parliament. The proportionate exercise of the directions power will be crucial to ensure the health and safety of Queenslanders continues to take priority and to protect the capacity of the public hospital and health system to meet the needs of Queenslanders.

The power of the Chief Health Officer to issue public health directions is limited in many ways including that a direction can only be given if the Chief Health Officer 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 AHPPC and ATAGI.

The delegation of powers to the Chief Health Officer 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 AHPPC and ATAGI, 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 Chief Health Officer 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 Chief Health Officers. 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 Chief Health Officer is a statutory appointment and accountable in existing government structures. The Chief Health Officer reports to the Director-General of Queensland Health and the Minister for Health and Ambulance Services. Therefore, the decision-maker is still within the existing structures of the Queensland Government and the legislation does not give powers to make directions to an external party. The Bill also provides that the Chief Health Officer cannot delegate their power to make public health directions.

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

The provisions that authorise the Chief Health Officer to issue directions may also interfere with the rights and liberties of individuals by requiring a person to isolate or quarantine for limited periods of up to seven days; requiring persons to carry or wear a mask in certain circumstances; and requiring workers in stated settings to be vaccinated against COVID-19. The rights and liberties of individuals may also be affected by related requirements that support the effectiveness of these directions, such as requirements for operators of workplaces to take steps to promote compliance with vaccination requirements for workers. The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals. The concept of liberty requires that an activity should be lawful unless there is a sufficient reason to declare it unlawful by an appropriate authority.

It is considered 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 Chief Health Officer's power to issue directions is confined to these limited categories, is clearly defined and is subject to strict limitations and safeguards, as described above.

Proportionality for penalties for breaches of public health directions

The Legislative Standards Act does not explicitly provide a fundamental legislative principle for offence provisions. However, a new offence must be appropriate, proportionate and reasonable in light of the conduct that constitutes the offence.

Clause 9 of the Bill contains a provision making it an offence to fail to comply with a public health direction issued by the Chief Health Officer without a reasonable excuse (new section 142K). This offence carries a maximum penalty of 100 penalty units. Under the previous temporary COVID-19 emergency framework, non-compliance with a direction by the Chief Health Officer was an offence punishable by a maximum penalty of 100 penalty units or six months imprisonment. The new offence does not include an imprisonment term, given the lower level of risk in the absence of a declared emergency.

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.

Enforcement powers of authorised persons

Section 4(3)(e) of the Legislative Standards Act states that whether legislation has sufficient regard to rights and liberties of individuals depends on whether it confers powers to enter premises and search for or seize items only with a warrant issued by a judge or other judicial officer.

Clause 9 of the Bill provides authorised persons with powers to enter places, seize evidence, and enforce compliance with public health directions (for example, to require a person to isolate or quarantine) using force that is reasonable in the circumstances (new sections 142N to 142P). Exercise of these powers does not require a warrant.

Authorised persons are appointed by the chief executive or the chief executive officer of a local government. Persons can only be appointed if they are a public service officer or employee, an employee or contractor of the local government, a health service employee, or a person prescribed under a regulation.

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.

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.

There are also existing safeguards in chapter 9 applicable to authorised officers. For example, sections 412 and 414 require authorised persons to give a receipt to a person describing any items seized, and to return seized items within a specified time, and section 381 requires authorised officers to produce or display their identity cards when exercising powers under the Public Health Act.

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 to COVID-19 through enforcement of targeted public health directions around mask-wearing, isolation and quarantine, and vaccination of certain workers in vulnerable settings.

Enforcement through the State Penalties Enforcement Regulation

Part 4 of the Bill amends the State Penalties Enforcement Regulation to make non-compliance with a public health direction an offence for which a penalty infringement notice may be issued

under the *State Penalties Enforcement Act 1999*. This is consistent with the current enforcement mechanism for public health directions issued during a declared public health emergency.

The ability to impose immediate fines will act as an appropriate deterrent against non-compliance. The penalty is considered reasonable, proportionate and appropriate to protect the community, and vulnerable cohorts, from the risk of the uncontrolled spread of COVID-19 by those who violate public health directions.

Compensation for loss or damage suffered

Part 3 of the Bill removes an entitlement to compensation for losses or damages incurred because of an exercise of a power in relation to a public health direction. This may be seen to infringe on the fundamental legislative principle that legislation should provide for compulsory acquisition of property only with fair compensation (section 4(3)(i) of the Legislative Standards Act).

The exercise of powers to manage the public health response to the risks of COVID-19 has the potential to result in loss or damage to a person to whom a direction is given. Should this occur, the amendments will have the effect of setting aside the right to make a claim for fair compensation.

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. The Australian and Queensland Governments have provided substantial economic assistance packages to mitigate the loss and damage suffered by individuals and businesses due to COVID-19. The provision of stimulus packages has supported the State's economic recovery from the pandemic.

Amendments to the *Corrective Services Act 2006*

Extension of modifications to section 268 of the Corrective Services Act

Part 2 of the Bill continues amendments to the Corrective Services Act to:

- expand the application of an emergency declaration made by the chief executive under section 268 to all corrective services facilities, rather than just prisons; and
- enable the emergency declaration to be made for up to 90 days, instead of three days as is ordinarily required by the Act.

As the declaration is made by the chief executive (QCS Commissioner), these amendments require consideration of whether the delegation of administrative power is appropriate under sections 4(2)(a) and (b) of the Legislative Standards Act. However, it is important to note that 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.

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.

In relation to the ongoing management of COVID-19 in correctional facilities, 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.

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.

Consultation

A confidential consultation paper about the proposed changes to the Chief Health Officer's powers to give public health directions was distributed to targeted stakeholders. Stakeholders included representative bodies from the health, aged care, disability, tourism, business, union and legal sectors. Queensland Health also provided briefings to some stakeholders to receive verbal feedback and to facilitate more informed written feedback.

All stakeholder feedback received was carefully considered.

Overall, stakeholders were supportive of the approach taken in the Bill. Stakeholders generally supported a step-down approach to managing the ongoing response to COVID-19, in principle. Stakeholders were also generally supportive of the enhanced scrutiny of public health directions.

Some concerns were expressed about the extent to which the powers of the Chief Health Officer to make public health directions are proposed to be limited, given the current impacts of the BA.4 and BA.5 subvariants. These concerns were raised by stakeholders from health, aged care and disability support sectors.

Peak bodies in the tourism, hospitality and entertainment industries supported the reduction in the powers to make a public health direction with enhanced scrutiny, noting the beneficial effects and increased certainty this will provide for business operations.

Some stakeholders queried whether public health directions would be referred to and reviewed by a Parliamentary Committee. As a result of this feedback, the Bill clarifies the tabling and disallowance process will include referral to the relevant portfolio committee of the Legislative Assembly for review. Oversight, review and reporting by a Parliamentary Committee is considered an important component of the enhanced scrutiny for public health directions.

There was also some support for public health directions to be issued by an elected representative, who is accountable to the community, rather than by the Chief Health Officer. Given the ongoing uncertainty around the risks, severity and impacts of COVID-19 at this time, the Chief Health Officer is considered best placed to access relevant information locally and internationally to assess the health risk to the community and impacts on the public health system and determine whether a public health direction is needed, and the exact nature of any such direction. For similar reasons, 'serious risk' is not defined in the Bill as requested by some stakeholders. Assessing the risk posed to the community and the health system requires a continual assessment of epidemiological data and the likely efficacy of existing protective measures. This assessment is appropriately committed to the expert judgment of the Chief Health Officer, acting on the most current evidence and public health advice.

Some stakeholders indicated support for permanent pandemic or COVID-19 powers. Given the ongoing uncertainty around the risks, severity, and impacts of COVID-19, it is considered appropriate to establish targeted and time-limited powers that are tailored to managing the current pandemic over the next twelve months.

In relation to the amendments to the Corrective Services Act, a targeted group of ten stakeholders, including legal services, prisoner services and human rights organisations were invited to provide feedback on a proposal to extend the temporary provisions in the Corrective Services Act for up to twelve months. In response to this request, seven stakeholders provided formal feedback, and one stakeholder provided informal feedback. All feedback was carefully considered.

There is stakeholder support for the proposed measures noting that the correctional environment is uniquely vulnerable and there is a higher risk of transmission of COVID-19 between prisoners and staff. Stakeholders also noted that the temporary measures enacted throughout the pandemic have to date provided the flexibility required in order for the appropriate responses to be implemented to mitigate the impacts of COVID-19.

Stakeholders have raised concerns about ensuring appropriate safeguards and oversight of measures adopted in corrective services facilities in light of the measures no longer requiring a public health declaration to be invoked for these powers to be enlivened.

Although there is support for the proposed extension, stakeholders did highlight the importance of ensuring that prisoners have access to personal and legal visits, health services, and programs to meet parole eligibility dates during the exercise of the extended powers.

Three stakeholders do not support the extension of the proposed provisions.

Consistency with legislation of other jurisdictions

Many Australian jurisdictions, including Victoria and South Australia, have updated their legislation to enable management of COVID-19 outside of a declared public health emergency.

This shift recognises that COVID-19 is an enduring pandemic that requires ongoing measures to be able to respond to the frequent changes in risk quickly and appropriately.

However, the approaches taken by jurisdictions varies considerably. Some jurisdictions have retained much broader powers at the cessation of their public health emergencies or, as with New South Wales, had broader powers before the pandemic began. Some jurisdictions have inserted temporary or transitional powers, from six months to two years in duration, while others have implemented permanent pandemic or COVID-19 specific powers. The approaches taken by jurisdictions have been largely dependent on the risks and impacts of COVID-19 experienced in each jurisdiction and community expectations.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 provides that, when enacted, the short title of the Act will be the *Public Health and Other Legislation (COVID-19 Management) Amendment Act 2022*.

Commencement

Clause 2 provides for the commencement of the Act.

Part 2 commences on assent. This part contains amendments to the *Corrective Services Act 2006*.

Parts 3, 4 and 5 and schedule 1, part 1 commence on 1 November 2022, immediately after the expiry of the current legislative framework supporting Queensland's response to the COVID-19 public health emergency, which was most recently extended by the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2022*. This will allow an uninterrupted transition to the new temporary and targeted powers to manage the ongoing risks of COVID-19 outside of a declared public health emergency.

Schedule 1, part 2 commences on 1 November 2023.

Part 2 Amendment of Corrective Services Act 2006

Act amended

Clause 3 states that this part amends the Corrective Services Act.

Amendment of ch 6, pt 15A, hdg (COVID-19 emergency provisions)

Clause 4 omits the word 'emergency' from the title of chapter 6, part 15A of the Corrective Services Act. This amendment reflects that the temporary provisions are no longer tied to the COVID-19 public health emergency declaration.

Replacement of s 351A (Definition for part)

Clause 5 replaces section 351A of the Corrective Services Act with a new section 351A (Application of Part). New section 351A provides that chapter 6, part 15A only applies if COVID-19 is a controlled notifiable condition under the *Public Health Act 2005*. This ensures that the expanded powers provided for by this part cannot be relied on if COVID-19 ceases to be a controlled notifiable condition. This is an important safeguard for use of these temporary provisions.

Section 63 of the Public Health Act defines a *controlled notifiable condition* to mean a notifiable condition prescribed under a regulation as a controlled notifiable condition. For a condition to be prescribed as a controlled notifiable condition, the Minister must be satisfied:

- that the condition may have a substantial impact on public health;

- the ordinary conduct of a person with the condition is likely to result in the transmission of the condition to someone else; and
- the transmission of the condition will result in, or is likely to result in, long term or serious deleterious consequences for the health of the person to whom the condition is transmitted.

COVID-19 was prescribed as a controlled notifiable condition in the *Public Health Regulation 2018* on 30 January 2020.[4]

Amendment of s 351C (Modification of s 268 (Declaration of emergency))

Clause 6(1) omits references in section 351C of the Corrective Services Act to the COVID-19 emergency period. In line with the amendment to section 351A (Application of part), chapter 6, part 15A of the Corrective Services Act will no longer be linked to the COVID-19 public health emergency declaration made under the Public Health Act.

Clause 6(2) provides that, while chapter 6, part 15A is in effect, a declaration made under section 268 of the Corrective Services Act will lapse at the end of the period stated in the declaration (which is no more than 90 days) or when COVID-19 ceases to be a controlled notifiable condition under the Public Health Act. The chief executive will also retain the discretion to cease a declaration earlier.

Amendment of s 351E (Expiry of part)

Clause 7 provides that chapter 6, part 15A of the Corrective Services Act will expire on 31 October 2023.

Part 3 Amendment of Public Health Act 2005

Act amended

Clause 8 states that this part amends the Public Health Act.

Insertion of new ch 3, pt 5A

Clause 9 inserts new part 5A into chapter 3 of the Public Health Act. Chapter 3 of the Public Health Act contains provisions to protect people from notifiable conditions through mechanisms that provide an appropriate balance between the health of the public and the right of individuals to liberty and privacy.[5] New part 5A is titled 'Public health directions for COVID-19' and contains five divisions.

Division 1 contains the preliminary provisions for the part.

New section 142A provides that part 5A applies if COVID-19 is a controlled notifiable condition. Section 63 of the Public Health Act defines a *controlled notifiable condition* to mean a notifiable condition prescribed under a regulation as a controlled notifiable condition. For a condition to be prescribed as a controlled notifiable condition, the Minister must be satisfied:

[4] *Public Health (Coronavirus (2019-nCoV)) Amendment Regulation 2020.*
[5] Public Health Act section 65.

- that the condition may have a substantial impact on public health;
- the ordinary conduct of a person with the condition is likely to result in the transmission of the condition to someone else; and
- the transmission of the condition will result in, or is likely to result in, long term or serious deleterious consequences for the health of the person to whom the condition is transmitted.

COVID-19 was prescribed as a controlled notifiable condition in the *Public Health Regulation 2018* on 30 January 2020.[6]

New section 142B (Definitions for part) defines the following terms used in chapter 3, part 5A:

- *isolation period*, see section 142E(1)(b);
- *justification statement*, for a public health direction, see new section 142C;
- *operator*, of a place, means the person who has the day-to-day operation and control of the place;
- *public health direction*, see new section 142E(1);
- *quarantine period*, see section 142E(1)(c); and
- *worker*, at a place, includes a person who performs paid or unpaid work at the place, including work for which a person is to be paid by the operator of the place or another person, and whether or not the worker is an employee.

The definition of *worker* is intentionally broad. It captures persons undertaking paid or unpaid work. Unpaid work can include vocational placements, unpaid internships, unpaid work experience, and volunteer work to gain experience in a job or industry. Examples of workers include contractors, performers, presenters, or other specialists entering the stated workplace as part of delivering an activity, function or event; a person undertaking work placement related to an enrolled course of study; regulators; government employees; auditors; and sales representatives that work in the stated workplace even though they may only occasionally enter the setting as part of their work duties. It is not intended to include persons supporting, caring or assisting a consumer at the stated workplace with whom they have a familial or personal relationship.

New section 142C (Meaning of justification statement) defines *justification statement*. A justification statement, for a public health direction, is a document that includes:

- a summary of the Chief Health Officer's reasons for giving the direction; and
- the Chief Health Officer's opinion on the compatibility of the direction with human rights, including the nature and extent of any incompatibility.

The Chief Health Officer's assessment of compatibility with human rights includes the same information that is specified in section 41(2) of the *Human Rights Act 2019*, with the exception that the opinion is of the Chief Health Officer, as the giver of the direction, rather than a Minister. Although the equivalent information is required, the form of the information to be conveyed is left to the discretion of the Chief Health Officer.

As with acts, decisions and statutory provisions, a public health direction is compatible with human rights if it does not limit a human right or limits a human right only to the extent that is

[6] *Public Health (Coronavirus (2019-nCoV)) Amendment Regulation 2020.*

reasonable and demonstrably justifiable in accordance with section 13 of the Human Rights Act.

New section 142D (Relationship with other provisions of Act) provides that, except as provided by new section 142R (which limits the availability of compensation for loss or damage under section 422 of the Act), new part 5A does not limit the operation of any other provisions of the Public Health Act. For example, new part 5A includes an offence for failing to comply with a public health direction (see new section 142K), but there are other offences in the Public Health Act that could also apply depending on the circumstances, such as the existing offence of recklessly spreading a controlled notifiable condition in section 143 of the Public Health Act. This section also clarifies that the operation of new part 5A is not limited by any other provision of the Public Health Act.

Division 2 empowers the Chief Health Officer to give public health directions.

New section 142E (Power to give public health direction) empowers the Chief Health Officer to give a *public health direction* about the following matters set out in subsection 1:

- a direction that persons must wear or carry a face mask in stated circumstances;
- a direction that persons who test positive for COVID-19 must, for a stated period starting on a stated day (the *isolation period*), stay at or in a stated place, and otherwise avoid contact with stated persons;
- a direction that persons who are symptomatic and have had contact of a stated type (including, for example, of a stated duration) with a person who has tested positive for COVID-19 must, for a stated period starting on a stated day (the *quarantine period*), stay at or in a stated place, and otherwise avoid contact with stated persons; and
- a direction that workers at stated places must not enter or remain at the places unless they have been vaccinated against COVID-19 in a stated way.

The ability to issue directions about mask-wearing, isolation and quarantine of certain persons, and vaccinations in specific settings is targeted at protecting the capacity of the health system and vulnerable cohorts from COVID-19. The measures are intended to ensure there are sufficient powers available to respond proportionately and rapidly to the unpredictable nature of COVID-19 after Queensland exits the public health emergency phase and moves towards managing the enduring and fluctuating risks of COVID-19.

Subsection 2 provides that a public health direction requiring people to isolate or quarantine may provide for one or more isolation or quarantine periods. The direction must state a period of not more than seven days for each isolation period or quarantine period for which the direction provides. This provision clarifies that while a direction may not prescribe an isolation or quarantine period of more than seven days, a person may be required to undertake more than one period of isolation or quarantine under a single public health direction. For example, consistent with Queensland's current public health direction for the management of diagnosed cases of COVID-19 and close contacts, a direction could provide that a person who continues to experience fever or acute respiratory symptoms of COVID-19 at the end of the prescribed period of isolation must undertake an additional isolation period of up to seven days until their symptoms resolve. Similarly, persons who are required to quarantine for a stated period could be required to quarantine for an additional period of up to seven days if they test positive for COVID-19 during quarantine or have contact with an additional positive case during quarantine and develop fresh symptoms.

Subsection 3 restricts when the Chief Health Officer may issue a public health direction under this section. It provides that the Chief Health Officer may only give a public health direction if the Chief Health Officer reasonably believes any of the following apply:

- the direction is necessary to prevent or respond to a serious risk to the public health system, or to the community, as a direct or indirect result of COVID-19;
- the direction gives effect to a decision or agreement of the National Cabinet related to the coordination of a national response to COVID-19; or
- the direction gives effect to advice or a recommendation of a *COVID-19 advisory body* related to the public health response to COVID-19.

Subsection 4 defines the following terms used in this section:

- *COVID-19 advisory body* means an expert body that provides advice, or recommendations, about the public health response to COVID-19 to the National Cabinet or the Australian Health Minister. This includes bodies such as the Australian Health Protection Principal Committee and the Australian Technical Advisory Group on Immunisation.
- *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.
- *symptomatic* means, in relation to a person, having symptoms consistent with the person having COVID-19.

The limitations in this subsection reflect the current and anticipated approach to the management of COVID-19. The Chief Health Officer will be able to issue directions in instances of serious risk, or to swiftly implement national advice, to support the ongoing public health response. The ability to give effect to a decision or agreement by National Cabinet and to the advice or recommendations of a COVID-19 advisory body is necessary to support a cooperative, national approach to managing COVID-19.

New section 142F (Public health direction may include related requirements) provides that a public health direction may include stated requirements that are related to, and support the effectiveness of, the direction. As set out in subsections 1 through 5, related requirements may include, without limitation:

- for a direction related to the carrying or wearing of face masks, a requirement for operators of stated premises to take stated steps in relation to compliance with the direction by persons at the premises;
- for a direction about isolation or quarantine, that persons leaving the stated place during the isolation or quarantine period for a purpose permitted under the direction must travel to their destination in a stated way, for example, using private transport;
- for a direction about isolation or quarantine, that persons must not enter stated places at which vulnerable persons are present for a stated period after the end of the isolation period or quarantine period; and
- for a direction about vaccination of workers, a requirement for workers to produce documentary evidence of their vaccination status for inspection by operators of workplaces or by authorised persons; and a requirement for operators to take steps to ensure

compliance, including keeping a record of workers' vaccination status and producing this information for inspection by an authorised person upon request.

Subsection 6 clarifies that related requirements need not satisfy any of the threshold conditions in section 143E(3). This is because the requirements must be related to, and support the effectiveness of, requirements in a public health direction that already satisfies the threshold test.

Subsection 7 provides that, for the purpose of this section, the *vaccination status* of a worker means details of whether the worker has had any vaccinations against COVID-19, including details about the type and date of any vaccinations the worker has received, and information about any contraindications to vaccination that the worker may have, whether of a permanent or temporary nature.

New section 142G (How public health direction is given) provides that a public health direction is given by notice published on the department's website or in the gazette. The direction takes effect when it is first published. The direction must state that a person commits an offence if they contravene the direction without a reasonable excuse.

New section 142H (Requirement to prepare and publish justification statement and inform affected persons) requires the Chief Health Officer to publish a justification statement, as defined in new section 142C, within five days after giving a public health direction. The statement must be published on the department's website. Also, after giving a public health direction, the Chief Health Officer must take reasonable steps to ensure persons likely to be directly affected by the direction are made aware of it. This is to be done as soon as reasonably practicable after a direction is given. However, the failure to publish a justification statement, or to make persons aware that a direction has been given, does not affect the validity of the direction.

New section 142I (When public health direction takes effect and expires) states that a public health direction takes effect either when it is given or at a later day or time specified in the direction. A public health direction expires 90 days after the day it takes effect, unless it is sooner revoked. However, the expiry of a public health direction does not prevent the Chief Health Officer giving a further public health direction in the same terms.

New section 142J (When public health direction must be revoked) requires the Chief Health Officer to revoke a public health direction as soon as reasonably practicable after the Chief Health Officer reasonably believes the direction is no longer necessary to prevent or respond to a serious risk posed to the public health system, or to the community, by COVID-19, or no longer gives effect to a decision or agreement by National Cabinet or the advice or recommendations of a *COVID-19 advisory body*.

New section 142K (Offence to contravene public health direction) makes it an offence for a person to contravene a public health direction unless the person has a reasonable excuse. The maximum penalty for this offence is 100 penalty units.

New section 142L (Application of particular provisions to public health direction) applies certain provisions in relation to public health directions as if they were subordinate legislation. The effect is to extend some of the legislative safeguards that apply to the making of subordinate legislation to the giving of a public health direction.

Subsections 1 and 2 apply sections 49, 50 and 51 of the *Statutory Instruments Act 1992* in relation to a public health direction as if it were subordinate legislation, with some minor modifications. Application of these sections allows for enhanced scrutiny of public health directions as compared to the current emergency legislative framework. This will increase transparency in decision-making around directions.

As applied, these sections will require a public health direction to be tabled in the Legislative Assembly within 21 days after the day the direction is given, along with a justification statement, as defined in new section 142C. If the direction is not tabled within 21 days, it ceases to have effect. Once a direction is tabled, the Legislative Assembly may pass a resolution disallowing the direction in the same way as it may pass a resolution disallowing subordinate legislation. If the resolution is passed, the direction ceases to have effect. If a direction ceases to have effect because it is disallowed or was not tabled, it is to be taken never to have been given. However, this does not affect anything done or suffered under the direction before it ceased to have effect.

Subsection 3 applies sections 93(1)(a) and (c) of the *Parliament of Queensland Act 2001* in relation to a public health direction as if the direction were subordinate legislation. This provides for the relevant portfolio committee established by the Legislative Assembly to examine a public health direction to consider the policy to be given effect by the direction and the direction's lawfulness.

Subsection 4 applies sections 41(3), 41(4) and 42 of the *Human Rights Act 2019* in relation to a public health direction as if the direction were subordinate legislation, with some modifications. As applied, the section will require the tabling of the public health direction to be accompanied by a justification statement, as defined in new section 142C. It will also allow the portfolio committee responsible for examining the direction to consider the justification statement.

New section 142M (Chief health officer may not delegate functions or powers) states the Chief Health Officer may not delegate the Chief Health Officer's functions or powers under division 2, including the power to give a public health direction. An exception is provided for the functions specified in new section 142H(2), so that the Chief Health Officer may delegate the function of informing affected persons that a public health direction has been given. The provision clarifies that this restriction on delegation applies despite section 53AC of the *Hospital and Health Boards Act 2011*.

Division 3 sets out provisions to enable the enforcement of public health directions by authorised persons appointed under chapter 9 of the Public Health Act. As clarified by new section 142D, these provisions supplement and in no way limit the powers of authorised persons, or the operation of offences, established under any other provisions of the Act.

New section 142N (Power to enter places) empowers authorised persons to enter places to monitor and enforce compliance with public health directions.

The power of entry is available only if an authorised person reasonably suspects a person is, or may be, contravening a public health direction at a place. Upon forming this reasonable suspicion, the authorised person may enter the place to check whether the direction is being contravened or to enforce compliance with the direction.

Because a person who contravenes a public health direction may pose an imminent risk to other persons, an authorised person is not required to provide advance or written notice before entering a place to take enforcement action. However, if reasonably practicable in the circumstances, the authorised person must inform the occupier of the place of the proposed entry and that the authorised person is permitted by law to enter the premises without a warrant or the consent of the occupier.

This section does not authorise entry to a place, or part of a place, that is a dwelling, or to a part of a place where a person is undergoing a health procedure or consulting a health practitioner.

The note to this section refers to chapter 9, part 2, divisions 1 and 2, which provide additional powers for authorised persons to enter places. Per new section 142D, these powers will remain available to authorised persons and are not limited by the operation of additional powers or other provisions contained in new part 5A.

New section 142O (Power to seize evidence) provides that an authorised person who enters a place under new section 142N may seize evidence of an offence against section 142K, that is, evidence that a person has committed the offence of contravening a public health direction. This provision does not authorise the seizure of evidence relating to the commission of other offences, since the power of entry under new section 142N is for the limited purpose of checking and enforcing compliance with public health directions.

New section 142P (Dealing with seized things) applies chapter 9, part 2, division 8 of the Public Health Act to the seizure of evidence under new section 142O. The effect of applying these provisions is to ensure that authorised persons observe the detailed evidence-gathering procedures and safeguards, and are able to exercise the associated powers, set out in that division.

New section 142Q (Enforcement by authorised person) empowers authorised persons to take specific actions to enforce public health directions in certain circumstances where an individual's ongoing failure to comply with a public health direction could pose serious risks to other individuals, the community or the health system. Specifically, an authorised person may take specific action to enforce a direction if they find:

- a person is contravening a public health direction given under section 142E(1)(b) or (c) by failing to stay at or in a stated place; or
- a worker is contravening a public health direction given under section 142E(1)(d) by entering or remaining at a workplace without having been vaccinated against COVID-19 in the way stated in the direction.

If an authorised person finds that a person is contravening a public health direction in any of these ways, the authorised person may enforce the direction by requiring the person to, where applicable, go to and stay at or in a stated place, or leave the workplace. An authorised person may also enforce the direction with the help, and using the force, that is reasonable in the circumstances. Before doing so, however, an authorised person must give the person an opportunity to voluntarily comply with the direction.

Division 4 bars claims for compensation resulting from the exercise of the temporary emergency powers in new part 5A.

New section 142R (No entitlement to compensation) applies if a person suffers loss or damage because of the exercise, or purported exercise, of a power under division 2 or 3 of part 5A, or under chapter 9, part 2, as applied by new section 142P. Despite section 422 of the Public Health Act, the person is not entitled to compensation for such loss or damage. Subsection 4 clarifies that, for purposes of this section, *loss* includes expense.

Division 5 establishes the expiry date of new part 5A.

New section 142S provides that new chapter 3, part 5A expires on 31 October 2023.

The temporary changes to the Public Health Act provide a mechanism for managing systemic and preventable impacts from COVID-19 for twelve months. The temporary powers are targeted to provide ongoing protections to the most vulnerable cohorts in the community, and to ensure appropriate powers are in place to mitigate repeated waves of COVID-19 infection and the impacts of additional variants and stress on the public health system.

Amendment of s 315 (Definitions for ch 8)

Clause 10 omits the definition of *public health direction* from section 315 of the Public Health Act. Instead the new meaning of public health direction can be found in new section 142E(1). This change reflects the evolving approach to managing COVID-19 as a controlled notifiable condition outside of a declared public health emergency.

Insertion of new ch 12, pt 9

Clause 11 inserts new part 9 in chapter 12 of the Public Health Act. New part 9 contains transitional provisions for the Bill.

New section 515 (Application of part) provides that this part applies on the expiry of chapter 3, part 5A.

New section 516 (Proceedings for particular offences) applies on the expiry of chapter 3, part 5A in relation to an offence against section 142K committed by a person before its expiry. The provision states that a proceeding for the offence may be continued or started, and the person may be convicted of and punished for the offence, as if chapter 3, part 5A had not expired. This provision applies despite section 11 of the Criminal Code. This provision ensures a person who commits an offence against this section before it expires may still be punished even if charged after the expiry.

New section 517 (Continued application of s 142R) provides for the continued application of new section 142R after the expiry of chapter 3, part 5A. The effect is to permanently preclude claims for compensation for loss or damage covered by that section.

Amendment of sch 2 (Dictionary)

Clause 12 inserts definitions of *isolation period, justification statement, operator, public health direction, quarantine period* and *worker* in schedule 2. It refers to the meaning of these terms provided in the relevant sections of chapter 3, part 5A.

Part 4 Amendment of State Penalties Enforcement Regulation 2014

Regulation amended

Clause 13 provides that this part amends the *State Penalties Enforcement Regulation 2014*.

Amendment of sch 1 (Infringement notice offences and fines for nominated laws)

Clause 14 amends schedule 1 of the *State Penalties Enforcement Regulation 2014*. Schedule 1 prescribes infringement notice offences and infringement notice fines for certain offences under the Public Health Act relevant to the public health response to COVID-19.

The amendments omit the entries for sections 362D and 362J of the Public Health Act, as these offences will expire.

The amendments insert entries for the new offence provision at section 142K, inserted by clause 9. As a result, the offence of failing to comply with a public health direction is designated a penalty infringement notice offence and may be enforced by way of a penalty infringement notice. The prescribed infringement notice penalty is 10 penalty units for an individual and 50 penalty units for a corporation. However, consistent with the current prescribed fines for contravening a public health direction under section 362D of the Public Health Act, a lesser penalty of 1.5 penalty units applies for the comparatively less serious offence of an individual failing to carry or wear a mask.

Part 5 Other amendments

Act amended

Clause 15 states that schedule 1 amends the Act it mentions. The Act mentioned by schedule 1 is the Public Health Act.

Schedule 1 Other amendments

Part 1 Amendments commencing on 1 November 2022

Section 62

Clause 1 amends section 62 of the Public Health Act, which contains definitions for chapter 3. For clarity and completeness, the amendment inserts definitions for *controlled notifiable condition* and *notifiable condition*. The definitions cross-reference the existing definitions of these terms in sections 63 and 64 of the Act respectively.

Section 323, heading, after ‘Extending’

Clause 2 amends the heading of section 323 of the Public Health Act to reflect the existing provision more accurately. Otherwise, there are no substantive changes to section 323.

Particular references to omission

Clause 3 amends the heading of, and provisions within, chapter 12, part 8, division 1A. This division contains transitional provisions that apply on the *omission* of chapter 8, part 7A (Particular powers for COVID-19 emergency).

The recent *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2022* amended the Public Health Act to provide for the expiry, rather than the omission, of chapter 8, part 7A of that Act. The part is to expire on the earlier of 31 October 2022 or the day the Minister ends the COVID-19 emergency under section 324(1).

As chapter 8, part 7A will be expiring, rather than omitted, this clause replaces references to the *omission* of chapter 8, part 7A with references to the *expiry* of that part.

The provisions mean that:

- words defined under chapter 8, part 7A before its expiry that are used in this division have the same meaning as they had before the expiry of part 7A (section 507C);
- certain confidentiality requirements continue after the expiry of part 7A (section 507D); and
- certain limits on the use of relevant information and derived evidence will continue after the expiry of part 7A (section 507E).

Section 507D(3), 'been omitted'—

Clause 4 replaces a reference to the omission of section 362MAF (Confidentiality of relevant information) with a reference to the expiry of that section. This has the effect of providing that a proceeding for an offence against section 362MAF may, after the expiry of chapter 8, part 7A, be started or continued under that section as if the section had not expired.

Part 2 Amendment commencing on 1 November 2023

Schedule 2, definitions *isolation period*, *justification statement*, *operator*, *public health direction*, *quarantine period* and *worker*

Clause 1 omits the definitions for *isolation period*, *justification statement*, *operator*, *public health direction*, *quarantine period* and *worker* from Schedule 2 of the Public Health Act from 1 November 2023.