

COVID-19 Emergency Response and Other Legislation Amendment Bill 2020

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence make this statement of compatibility with respect to the COVID-19 Emergency Response and Other Legislation Amendment Bill 2020 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

On 29 January 2020, a public health emergency was declared under section 319 of the *Public Health Act 2005* (PH Act) in relation to the outbreak of COVID-19 in China, its pandemic potential due to cases spreading to other countries, and the public health implications within Queensland resulting from recently arrived travellers from the epicentre of the outbreak (referred to as the ‘**declared COVID-19 public health emergency**’). The declared COVID-19 public health emergency was declared for all of Queensland. The declared COVID-19 public health emergency in Queensland has now been extended by regulation until 31 December 2020 and may need to be further extended.

On 11 March 2020, the Director-General of the World Health Organisation (WHO) declared COVID-19 a global pandemic. COVID-19 represents a significant risk to the health, safety and wellbeing of all Queenslanders.

The *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* was passed by the Legislative Assembly on 18 March 2020, including key legislative amendments to the *Public Health Act 2005* to strengthen powers of the Chief Health Officer and emergency officers for the declared COVID-19 public health emergency to implement social distancing measures, including regulating mass gatherings, isolating or quarantining people suspected or known to have been exposed to COVID-19, and protecting vulnerable populations; and changes to the *Planning Act 2016* and *Economic Development Act 2012* to ensure important services can continue to be provided to the community.

The *COVID-19 Emergency Response Act 2020* (COVID-19 ER Act) was passed by the Legislative Assembly in April 2020 to support the Queensland Government’s response to the declared COVID-19 public health emergency. The COVID-19 ER Act contained extraordinary legislative measures to respond to the extraordinary public health crisis by way of a modification framework that operates across the whole of the Queensland statute book (as well as other specific amendments). The COVID-19 ER Act and all instruments enacted under it are set to expire on 31 December 2020.

The *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* (COVID-19 ER Amendment Act) was passed by the Parliament in May 2020 to further support the Queensland Government's response to the declared COVID-19 public health emergency. The COVID-19 ER Amendment Act made amendments to 23 different pieces of legislation to provide necessary adjustments across a range of portfolios to enable appropriate responses in the context of the pandemic. The majority of amendments under the COVID-19 ER Amendment Act are set to expire on 31 December 2020.

This Bill relates only to the COVID-19 ER Act and COVID-19 ER Amendment Act, as set out below.

The COVID-19 Emergency Response Act 2020

COVID-19 ER Act mechanisms

Modification framework

The COVID-19 ER Act established a legislative modification framework across the statute book (the modification framework) to ensure there is clear legal authority to make the interventions necessary to protect the health, safety and welfare of Queenslanders; mitigate the spread of COVID-19 in the community; facilitate continued functioning of Queensland institutions and economy to the extent possible in the circumstances of the pandemic; and to allow for timely and flexible responses in managing disruptions caused by COVID-19 and social distancing measures.

The modification framework provisions in the COVID-19 ER Act established a number of empowering provisions that are broad and facilitative and that allow legislative requirements to be modified in the following areas, should that be required:

- attendance at places or meetings, making and associated use of documents, and physical presence requirements;
- statutory timeframes; and
- proceedings of courts and tribunals.

These empowering provisions enable the use of secondary instruments, should the need arise, to facilitate the modification or alteration of various existing legislative requirements. Depending on which of the above areas is being impacted, the secondary instrument will be either an extraordinary regulation or a statutory instrument or, in limited circumstances relating to statutory timeframes, notices to individuals or parties.

The modification framework under the COVID-19 ER Act, and all secondary instruments enacted under the framework, are set to expire on 31 December 2020.

Regulation making power for residential tenancies and rooming accommodation

The COVID-19 ER Act establishes a regulation making power in respect of residential tenancies and rooming accommodation to facilitate, if and when necessary, the making of regulations to support the Queensland residential rental sector during the declared COVID-19

public health emergency and minimise the impact of obligations under the *Residential Tenancies and Rooming Accommodation Act 2008* that may conflict with COVID-19 community health directives.

This regulation making power is set to expire on 31 December 2020.

Regulation making power for relevant non-residential leases

The COVID-19 ER Act establishes a regulation making power in respect of retail leases under the *Retail Shop Leases Act 1994* (and other prescribed leases) (relevant non-residential leases) to provide the ability to implement responsive measures to relieve the financial stress and anxiety for tenants under relevant non-residential leases.

This regulation making power is set to expire on 31 December 2020.

Queensland Small Business Commissioner

The COVID-19 ER Act establishes a temporary Queensland Small Business Commissioner to deliver small business advocacy functions and dispute resolution support, including administering mediation services in relation to small business tenancy disputes under the *Retail Shop Leases Act 1994*.

The appointment of the Queensland Small Business Commissioner is set to end on 31 December 2020.

Extension of the COVID-19 ER Act mechanisms

Recognising the ongoing nature of the declared COVID-19 public health emergency, the Bill sets a new expiration date for the modification framework; the statutory instruments that have been enacted under the framework; the regulation making power relating to residential tenancies and rooming accommodation; and the regulation making power relating to relevant non-residential leases (collectively referred to as the ‘**COVID-19 ER Act mechanisms**’). Under the Bill, these mechanisms will now expire on 30 April 2021 or an earlier date to be prescribed by regulation (referred to as the ‘**COVID-19 legislation expiry day**’).

The following secondary instruments which were enacted pursuant to powers under the COVID-19 ER Act remain necessary to respond to the declared COVID-19 public health emergency, and will therefore be subject to extension until the COVID-19 legislation expiry day:

- *Corrective Services (COVID-19 Emergency Response) Regulation 2020*
- *Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020*
- *Economic Development (COVID-19 Emergency Response) Regulation 2020*
- *Education Legislation (COVID-19 Emergency Response) Regulation 2020*
- *Explosives Legislation (COVID-19 Emergency Response) Regulation 2020*
- *Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020*

- *Health Legislation (COVID-19 Emergency Response) Regulation 2020*
- *Justice Legislation (COVID-19 Emergency Response—Community Titles Schemes and Other Matters) Regulation 2020* (including amendments contained in this Regulation made under the *Body Corporate and Community Management Act 1997* and the *Building Units and Group Titles Act 1980*)
- *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020* (first made as the *Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Regulation 2020* and later amended by the *Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Amendment Regulation 2020*)
- *Justice Legislation (COVID-19 Emergency Response—Proceedings and Other Matters) Regulation 2020*
- *Local Government (COVID-19 Emergency Response) Regulation 2020*
- *Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020*
- *Planning (COVID-19 Emergency Response) Regulation 2020*
- *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020*
- *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*
- *Youth Justice (COVID-19 Emergency Response) Regulation 2020*

One other secondary instrument, the *Transport Legislation (COVID-19 Emergency Response) Regulation (No. 2) 2020* will expire on 31 December 2020 and is no longer considered necessary to respond to the declared COVID-19 public health emergency.

The extension of the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020* (until the COVID-19 legislation expiry day) is in order to facilitate dispute resolution processes only, and does not extend the response period or extension period under that Regulation beyond 31 December 2020.

The legislative provisions relating to the operation of the Queensland Small Business Commissioner (QSBC) are extended by this Bill pending permanent establishment. The QSBC has played a critical role in avoiding lengthy and costly commercial leasing disputes during the COVID-19 pandemic through the provision of early information, advice and mediation services. This function has assisted many Queensland businesses to successfully manage the impact of COVID-19 and resolve leasing issues in an effective and timely way, in many cases through informal mechanisms. The Government has committed at the 2020 election to introduce a permanent QSBC. The Bill therefore extends the QSBC arrangements under the COVID-19 ER Act, pending permanent establishment, to enable the QSBC to continue to provide additional assistance to small businesses as government supports are reduced or withdrawn and ensure the continued availability of a service that supports small business to address leasing issues.

Further, the amendments made under the COVID-19 ER Act to the *Acts Interpretation Act 1954* and the *Statutory Instruments Act 1992* are no longer considered necessary to respond to the declared COVID-19 public health emergency and will expire on 31 December 2020.

The amendments made under the COVID-19 ER Act 2020 to the *Parliament of Queensland Act 2001* expire at the end of the declared COVID-19 public health emergency and are not affected by this Bill.

Transitional arrangements

The COVID-19 ER Act did not contain transitional provisions or an explicit power for regulations made under or in reliance on the COVID-19 ER Act to be made for a savings purpose or to address transitional matters.

This Bill therefore provides an appropriate transitional framework which enables regulations to be made, where required, to return to normal operations in the most effective and efficient way. This framework will provide commercial and legal certainty.

Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020 amendments

Recognising the ongoing nature of the COVID-19 pandemic, the Bill sets a new expiration date for the amendments made to the following legislation under the COVID-19 ER Amendment Act:

- *Body Corporate and Community Management Act 1997*, chapter 7, part 3 and chapter 8, part 14
- *Building Units and Group Titles Act 1980*, part 6A and part 7, division 3
- *Casino Control Act 1982*, section 57A
- *Corrective Services Act 2006*, chapter 6, part 15A
- *Disaster Management Act 2003*, part 12A
- *Environmental Protection Act 1994*, chapter 11A
- *Gaming Machine Act 1991*, part 11A
- *Keno Act 1996*, section 116A
- *Lotteries Act 1997*, section 99A
- *Liquor Act 1992*, part 10A
- *Manufactured Homes (Residential Parks) Act 2003*, section 146A
- *Mental Health Act 2016*, chapter 18B
- *Public Health Act 2005*, part 7B
- *Youth Justice Act 1992*, section 264A

Under the Bill, the above amendments will expire on the COVID-19 legislation expiry day. The extension of amendments to the *Gaming Machine Act 1991* will have the effect of also extending gaming tax notices made under Part 11A of that Act.

The amendments made to the following legislation under the COVID-19 ER Amendment Act are no longer considered necessary to respond to the COVID-19 pandemic, and will therefore not be subject to extension and will expire on 31 December 2020:

- *Disability Services Act 2006*, part 8, division 2A
- *Forensic Disability Act 2011*, chapter 12, part 2A
- *Building and Construction Industry (Portable Long Service Leave) Act 1991*, part 7A

- *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*, part 6A
- *Private Health Facilities Act 1999*, part 11A

The amendments made under the COVID-19 ER Amendment Act to the *City of Brisbane Act 2010* (new section 96A) and the *Local Government Act 2009* (new section 94A) expire on 30 June 2021 and are not affected by this Bill.

The amendments made under the COVID-19 ER Amendment Act to the *Police Powers and Responsibilities Act 2000* (new chapter 18B) expire on 31 December 2020 or at the end of the declared COVID-19 public health emergency, whichever is later, and are not affected by this Bill.

Amendment to section 264A of the *Youth Justice Act 1992*

Section 264A of the *Youth Justice Act 1992* (YJ Act) allows the youth justice chief executive to appoint appropriately qualified persons as temporary detention centre employees during the declared COVID-19 public health emergency.

However, section 312 of the YJ Act only allows the chief executive to delegate functions and powers under the Act to appropriately qualified public service officers. This excludes a range of potential temporary detention centre employees, such as police officers and people who are not Queensland Government employees within the definition of ‘public service officer’ under the *Acts Interpretation Act 1954* and the *Public Service Act 2008* (police officers, for example are employed under the *Police Service Administration Act 1990*).

The Bill therefore amends the YJ Act to allow delegation of the chief executive’s powers to appropriately qualified temporary detention centre employees to ensure that critical decisions in relation to the security and management of detention centres and the safe custody and wellbeing of children can always be made in a timely way, consistent with the responsibilities on the youth justice chief executive under section 263 of the YJ Act.

Amendments to the *Liquor Act 1992* for artisan distillers

The Bill amends the *Liquor Act 1992* (Liquor Act) to temporarily grant artisan distillers (i.e. producer/wholesaler licensees producing between 400 and 450,000 litres of spirits at the licensed premises each year) an exemption from the limited purposes for which this liquor may be sold and the requirement that sales of liquor for on-premises and takeaway consumption must not exceed 2.5% of the licensee’s total sales.

Amendments to the *Electoral Act 1992* to ensure safe by-elections

The *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* and the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020* both inserted new provisions into the *Electoral Act 1992* (Electoral Act) to facilitate, during the declared COVID-19 public health emergency, the holding of the 2020 State General Election (Part 12B) and any necessary by-elections prior to the 2020 State General Election (Part 12A).

However, these arrangements do not apply to any by-election that is held after the 2020 State General Election but before the declared COVID-19 public health emergency ends. Therefore, this Bill inserts arrangements into the Electoral Act to cover such by-elections, modelled on the arrangements set out in Part 12B. These arrangements will apply to a by-election where the writ for the by-election was issued on or before the COVID-19 legislation expiry day.

Amendments to the *Local Government Act 2009* in relation to filling vacancies in the office of a mayor or councillor

Chapter 6, part 2, division 3 of the *Local Government Act 2009* (the LGA) details when a councillor's office becomes vacant and the way in which the vacancy is to be filled. Section 161 of the LGA provides that the way in which a vacancy is filled depends on whether the office becomes vacant during the beginning, middle or end of the local government's term.

In June 2020 the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020* (Integrity Act) was passed by the Legislative Assembly. The Integrity Act included amendments to the LGA about filling a vacancy in the office of a mayor or councillor. In particular, the amendments required mayoral and councillor vacancies, in divided and undivided local governments, arising during the first 12 months after a quadrennial election to be filled by appointment of a runner-up or, if there is no runner-up who is eligible and consents to the appointment, by by-election. These amendments commenced on 12 October 2020.

The Bill amends the process for filling a vacancy in the office of a mayor or councillor, during the first 12 months after a local government quadrennial election by requiring a mayoral vacancy to be filled through a by-election and enabling local governments to decide whether to fill a councillor vacancy through a by-election or appointment of a runner-up.

The Bill also provides the following transitional provisions in relation to any vacancy in the office of a mayor or councillor that arose in the period starting on 12 October 2020 until the commencement of part 5 of the Bill (the relevant period):

- the procedure for filling the vacancy through the appointment of a runner-up from the last quadrennial election, under section 166A of the LGA as in force from time to time before commencement (former section 166A), does not apply and is taken never to have applied in relation to filling the vacant office;
- anything done during the relevant period under former section 166A in relation to filling the vacancy is taken never to have been done;
- if a runner-up was appointed to the vacant office under former section 166A, the office is taken to be vacant, and to have always been vacant since it became vacant during the relevant period and the runner-up is taken never to have been appointed;
- any entitlement to remuneration or other benefits accrued or accruing under an Act to the runner-up in respect of the period of their appointment under former section 166A is not affected;
- the vacancy must be filled under the amended processes in new chapter 6, part 2, division 3 and the local government has 2 months from commencement to fill the vacant office, despite new section 163(3) of the LGA; and

- if a local government decides to fill a vacancy in the office of a councillor by appointing a runner-up under new section 166A, that:
 - anything done before commencement under former section 166A of the LGA for filling a vacancy is taken to have been done under new section 166A;
 - if the runner-up had been appointed to fill the vacancy during the relevant period under former section 166A(4)(b), the runner-up is taken to have been appointed on commencement under new section 166A(4)(b) and to have held office as a councillor continuously from that day;
 - additional time is to be given for a runner-up to consent to the appointment if the Electoral Commission of Queensland had given the runner up a vacancy notice before commencement and the runner-up had not advised of whether they consent before the commencement.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Extension of the COVID-19 ER Act 2020 mechanisms

The COVID-19 ER Act mechanisms have the potential to limit most, if not all, of the human rights protected by the HR Act depending on the nature of the secondary instruments that may be enacted or exercised under the empowering provisions of the framework. This was acknowledged when the COVID-19 ER Act was introduced, noting that the human rights implications would not crystallise until a specific proposal (that is, a regulation, extraordinary regulation, statutory instrument or notice) had been developed and enacted under the framework.

However, those implications have now crystallised in the form of a number of secondary instruments the majority of which are being extended under the Bill. The human rights that are relevant to each of the secondary instruments that are proposed to be extended under the Bill are set out in the human rights certificates that accompanied each Regulation:

- [Human Rights Certificate](#) – *Corrective Services (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Economic Development (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Education Legislation (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Explosives Legislation (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Health Legislation (COVID-19 Emergency Response) Regulation 2020*

- [Human Rights Certificate](#) – *Justice Legislation (COVID-19 Emergency Response—Community Titles Schemes and Other Matters) Regulation 2020*
- [Human Rights Certificate](#) – *Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Regulation 2020*
- [Human Rights Certificate](#) – *Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Amendment Regulation 2020*
- [Human Rights Certificate](#) – *Justice Legislation (COVID-19 Emergency Response—Proceedings and Other Matters) Regulation 2020*
- [Human Rights Certificate](#) – *Local Government (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Planning (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Planning Legislation (Economic Recovery Measures and Other Matters) Amendment Regulation 2020*
- [Human Rights Certificate](#) – *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020*
- [Human Rights Certificate](#) – *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*
- [Human Rights Certificate](#) – *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Amendment Regulation 2020*
- [Human Rights Certificate](#) – *Youth Justice (COVID-19 Emergency Response) Regulation 2020*

The abovementioned human rights certificates were made in the names of the responsible Minister at the time who administered the law or provision under which the identified secondary instrument was made, and I am advised that those certificates accurately reflect the human rights that are limited by each secondary instrument.

It is not, at this point, reasonably foreseeable that any secondary instruments will be enacted or exercised in the future under the COVID-19 ER Act mechanisms which radically depart from the types of instruments that have already been made. This means that there are no reasonably foreseeable limitations on human rights in addition to those detailed in the human rights certificates noted above and the Statement of Compatibility for the COVID-19 ER Act. However, that is not to say that no further secondary instruments will be enacted under the COVID-19 ER Act mechanisms. Should the need arise for further secondary instruments to be enacted, the potential limitations of human rights will be canvassed in a human rights certificate which will be attached to the secondary instrument.

Transitional arrangements

The transitional arrangements do not limit human rights to any greater extent than what was identified in the human rights certificates that accompanied each secondary instrument, as listed above. Further, when any transitional regulations come to be made under the

arrangements, they will necessarily be accompanied by a human rights certificate which discusses the compatibility of any limitations on human rights that do arise.

Extension of the Queensland Small Business Commissioner pending permanent establishment

The extension of the QSBC does not limit human rights.

Extension of the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* amendments

The human rights that are limited by the amendments made to the *Body Corporate and Community Management Act 1997*, chapter 7, part 3 and chapter 8, part 14; *Building Units and Group Titles Act 1980*, part 6A and part 7, division 3; *Casino Control Act 1982*, section 57A; *Corrective Services Act 2006*, chapter 6, part 15A; *Disaster Management Act 2003*, part 12A; *Environmental Protection Act 1994*, chapter 11A; *Gaming Machine Act 1991*, part 11A; *Keno Act 1996*, section 116A; *Lotteries Act 1997*, section 99A; *Liquor Act 1992*, part 10A; *Manufactured Homes (Residential Parks) Act 2003*, section 146A; *Mental Health Act 2016*, chapter 18B; *Public Health Act 2005*, part 7B; and *Youth Justice Act 1992*, section 264A under the COVID-19 ER Amendment Act 2020 are set out in the [Statement of Compatibility](#) that accompanied that Bill.

In addition, the human rights impacts of the gaming tax notices are set out in the Human Rights Certificates for the:

- [Gaming Tax Notice 2020](#); and
- [Gaming Tax Notice \(No 2\) 2020](#).

Amendment to section 264A of the *Youth Justice Act 1992*

The amendments to the YJ Act to facilitate the delegation of powers to appropriately qualified temporary detention centre employees may limit the following human rights:

- privacy and reputation (section 25 of the HR Act)
- protection of families and children (section 26 of the HR Act)
- humane treatment when deprived of liberty (section 30 of the HR Act)
- children in the criminal process (section 33 of the HR Act)
- right to education (section 36 of the HR Act)

Amendments to the *Liquor Act 1992* for artisan distillers

The amendments to the Liquor Act seek to provide authorisations for artisan distillers to sell their own liquor product as takeaway liquor to support the boutique distiller sector by removing a disadvantage arising from the restriction on the sale of liquor by these distillers to the general public. These amendments do not limit human rights.

Amendments to the *Electoral Act 1992* to enable safe by-elections

The amendments to the Electoral Act to provide alternative arrangements for the conduct of by-elections limit the following human rights:

- freedom of movement (section 19 of the HR Act)
- freedom of expression (section 21 of the HR Act)
- taking part in public life (section 23 of the HR Act)
- privacy and reputation (section 25 of the HR Act)

Amendments to the *Local Government Act 2009* in relation to filling vacancies in the office of a mayor or councillor

The amendments to the LGA in relation to mayoral and councillor vacancies limit the following human right:

- taking part in public life (section 23 of the HR Act)

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Extension of the COVID-19 ER Act 2020 mechanisms

(a) the nature of the right

Information relating to the general nature and scope of the human rights, required under section 13(2)(a) of the HR Act, has been provided above under the heading ‘Human rights relevant to the Bill – Extension of the COVID-19 ER Act mechanisms’ (and by reference to various other statements of compatibility and human rights certificates, as detailed).

(b) the nature of the purpose of the limitation to be imposed by the extension of the COVID-19 ER Act mechanisms, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of extending the expiry of the COVID-19 ER Act mechanisms is to ensure that Queensland Government remains flexible and responsive to emerging challenges of the pandemic, particularly while the declared COVID-19 public health emergency is still on foot.

The COVID-19 emergency in Queensland remains ongoing – measures which protect the health, safety and welfare of Queenslanders, mitigate the spread of COVID-19 in the community and facilitate the continued functioning of Queensland institutions and economy to the extent possible are still required. For example, modifications to legislation which promote social distancing may need to be in place for some time.

Having the ability to respond at short-notice in line with the evolving epidemiological situation will continue to ensure the public health objectives are met, while balanced with essential and ongoing social and economic needs of our communities and service delivery responsibility of the State Government.

The ability to respond rapidly has been a key factor in Queensland's sustained low COVID-19 case numbers to date. However, despite overall low numbers of COVID-19 in Queensland, recent events in other Australian jurisdictions and continued large-scale outbreaks around the world serve as a stark reminder of how precarious this situation can be. The Queensland Government requires the ability to remain flexible and responsive for a further four months in order to monitor and respond to potential outbreaks of the COVID-19 at a time where the risk of a potential outbreak is high.

The period covered by the extension includes the Christmas and New Year holiday period where family gatherings and social events are more frequent, and also the Parliamentary holiday period where no Parliamentary sittings are likely. The Queensland Government needs to retain the ability to monitor and respond flexibly to any potential outbreaks that could occur during this period, as well as ensure the ongoing administration of government services in a way that is safe and which protects the health and wellbeing of the Queensland community during the COVID-19 pandemic.

(c) the relationship between the limitation to be imposed by the extension of the COVID-19 ER Act mechanisms, and its purpose, including whether the limitation helps to achieve the purpose

By extending the expiry of the COVID-19 ER Act mechanisms, the necessary flexibility is provided to enable the Government to respond to the ongoing COVID-19 pandemic if and when challenges emerge. To date, the secondary instruments that have been made under the modification framework have enabled the ongoing administration of Government and services in a way that is safe and that protects the health and wellbeing of the Queensland community during the COVID-19 pandemic.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the extension of the COVID-19 ER Act mechanisms

Due to the extraordinary nature of the COVID-19 ER Act mechanisms, the Bill proposes an extension of their expiration until 30 April 2021 or an earlier date to be prescribed by regulation.

The four month extension period provides Government with an opportunity to reflect on the state of COVID-19 in Queensland, having regard to increased social gatherings during the holiday period and also the impact of any further opening of interstate border restrictions, and reconsider the ultimate necessity of COVID-19 ER Act mechanisms as Queensland transitions into a recovery period.

The four month extension period also ensures that, should any further extension beyond 30 April 2021 be required (having regard to health advice and restrictions) Government has sufficient time to engage with and consult key stakeholders to seek their views and inform the decision about any extension, and, ultimately, that any extension can be made openly and transparently by the Parliament.

It also provides Government with further time to evaluate the COVID-19 ER Act mechanisms which represent valuable business improvements that should be retained as part of business-

as-usual practices irrespective of COVID-19 and to commence the work in relation as to how to best transition those improvements into primary legislation to ensure their ongoing use and viability.

Further, the Bill also enables the Executive to prescribe by regulation the end of the COVID-19 ER Act mechanisms at a time before the 30 April 2021 expiry. This enables the Executive to consider current public health advice in relation to the COVID-19 pandemic, as well as the declared COVID-19 public health emergency (should it end sooner than 30 April 2021), in informing decisions about the ongoing necessity of the COVID-19 ER Act mechanisms.

Importantly, the inclusion of an ability to prescribed by regulation the end of the COVID-19 ER Act mechanisms does not prevent the repeal of legislative amendments, subordinate legislation or statutory instruments through ordinary processes should they no longer be necessary to respond to the COVID-19 pandemic.

Without any extension, the COVID-19 ER Act mechanisms will expire on 31 December 2020. This would leave the Queensland Government without the ability to respond flexibly to emerging challenges of the COVID-19 pandemic at a time where family gatherings and social events are more frequent (during the Christmas and New Year holiday period) and where no Parliamentary sittings are likely (meaning it would not be possible to pass urgent primary legislation to respond swiftly).

It is therefore considered that there is no less restrictive reasonably available way to achieve the purpose of ensuring that the Queensland Government remains flexible and responsive to emerging challenges of the COVID-19 pandemic.

(e) the balance between the importance of the purpose of the extension of the COVID-19 ER Act mechanisms, which would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The need to ensure that the Queensland Government remains flexible and responsive to emerging challenges of the pandemic through the COVID-19 ER Act mechanisms outweighs the harm that may be caused to human rights. This is especially so when considering that the COVID-19 ER Act mechanisms only allow for statutory instruments that are compatible with human rights; that the powers under those statutory instruments must be exercised compatibly with human rights under section 58 of the HR Act; and that the secondary instruments that have been enacted under the COVID-19 ER Act mechanisms to date have been compatible with human rights as evidenced by their human rights certificates.

(f) any other relevant factors

Not applicable.

Extension of the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* amendments

Extension of the amendments made to the *Body Corporate and Community Management Act 1997*, chapter 7, part 3 and chapter 8, part 14; *Building Units and Group Titles Act 1980*, part

6A and part 7, division 3; *Casino Control Act 1982*, section 57A; *Corrective Services Act 2006*, chapter 6, part 15A; *Disaster Management Act 2003*, part 12A; *Environmental Protection Act 1994*, chapter 11A; *Gaming Machine Act 1991*, part 11A; *Keno Act 1996*, section 116A; *Lotteries Act 1997*, section 99A; *Liquor Act 1992*, part 10A; *Manufactured Homes (Residential Parks) Act 2003*, section 146A; *Mental Health Act 2016*, chapter 18B; *Public Health Act 2005*, part 7B; and *Youth Justice Act 1992*, section 264A under the COVID-19 ER Amendment Act is necessary to continue to meet the proper purposes identified for each of the amendments.

The proper purposes of the amendments (including the amendments authorising the creation of gaming tax notices) are set out in the [Statement of Compatibility](#) that accompanied that Bill, which also considers the rational relationship between the limitations and the purposes, the necessity of the limitations, and a fair balance (as required under section 13 of the HR Act).

I am satisfied that the limitations on human rights that arise under each of these amendments continues to be reasonable and proportionate on the basis of the justification set out in the original [Statement of Compatibility](#) that accompanied the Bill.

Amendment to section 264A of the *Youth Justice Act 1992*

(a) the nature of the rights

The amendment to the YJ Act to facilitate the delegation of powers to appropriately qualified temporary detention centre employees may limit the following human rights:

- privacy and reputation (section 25 of the HR Act)
- protection of families and children (section 26 of the HR Act)
- humane treatment when deprived of liberty (section 30 of the HR Act)
- children in the criminal process (section 33 of the HR Act)
- right to education (section 36 of the HR Act)

These rights are limited by virtue of the nature of the detention centre environment where young people are held in custody. These rights may be limited by the delegation of powers to appropriately qualified temporary detention centre employees to the extent that the delegation potentially facilitates less experienced persons exercising the powers than is ordinarily the case. It is noted that while limitations of these rights are possible, they will not necessarily arise until a decision is made or an action is taken under the delegated powers by a temporary detention centre employee. In such a circumstance, it is further noted that the decision to delegate a power by the chief executive must be compatible with human rights under section 58 of the HR Act, and also that the use of the delegated powers by an appropriately qualified temporary detention centre employee in practice must also be compatible with human rights.

The right to privacy and reputation protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The scope of the right to privacy is very broad, but at its most basic, is concerned with notions of personal autonomy and dignity. The underlying value of the right to privacy is the ‘protect[ion] and enhance[ment of] the liberty of the person – the existence, autonomy, security and well-

being or every individual in their own private sphere'.¹ The right to privacy may be limited in the context of a youth detention centre environment through, for example, searches of young people and/or their property.

The right to the protection of families and children recognises that families are the fundamental group unit of society and entitles families to protection by the society and the State. The meaning of families is broad and recognises that families take many forms and accommodates the various social and cultural groups in Queensland whose understanding of family may differ. Cultural, religious and other traditions will be relevant when considering whether a group of persons constitute a 'family'. The right also protects the right of every child, without discrimination, to the protection that is needed by the child and is in the child's best interests. This recognises the special vulnerability of children, and it is a right that is only held by children. The right requires the State to ensure the survival and development of every child to the maximum extent possible. The right to protection of families and children may be limited in the context of a youth detention centre environment through, for example, restrictions on family contact and/or visits or through the exercise of powers which do not take into account issues directly related to a child's age or cognitive development.

The right to humane treatment when deprived of liberty requires that all persons must be treated with humanity and with respect for their inherent human dignity, recognising the particular vulnerability of all persons deprived of their liberty. The right is informed by a number of United Nations (UN) standards, including the UN Standard Minimum Rules for the Treatment of Prisoners which covers matters such as accommodation conditions, adequate food, personal hygiene, clothing and bedding standards, exercise, medical services, and disciplinary procedures. The right to humane treatment when deprived of liberty may be limited in the context of a youth detention centre environment through, for example, disciplinary measures such as separation or the use of force.

The rights of children in the criminal process recognises that young persons who become involved in the criminal justice system deserve special protections because of their age. The right requires that an accused child who is detained (or a child detained without charge) must be segregated from all adults; that accused children must be brought to trial as quickly as possible; and that a child who is convicted of an offence must be treated in a way that is appropriate for the child's age. The UN Convention on the Rights of the Child provides that children in the criminal process should be 'treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedom of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society'. The rights of children in the criminal process may be limited in the context of a youth detention centre environment through, for example, treatment of a young person that is not consistent with their age or cognitive development.

The right to education protects the right of every child to have access to primary and secondary education appropriate to the child's needs. The requirement that access to such education is

¹ Director of Housing v Sudi (2010) 33 VAR 139, 145 (Bell J). See also Re Kracke and Mental Health Review Board (2009) 29 VAR 1, 131 (Bell J).

appropriate to the child's needs likely places a positive obligation on the State to provide education which is broadly suitable or tailored to the needs of children generally, to children individually, as well as to different groups of children in different contexts.² The right to education may be limited in the context of a youth detention centre environment through, for example, the denial of access to education.

(b) the nature of the purpose of the limitation to be imposed under the amendment if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendment is to ensure the safe operation of detention centres in the event that a large number of regular staff are unavailable for work due to an outbreak of COVID-19, and essential time-critical functions cannot be exercised by the temporary staff engaged to replace them. Without these powers, the safety of children and staff would be put at risk. Ensuring a safe environment for children and staff in detention is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed under the amendment if enacted, and its purpose, including whether the limitation helps to achieve the purpose

It is not possible to achieve the purpose in any way other than to allow the chief executive to delegate powers to temporary detention centre employees if required. The limitation therefore achieves its purpose.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendment

There are no less restrictive or reasonably available ways to achieve the purpose.

The limitation is minimised by only allowing the chief executive to delegate to appropriately qualified temporary detention centre employees, and also by the safeguard in section 27A(10A) of the *Acts Interpretation Act 1954* which provides that the delegation of a function or power does not relieve the delegator of the delegator's obligation to ensure that the function or power is properly performed or exercised.

Further, the provision is time-limited and will expire on 30 April 2021 or an earlier date to be prescribed by regulation, and it will only be available if the chief executive is satisfied the appointment of temporary detention centre employees is reasonably necessary for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres.

It is also relevant that the decision of the chief executive to delegate a power to a temporary detention centre employee must be exercised in a way that is compatible with human rights under section 58 of the HR Act, and also that the use of the delegated powers by an

² As noted in the Legal Affairs and Community Safety Committee, Parliament of Queensland, Human Rights Bill 2018 (Report No. 26, February 2019) 51.

appropriately qualified temporary detention centre employee in practice must also be compatible with human rights.

(e) the balance between the importance of the amendment, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, it is considered that the importance of the purpose of ensuring a safe environment for children and staff in detention, as well as ensuring the functional operation of detention centres, outweighs any harm caused to the rights through the delegation.

(f) any other relevant factors

Not applicable.

Safe by-elections

(a) the nature of the rights

The amendments to the Electoral Act to make provision for safe by-elections limit the following human rights:

- freedom of movement (section 19 of the HR Act)
- freedom of expression (section 21 of the HR Act)
- taking part in public life (section 23 of the HR Act)
- privacy and reputation (section 25 of the HR Act)

The right to take part in public life affirms the right of all persons to contribute to and exercise their voices in relation to the public life of the State. It ensures all persons have the opportunity to contribute to the political process and public governance, directly or through freely chosen representatives. The United Nations Human Rights Committee (UNHRC) considers that the right imposes positive obligations on the State regarding the conduct of elections, including to preserve the impartiality of the electoral process and the right of citizens to choose their representatives freely.

The freedom of expression protects the right of all persons to hold an opinion without interference, and the right of all persons to seek, receive and express information and ideas (including verbal and non-verbal communication). The forms of protected expression are broad, and include expression that is oral, written, print, art or in any other medium. The right to freedom of expression and the free flow of information and ideas, particularly about public and political issues, is considered to be a touchstone of a democratic society.

The right to take part in public life and the freedom of expression are inherently linked in the context of elections. The proposed amendments will limit these rights by:

- allowing the cut-off day for the electoral rolls and the nomination of candidates stated in the writ to be a day earlier than the day stated in section 84 of the Electoral Act or for the Government or Speaker, as the case may be, to substitute later days than those stated in the writ, including changes to the by-election's polling day – insofar as these

amendments may operate to alter the period during which a person may update the electoral roll, nominate as a candidate for the by-election or cast their vote on polling day;

- allowing the ECQ or a returning officer to direct an issuing officer not to visit an elector who has requested to vote as an electoral visitor voter, electors in the by-election or electors of a particular class if the ECQ is satisfied that a risk to the health and safety of an issuing officer is posed, but also requiring the ECQ or returning officer to, to the extent practicable, have the issuing officer make alternative arrangements to enable the elector affected by the direction to vote in the by-election – insofar as these amendments may make it more challenging for certain voters to exercise their right to vote; and
- providing the ECQ with the ability to issue directions in relation to the display or distribution of how-to-vote cards in or near polling booths at a by-election, with an offence applying to persons who contravene such a direction – insofar as these amendments may impact on the ability of candidates, political parties, third parties and other individuals to communicate with voters.

The right to privacy and reputation protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The scope of the right to privacy is very broad, but at its most basic is concerned with notions of personal autonomy and dignity. The UNHRC has said that it refers to those aspects of life in which a person can freely express his or her identity, either alone or in relationships with others.³ It protects privacy in the personal sense (and in the sense of personal information, data collection and correspondence) but also extends to an individual's private life more generally.

The right to privacy under the HR Act protects individuals against unlawful or arbitrary interferences with their privacy. The concept of lawfulness in the context of the right to privacy means that no interference can take place except in cases envisaged by the law. Interference authorised by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the International Covenant on Civil and Political Rights (ICCPR).⁴ The European Court of Human Rights has also said that an interference will be lawful if it is authorised by a law that is adequately accessible and formulated with sufficient precision to enable a person to regulate his or her conduct by it.⁵ These are concepts that are consistent with the rule of law principles. The concept of arbitrariness in the context of the right to privacy carries a human rights meaning of 'capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought'.⁶

The freedom of movement protects a person's right to move freely within Queensland and to enter and leave it and choice of residence, if they are lawfully within Queensland. The right is based upon Article 12 of the ICCPR. The ICCPR states in part that the right shall not be subject to any restrictions except those which are provided by law and are necessary to protect public health. However, the UNHRC considers that the right for individuals to move freely should not be unnecessarily affected by legal and bureaucratic barriers.

³ *Coeriel and Aurik v The Netherlands* (Communication No 45/1991) [10.2].

⁴ United Nations Human Rights Committee, *General Comment No. 16*.

⁵ *Sunday Times v United Kingdom* [1979] ECHR 1, [49].

⁶ *WBM v Chief Commissioner of Police* (2012) 43 VR 466, 472 (Warren CJ, Hansen JA agreeing).

The freedom of movement and the right to privacy are both limited to the extent that the proposed amendments will allow:

- the ECQ to give a direction about the number of scrutineers each candidate may have at a polling booth or other place at which a scrutineer is entitled to be present under the Electoral Act, or prohibiting a scrutineer from being present at a polling booth or other place at which a scrutineer is otherwise entitled to be present under the Electoral Act, with an offence applying to a contravention;
- a returning officer or member of the ECQ's staff in charge of a polling booth to give a direction about the movement of candidates or scrutineers at the polling booth for the by-election, and areas where they may be, with an offence applying to a contravention;
- a returning officer to arrange for the counting of votes to be filmed by a member of the ECQ's staff; and
- a returning officer to direct a member of the ECQ's staff to carry out the counting of votes at a stated place.

(b) the nature of the purpose of the limitation to be imposed by the safe by-election provisions, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The COVID-19 pandemic remains a threat to the Queensland community. The primary purpose of the amendments is to protect public health. Moreover, protecting the health, safety and wellbeing of people in the Queensland community, as well as election participants and officials and the ECQ staff, from the risk posed by COVID-19 and its spread, including limiting situations and attendance at public events which may result in contagion through person-to-person contact, also promotes the right to life (protected under section 16 of the HR Act). The State has positive obligations in relation to protecting the health and safety of its citizens and this is consistent with a free and democratic society based on human dignity, equality and freedom.

The amendments will also support possible alternative arrangements for the conduct of the by-election which may be required as a result of COVID-19. For example, should it be necessary to facilitate the increased use of postal voting at the by-election to reduce the risk of the spread of COVID-19.

(c) the relationship between the limitation to be imposed by the safe by-election provisions, and its purpose, including whether the limitation helps to achieve the purpose

While Queensland is currently in a strong position in respect of active cases of COVID-19 and no community transmission, should an outbreak occur (either State-wide or in a particular electoral district) it would be inconsistent with public health advice to facilitate a by-election which required large groups of individuals to gather in person. The conduct of a by-election could give rise to certain challenges if social distancing requirements are in place and there are limits on gatherings of large numbers of persons at a single place (such as a polling booth).

Accordingly, amendments are required to support possible alternative arrangements for the conduct of the election to reduce the risk of COVID-19 transmission, which may include the

increased use of postal voting and/or reducing the need for people to attend or congregate at polling booths and counting locations. For example:

- Facilitating the increased use of postal voting will reduce the need for persons to attend in person to vote at a polling booth, and for polling booths to be staffed based on anticipated attendance. This will in turn reduce person-to-person contact and protect the health and safety of individuals and the public more generally.
- Provisions which would enable the ECQ to decline to offer electoral visitor voting reduces person to person contact and the potential for issuing officers to spread the virus as they travel between different residences.
- Allowing the ECQ to give a direction about the number of scrutineers each candidate may have at a polling booth or other place that scrutineers are otherwise entitled to be present, or by allowing the returning officer or member of the ECQ's staff in charge of a polling booth to give a direction about the movement of candidates or scrutineers at the polling booth will limit person-to-person contact and the risk of super spreading events.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the safe by-election provisions

The proposed amendments will be confined to a by-election where the writ is issued on or before the COVID-19 legislation expiry day, with the purpose of minimising the risks to health and safety.

There are no less restrictive and reasonably available ways to achieve the purpose of the Bill. The amendments clearly contemplate alternative arrangements being put in place when required.

(e) the balance between the importance of the purpose of the safe by-election provisions, which would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The balance between the importance of protecting the health and safety Queensland individuals by mitigating against any potential spread of COVID-19 and the importance of the right to take part in public life has been considered.

Despite the State's current strong position in relation to COVID-19, there are risks associated with electoral events. Accordingly, where a by-election is held during the declared COVID-19 public health emergency and depending on the prevailing circumstances at the time of that by-election, there will be a need to ensure appropriate social distancing requirements or to have in place a framework which enables alternative arrangements to be put in place, for example, to enable the by-election to be held by way of postal vote.

The Queensland Government's paramount priority to date has been the protection of the health and safety of Queensland citizens and therefore, should the need arise, the amendments will enable the Government to take appropriate action based on public health advice.

It is noted that the provisions do not necessarily need to be invoked. For example, despite there being the power for it, there was no regulation made which required the 2020 state election to

occur by way of state-wide, or electoral district wide, postal vote. This is because the public health advice did not require such action. However, the framework was there and could have been utilised if Queensland had a higher rate of community transmission of COVID-19 and stricter measures were required. Further, the directions governing the movement of candidates and scrutineers and the distribution of how-to-vote cards for the 2020 state election were relatively moderate in their application, limited to requiring affected parties to do such things as abide by current social distancing rules; wear a face mask; not shake hands with electors/persons at polling booths/counting locations; and not re-using how-to-vote cards.

In relation to any potential regulation made under the proposed regulation making power, in the absence of any information about the nature of the regulation and the prevailing health conditions at the time the regulation is made, it is difficult to balance any potential limitation on human rights with the purpose of the amendments. The human rights certificate that accompanies any regulation made under this power will provide detailed consideration as to how the regulation is compatible with human rights.

(f) any other relevant factors

Not applicable.

Amendments to the *Local Government Act 2009* in relation to filling vacancies in the office of a mayor or councillor

(a) the nature of the right

The amendments to the LGA in relation to mayoral and councillor vacancies limit the right to take part in public life (section 23 of the HR Act).

The right to take part in public life affirms the right of all persons to contribute to and exercise their voices in relation to the public life of the State and ensures all persons have the opportunity to contribute to the political process and public governance. The UNHRC considers that the right imposes positive obligations on the State regarding the conduct of elections, including to preserve the impartiality of the electoral process and the right of citizens to choose their representatives freely.

The amendments may limit the right to take part in public life for a person who was an eligible runner-up at a local government quadrennial election for the office of a mayor, and the office of a councillor if a local government decides to fill the vacancy by a by-election rather than appointment of the runner-up. The change will remove the current right of these individuals to be appointed should the office become vacant in the period starting on a quadrennial election and ending on the day before the first anniversary of the election and will therefore limit their opportunity to participate in the conduct of public affairs directly unless they contest and are elected in a by-election.

The amendments will submit each vacancy in the office of a mayor to a by-election in which all eligible electors would have the right and opportunity to vote. Although a runner-up would lose their entitlement to be appointed to a vacant office, they will also have the opportunity to be elected, by nominating as a candidate at the by-election. The amendment will also remove

the possibility that a person who received only a small percentage of the vote at a quadrennial election could be appointed to a vacant position.

In relation to a vacancy in the office of a councillor, should a local government decide that it is appropriate for the vacancy to be filled by a runner-up, the runner-up will have the opportunity to continue to take part in public life as a councillor. However, if the local government decides to fill the vacancy by a by-election, the runner-up would then have the opportunity to be elected, by nominating as a candidate at the by-election and the free expression of the will of electors would be promoted on a broader basis.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Mayoral vacancies

The purpose of the limitation to be imposed on a runner-up for the office of a mayor is to allow the will of the electors to play a greater role in filling a vacancy in the office of the mayor during the first twelve months after a quadrennial election.

This purpose is consistent with a free and democratic society because it ensures individuals may exercise their right and opportunity to both vote for their representative and to be elected at a by-election. This places a greater emphasis on the free expression of the will of the electors which is fundamental to a representative democracy, especially where it concerns the election of the mayor of a local government. In doing so, the amendments promote the freedom of expression and the right to take part in public life for electors and candidates in the by-election, both of which are protected rights under the HR Act (sections 21 and 23).

The amendments promote the right to take part in public life for electors in affected local government areas by providing an additional opportunity for electors to vote on candidates in a by-election where a mayoral vacancy has arisen or where a local government has decided that a councillor vacancy should be filled by a by-election. This ensures that, given the changed circumstances resulting from the vacancy, representation is determined according to the will of these electors. The amendments also promote the right to take part in public life for candidates in a by-election by providing them the opportunity to contest and be elected in the by-election.

Councillor vacancies

The purpose of the limitation to be imposed on a runner-up for the office of a councillor is to enable a local government to balance the cost of holding a by-election with the availability of a runner-up when filling a vacancy that arose during the first twelve months after a quadrennial election.

This purpose is consistent with a free and democratic society as it provides elected local governments the discretion to decide, according to their unique circumstances, how their constituents will be best represented and to make decisions for the good rule and local government of their local government area.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Mayoral vacancies

The limitation to be imposed will help achieve the purpose in relation to the office of a mayor, as the requirement for a vacancy in the office of the mayor in the first 12 months after a quadrennial election to be filled through a by-election necessarily requires the removal of the statutory entitlement of a runner-up to fill a vacant office by appointment.

Councillor vacancies

The limitation to be imposed will help achieve the purpose, as enabling the local government to make a decision about whether to fill a vacancy in the office of a councillor in the first twelve months after a quadrennial election by a by-election or by the appointment of a runner-up requires the removal of the previous statutory entitlement of a runner-up to be appointed.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

Mayoral & councillor vacancies

There are no less restrictive means reasonably available to achieve the purposes of allowing the will of the electors to play a greater role in filling a vacancy in the office of the mayor or to provide a local government the discretion to decide how a vacancy in the office of a councillor will be filled.

The limitation could be lessened if the amendments did not apply retrospectively so that a runner-up could be appointed to fill vacancies that arose prior to commencement. However, this would not provide individuals in these local government areas with the same further opportunity to vote or be elected to fill the vacancy in the office of a mayor as other local governments. In relation to a vacancy in the office of a councillor, it would not enable the local government to balance the cost of holding a by-election with the availability of a runner-up, as would apply for other local governments. It is therefore considered that this approach would not achieve the identified purpose as effectively as the amendments proposed in the Bill.

It is also noted that, in respect to the amendments in the Bill which provide local governments with the discretion to decide how a vacancy in the office of a councillor will be filled during the first twelve months after a quadrennial election, the exercise of this power must be compatible with human rights under section 58 of the HR Act.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Mayoral & councillor vacancies

On balance, taking into account the nature and extent of the limitation on the right to take part in public life, I consider that the purpose of allowing the will of the electors to play a greater role in filling a vacancy in the office of the mayor, and providing local governments the opportunity to balance the cost of a by-election with the availability of a runner-up, during the first twelve months after a quadrennial election, outweighs the negative impact on the right to take part in public life.

(f) any other relevant factors

Not applicable.

Conclusion

In my opinion, the COVID-19 Emergency Response and Other Legislation Amendment Bill 2020 is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

Shannon Fentiman MP

Attorney-General and Minister for Justice

Minister for Women

Minister for the Prevention of Domestic and Family Violence

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