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

Explanatory Notes

FOR

Amendments to be moved during consideration in detail by the Honourable Yvette D'Ath MP, Minister for Health and Ambulance Services and Leader of the House

Title of the Bill

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

Objectives of the Amendments

Amendments to the Public Health Act 2005 and Right to Information Act 2009

Proactive and effective contact tracing has been critical to preventing widespread community transmission of COVID-19 in Queensland when positive cases have been detected in the community.

The 'Check in Qld' app (App) plays an important role in contact tracing efforts by providing rapid and efficient access to information about individuals who have visited a potential exposure site. The App has significantly enhanced Queensland's contact tracing system and is widely used across the State. It provides the Queensland Government with a person's contact information and details of the person's attendance at a restricted business, activity or undertaking. The use of the App has been mandated by the Chief Health Officer under a public health direction, *Restrictions on Businesses, Activities and Undertakings Direction (No. 26)* (as at 24 August 2021) (Restrictions on Business Direction), issued under section 362B of the *Public Health Act 2005*. Under the direction, a wide range of entities must require guests, patrons and staff to use the App and individuals are required to use the App to 'check in'.

Under the Restrictions on Business Direction, in limited circumstances, contact tracing information can be collected through alternative means other than the App. For example, a paper-based collection of information is allowed to be used if there is a temporary failure of an internet service, a safety issue such as risk of overcrowding or a remote location that does not have internet access.

A key concern in relation to the App and other similar applications that may be introduced under a public health direction is the potential for personal information collected to be used for purposes other than contact tracing, such as law enforcement or in criminal or civil proceedings.

The COVID-19 pandemic has led to the need to collect an unprecedented amount of information about a person's movements, which is supported by the community as they understand the need for this information to be available for contact tracing purposes to lessen the need for lockdowns during the pandemic. However, this information would not ordinarily be collected by government and would not be available to law enforcement agencies.

The amendments are intended to maintain public confidence in the use of the App and to encourage Queenslanders to continue using it to 'check in' knowing their personal information will be protected and only used for purposes connected with contact tracing or the COVID-19 pandemic. It is particularly important to ensure Queensland's contact tracing capability remains strong while other States are currently subject to significant outbreaks, which have the potential to spread into Queensland.

The objective of the amendments is to improve the privacy protection for personal information collected through the App by ensuring it can only be used or disclosed for limited purposes including contact tracing, compliance activities and investigating or prosecuting an offence related to contact tracing or the COVID-19 pandemic. It is considered these protections should apply regardless of how the information is collected, whether through the App or a paper-based method.

An amendment to the *Right to Information Act 2009* is also proposed to ensure the Act provides that personal information collected under the App or through an alternative method is exempt from disclosure under the Right to Information Act.

Amendments to the Hospital and Health Boards Act 2011 and Public Health Act 2005 – appointment of more than one Deputy Chief Health Officer

The statutory position of Deputy Chief Health Officer (DCHO) is established under section 53AA of the *Hospital and Health Boards Act 2011*. The DCHO position was created to support the Chief Health Officer (CHO) in performing their functions.

The objective of these amendments is to enable more than one DCHO to be appointed to ensure diverse technical expertise from various medical specialities is available to be stood up rapidly with appropriate statutory power in response to an emerging situation of significance facing Queensland. The amendments provide Queensland Health with the flexibility to respond to the current and future pandemics or other health emergencies and provide the ability for appointed DCHOs to oversee distinct work streams, based on their medical specialty. For example, during the COVID-19 pandemic, work streams could be established to focus on the public health response or COVID-19 operations and planning.

The ability to appoint more than one DCHO also ensures the work of the CHO is sustainable and there is appropriate support for the CHO in performing their functions during public health emergencies and other situations of significance. It will enable the CHO to delegate to the DCHOs based on their specialities and the prevailing situation, allowing the CHO or a DCHO who may be appointed as the Acting CHO, where the CHO is absent, to respond to the circumstances at hand (for example, mobilising a response to a pandemic while concurrently managing a response to a natural disaster such as a cyclone).

No changes are made to the requirement that only the CHO may make a public health direction under section 362B of the *Public Health Act 2005*. This power cannot be delegated and the amendments do not permit a DCHO to exercise this power.

Amendments to the Holiday Act 1983 and Industrial Relations Act 2016

Amendments to the *Holidays Act 1983* will provide for Friday 29 October 2021 to be declared as a public holiday for the Brisbane City Council, Moreton Bay Regional Council and the Scenic Rim Reginal Council areas following the cancellation of the Royal Queensland Show in response to a South East Queensland COVID-19 lockdown, and the repeal of the 2021 show day public holidays in these local government areas.

An additional amendment to the Holidays Act will provide for the Minister to be able to change the new public holiday on 29 October 2021 to another date by notice published on the department's website if the Minister considers it necessary or desirable to do so having regard to the COVID-19 emergency.

It is also necessary to amend the *Industrial Relations Act 2016* to ensure the public holiday is recognised for industrial relations purposes.

Repeal of the Personalised Transport Ombudsman Act 2019 and an amendment to the Transport Operations (Passenger Transport) Act 1994

The repeal of the *Personalised Transport Ombudsman Act 2019* reduces unnecessary government expenditure and ensures no unnecessary regulatory burden is placed on the personalised transport industry while the sector recovers from the impacts of the COVID-19 pandemic.

During consideration of the Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017, the former Public Works and Utilities Committee recommended establishing an ombudsman, or an equivalent entity, with responsibility for dealing with disputes in the personalised transport industry. The Queensland Government supported the recommendation and committed to establishing an ombudsman, or equivalent entity, for the personalised transport industry.

In 2019, the government delivered on its commitment by providing for the establishment of the Personalised Transport Ombudsman through the Personalised Transport Ombudsman Act. The Personalised Transport Ombudsman was expected to be appointed in 2020. The appointment and commencement of the legislation was deferred due to the impacts of the COVID-19 pandemic on the personalised transport industry.

The Department of Transport and Main Roads has since reviewed the objectives of the Personalised Transport Ombudsman Act, focusing on issues raised by the former Transport and Public Works Committee and industry submissions during committee consideration of the Bill for the Personalised Transport Ombudsman Act (the Review).

The key issues raised included the exclusion period for industry participants to be eligible to hold the office of the Personalised Transport Ombudsman, the Personalised Transport Ombudsman's limited powers to make binding decisions, and whether there were sufficient mechanisms to protect consumer rights and the role of the Personalised Transport Ombudsman in protecting them. The Review also considered expanding the Personalised Transport Ombudsman's remit.

However, the Review found that appropriate mechanisms already exist to effectively deal with disputes in the personalised transport industry, including customer complaint lines and existing services provided by other State and Commonwealth agencies and bodies, including Workplace Health and Safety Queensland, the Fair Work Ombudsman or Fair Work Commission, the Office of Fair Trading, the Australian Competition and Consumer Commission and the Australian Taxation Office.

Government also considered the appropriateness of introducing new regulations while the sector is recovering from the impacts of the COVID-19 pandemic. The Review considered the costs to government of funding the Personalised Transport Ombudsman and determined this cost would outweigh any potential benefits of the Personalised Transport Ombudsman to the personalised transport industry and users of personalised transport services.

The amendment to the *Transport Operations (Passenger Transport) Act 1994* amends the definition of *relevant offence*. This amendment is consequential to the repeal of the Personalised Transport Ombudsman Act.

Achievement of the Objectives

Amendments to the Public Health Act 2005 and Right to Information Act 2009

The amendments to the Public Health Act restrict the use and disclosure of personal information collected through the App or an alternative method.

New section 362MAG of the Public Health Act provides that personal information collected through the App or an alternative method can only be used or disclosed for the purpose of contact tracing and a number of limited purposes related to contact tracing or the COVID-19 pandemic. The personal information will able to be disclosed or used for:

- contact tracing or purposes related to contact tracing (for example, ensuring the integrity or security of the information);
- investigating or prosecuting an offence under 'relevant provisions' of the Public Health Act;
- ensuring compliance with 'relevant provisions' of the Public Health Act;
- deriving statistical or summary information; or
- another purpose prescribed for a COVID-19 application if the application is prescribed as one to which the privacy protection will apply under section 362MAC.

The ability to prescribe another purpose is required for the possible future use of other applications or platforms developed and used in Queensland for the COVID-19 emergency. If appropriate, these applications or platforms could be prescribed as a COVID-19 application, which would have the effect that any personal information collected by the application would also be subject to the same privacy protections.

The amendments define the term 'relevant provision' to include chapter 3, part 3 of the Public Health Act that relates to contact tracing, and other provisions of the Public Health Act that are closely related to contact tracing or matters directly related to the COVID-19 emergency, such as failing to comply with a requirement of an emergency officer (section 346), giving false or misleading statements or documents (sections 363 and 364), and the provisions of chapter 8, part 7A about the COVID-19 emergency, including failing to comply with a public health direction (section 362D) and failing to comply with a written direction of an emergency officer (section 362J). It is considered appropriate and necessary to ensure personal information collected by the App and alternative methods can be used for these purposes to ensure an appropriate compliance and enforcement regime for the COVID-19 pandemic.

The amendments also provide that personal information collected for contact tracing cannot be disclosed or used for particular purposes (new section 362MAI). Under this provision, the personal information cannot be:

- accessed under any judicial or administrative order, including a decision on an application under an Act for access to information or a document such as an application under the *Information Privacy Act 2009* or the Right to Information Act, except for an order under a 'relevant provision' of the Public Health Act;
- compelled to be produced by a person or given in evidence by a person in any criminal or civil proceeding or in compliance with a requirement under an Act or legal process, except for under a proceeding relating to a 'relevant provision' of the Public Health Act.

The amendments will provide that personal information collected through the App or alternative method can be used or disclosed with the consent of the person to whom the information relates. Similarly, the personal information can also be used in proceedings or in compliance with a requirement under an Act or legal process with consent. This ensures individuals retain control over their collected personal information. The consent will need to be informed consent and given in writing to ensure the person understands the purposes for which the information may be used.

The amendments include an offence of using or disclosing information collected under the App or an alternative method other than in accordance with the new provisions (new section 362MAF). The new offence carries a maximum penalty of 100 penalty units, which is higher than penalties for other offences related to confidentiality in the Public Health Act. However, the higher penalty is considered appropriate given the significant amount of information being collected through the App and the extraordinary nature of the powers being used during the COVID-19 pandemic.

The offence provision will principally apply to public servants including contact tracers, emergency officers and support staff who administer and manage the App, with access to information collected under the App or an alternative method. In the limited circumstances in which business owners may collect information in a paper-based form, they will also be subject to the requirement to only use the information for contact tracing purposes. That is, the business

owner may be asked to produce the contact tracing information if a person diagnosed or exposed to COVID-19 attended their business premises. Under the amendments, the business owner is not permitted to use the information for any other purposes. This will ensure that the information collected in a paper-based form cannot be used for any other purpose unconnected to contact tracing. Business owners will also be required to take reasonable steps to ensure their staff do not disclose or misuse the information (new section 362MAF(4)).

It is intended the new provisions in the Public Health Act will prevail to the extent of any inconsistency with existing laws (s362MAD). This will ensure the provisions override other laws of general application than would ordinarily apply for accessing information held by governments, such as the Right to Information Act.

The amendments also include transitional provisions to clarify that the new privacy protections apply to information collected through the App or an alternative method, whether the information was collected before or after the commencement.

The amendments also include a minor change to the Right to Information Act to provide a cross-reference to the new provisions of the Public Health Act to state that personal information collected under the App or through an alternative method is exempt from disclosure under the Act.

Amendments to the Hospital and Health Boards Act 2011 and Public Health Act 2005 – appointment of more than one Deputy Chief Health Officer

The amendments to the Hospital and Health Boards Act will enable the appointment of more than one DCHO. A number of consequential amendments also update provisions in the Act to reflect that more than one DCHO can be appointed. This is consistent with the objectives of ensuring there is appropriate technical expertise from various medical specialities to be available to respond to emerging situations of significance and to provide additional ongoing support to the CHO.

Minor amendments to the Public Health Act are also being made to clarify that the CHO may delegate functions or powers under that Act to any person appointed as a DCHO and to ensure that all appointed DCHOs will be subject to section 456 which provides protection from liability for actions taken under the Act.

Amendments to the Holiday Act 1983 and Industrial Relations Act 2016

To give effect to the Government's announcement that a public holiday be appointed for the City of Brisbane, Scenic Rim Region and Moreton Bay Region following the repeal of the show day public holiday in those districts, the Holidays Act is amended to declare Friday, 29 October 2021 as a public holiday in the City of Brisbane and in the Scenic Rim Region Council and the Moreton Bay Region Council areas.

The amendment to the Holidays Act also allows the Minister to move the public holiday on 29 October 2021 to another date by notice published on the Department of Education's website if the Minister considers it necessary or desirable to do so, having regard to the COVID-19 emergency.

The Bill also makes a minor and consequential amendment to the *Industrial Relations Act 2016* to ensure the public holiday is recognised for industrial relations purposes.

Repeal of the Personalised Transport Ombudsman Act 2019 and an amendment to the Transport Operations (Passenger Transport) Act 1994

The repeal of the Personalised Transport Ombudsman Act will reduce unnecessary government expenditure by removing the requirement to establish the Personalised Transport Ombudsman.

The provisions to repeal the Personalised Transport Ombudsman Act and the minor consequential amendment to the Transport Operations (Passenger Transport) Act were introduced to the Legislative Assembly via the Resources and Other Legislation Amendment Bill 2021 on 16 June 2021.

The repeal of the Personalised Transport Ombudsman Act is required before the automatic commencement of the Personalised Transport Ombudsman Act on 13 September 2021, in order to ensure any potential impact on industry stakeholders is minimised.

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 implement the amendments. Any costs will be met from within existing budget allocations.

The amendments to the Public Health Act contain privacy protections for the use of personal information collected through the App and alternative methods. These privacy protections will provide the community with greater confidence in being able to use the App knowing their personal information will be protected from misuse.

A key benefit of having the ability to appoint more than one DCHO is the flexibility to put in place multiple work streams, based on specialty skills, enhancing responsiveness to emergent situations.

The repeal of the Personalised Transport Ombudsman Act responds to industry views and results in cost savings for government of approximately $5 million over three years. The Department of Transport and Main Roads will establish channels for mediation of personalised transport matters and enhance existing complaints frameworks to ensure systemic issues which may arise are monitored on an ongoing basis.

Consistency with Fundamental Legislative Principles

The amendments have been drafted with regard to the fundamental legislative principles (FLPs) in section 4 of the *Legislative Standards Act 1992*.

Amendments to the Public Health Act 2005

Institution of Parliament

The amendments include a provision which enables additional COVID-19 applications or platforms to be prescribed if they are developed and used in Queensland in the future. Further, the amendments permit the use and disclosure of the personal information for another purpose related to the COVID-19 emergency that is prescribed by regulation.

The use of regulations for this purpose represents a potential departure from the fundamental legislative principle requiring that legislation has sufficient regard to the institution of Parliament (section 4(2)(b) Legislative Standards Act). The potential impact on the FLP may:

- enable additional applications to be added and to be covered by the same privacy protections as personal information collected through the App;
- potentially broaden the purposes permitted for use and disclosure in relation to any prescribed application or platform to accommodate any additional personal information beyond contact tracing which may be collected by these other applications.

Despite Queensland's current strong position in relation to COVID-19, to date, recent events in relation to the presence of the highly virulent Delta strain in Queensland and other jurisdictions including New South Wales and Victoria, illustrate that the COVID-19 emergency is ongoing and evolving. The ability to prescribe additional COVID-19 applications by regulation is justified on the basis that the ability to be responsive to emerging issues is critical to the public health response to the COVID-19 emergency. As new applications and platforms are developed and identified as needed, if these are mandated under public health directions issued by the CHO, it is important that the personal information collected through these platforms can be protected in the same way as the information collected through the App. The ability to prescribe another purpose is required to accommodate potential broader collections of personal information which may extend beyond contact tracing. For example, other applications may also collect information about an individual's health and welfare status and it may be necessary to prescribe authorised purposes to ensure the application operates as intended. It is also important to note that any application prescribed under the regulations will generally be subject to the same requirements and privacy protections as the App data, as set out in the Public Health Act.

Rights and liberties

Under section 4(2)(a) of the Legislative Standards Act, the FLPs include requiring that legislation has sufficient regard to rights and liberties of individuals, particularly in relation to human rights including the right to privacy and reputation.

The amendments will prohibit the use and disclosure of personal information collected through the App (or an alternative method such as paper-based collection). The amendments positively impact on an individual's right to privacy by protecting personal information which is required to be collected for contact tracing purposes under a public health direction issued by the CHO under the Public Health Act.

The creation of a new offence of using or disclosing contact tracing information other than in accordance with the new provisions potentially impacts on whether the legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the Legislative

Standards Act). This includes whether, for example, consequences imposed by legislation are proportionate and relevant to the actions to which the consequences are applied by legislation. Legislation must impose penalties which are proportionate to the offence.

The new offence carries a maximum penalty of 100 penalty units, which is higher than penalties for other offences related to confidentiality in the Public Health Act. However, the higher penalty is considered appropriate given the significant amount of contact tracing information being collected and the extraordinary nature of the powers being used during the COVID-19 pandemic. The maximum penalty of 100 penalty units is also equivalent to the penalty for similar offences across the statute book, including section 142 of the *Hospital and Health Boards Act 2011*, section 188 of the *Information Privacy Act 2009*, section 10.1 of the *Police Service Administration Act 1990*, section 172 of the *Public Service Act 2008* and section 15 of the *Justice and Other Information Disclosure Act 2008*.

Whether legislation has sufficient regard to rights and liberties of individuals depends, in part, on whether the legislation does not adversely affect the rights and liberties, or impose obligations, retrospectively (section 4(3)(g) of the Legislative Standards Act). The amendments include a transitional provision providing for the continuation of confidentiality requirements after omission of the provisions. The effect of the transitional provisions is to also continue the operation of the offence provision so that a proceeding for an offence against former section 362MAF, may, after the omission, be started or continued under that section as if the section had not been omitted. While the effect of this provision does not create a retrospective offence, it does provide for ongoing criminal liability of 'relevant persons' if they contravene the confidentiality provisions, even after they are omitted. However, the continuation of the offence provision is necessary as it ensures that the personal information collected by the App (and through other methods) remains protected. The need to provide for the transitional effect of these provisions arises because the legislation associated with the COVID-19 emergency is temporary and subject to expiry. Any potential adverse impact is likely to be minimal and outweighed by the need to protect the personal information.

Amendments to the Hospital and Health Boards Act 2011 and Public Health Act 2005 – appointment of more than one Deputy Chief Health Officer

The amendments to the Hospital and Health Boards Act and Public Health Act to enable the appointment of more than one DCHO are consistent with FLPs.

Amendments to the Holiday Act 1983

The power for the Minister to substitute the public holiday on the Minister's own motion without providing scrutiny by the Legislative Assembly could be considered to be a potential breach of FLPs. To address this potential FLP concern, the amendment includes a requirement on the Minister to table a copy of the notice in the Legislative Assembly within 14 sitting days after the day the notice is published. The notice published on the Department of Education's website is a statutory instrument.

Repeal of the Personalised Transport Ombudsman Act 2019 and an amendment to the Transport Operations (Passenger Transport) Act 1994

The amendments to repeal the Personalised Transport Ombudsman Act and the consequential amendment to the Transport Operations (Passenger Transport) Act are consistent with FLPs.

Consultation

Amendments to the Public Health Act 2005

Submissions were received by the Economics and Governance Committee from the Queensland Council for Civil Liberties, Queensland Human Rights Commission, Australian Lawyers Alliance and individuals about the protection of data collected through the App during the Parliamentary Committee process for the Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021.

The Privacy Commissioner was consulted and supports the amendments as providing greater certainty and privacy protections for users of the App and alternative methods of collection of check-in information.

Amendments to the Hospital and Health Boards Act 2011 and Public Health Act 2005 – appointment of more than one Deputy Chief Health Officer

The amendments to allow the appointment of more than one DCHO position is an internal structural issue for Queensland Health. Consultation with external stakeholders was not required.

Amendments to the Holiday Act 1983 and Industrial Relations Act 2016

Consultation was undertaken with the 16 local government areas that observe a public holiday associated with the Royal Queensland Show and tourism industry operators and businesses.

Repeal of the Personalised Transport Ombudsman Act 2019 and an amendment to the Transport Operations (Passenger Transport) Act 1994

Industry consultation on the repeal of the Personalised Transport Ombudsman Act was undertaken with the following key personalised transport stakeholders:

- Taxi Council of Queensland;
- Limousine Association of Queensland;
- Limo Action Group;
- Uber; and
- Transport Workers' Union.

These personalised transport stakeholders were supportive of the proposed repeal but provided feedback that access to mediation services for industry participants is important. In recognition of this, the Department of Transport and Main Roads will establish channels for mediation of personalised transport matters and enhance existing complaints frameworks to ensure systematic issues which may arise, are monitored on an ongoing basis.

Extensive community and industry consultation had also previously occurred during the drafting and committee consideration of the Bill for the Personalised Transport Ombudsman Act. Key feedback from industry and stakeholders during this consultation was that the Personalised Transport Ombudsman would be ineffective due to its limited powers in making and enforcing binding decisions, and in reviewing government policies or decisions. This was despite the Personalised Transport Ombudsman's prescribed powers being consistent with a number of other ombudsman schemes, such as the Queensland Ombudsman.

Consistency with legislation of other jurisdictions

Amendments to the Public Health Act 2005

The Commonwealth and Western Australia have adopted a legislative approach, similar to the proposed amendments, to manage the use and disclosure of information collected through COVID-19 related apps. The *Privacy Amendment (Public Health Contact Information) Act 2020* (C'wlth) imposes requirements on the collection, use and disclosure of data collected by the Australian Government's COVIDSafe app. The legislation ensures data collected through the COVIDSafe app is only used to facilitate contact tracing activities by State and Territory health officials and disclosure for other purposes is an offence.

In Western Australia, the *Protection of Information (Entry Registration Information Relating to COVID-19 and Other Infectious Diseases Act) 2021* (WA) limits the permitted use and disclosure of check in data to contract tracing and related purposes, including investigating an offence under the Act or deriving de-identified statistical information. The Western Australian legislation overrides various pieces of legislation of general application, including the *Freedom of Information Act 1992* (WA), *State Records Act 2000* (WA), *Criminal Investigation Act 2006* (WA), *Emergency Management Act 2005* (WA), *Public Health Act 2016* (WA) and any other written law in Western Australia.

On 4 August 2021, the *COVID-19 Emergency Response (Check-In Information) Amendment Bill 2021* (ACT Bill) was introduced into the Australian Capital Territory Legislative Assembly in response to concerns expressed by the ACT Human Rights Commissioner about the adequacy of existing privacy protections applying to personal information collected by the ACT Government's Check In CBR App (ACT App). The ACT Bill provides additional privacy safeguards by prohibiting the use of check-in information except for a permitted purpose including undertaking contact tracing or purpose related to contact tracing. Check-in information is not admissible in evidence in a court proceeding, except as it relates to investigating or prosecuting an offence relating to compliance with a public health direction in relation to contact tracing.

In New South Wales, section 27 of the *Public Health (COVID-19 Gathering Restrictions) Order (No 2) 2021* (NSW) specifies that check in data obtained through the Services NSW app are to be used or disclosed only for the purposes of contact tracing during the COVID-19 pandemic. However, this direction does not replace the ability of police officers in New South Wales to apply to a court for a warrant to access this information.

Victoria collects contact tracing data through the Service Victoria app and police can access check in data through a court issued warrant. There is no legislation currently in place in Victoria which specifically addresses the use and disclosure of information obtained through COVID-19 related apps.

Amendments to the Hospital and Health Boards Act 2011 and Public Health Act 2005 – appointment of more than one Deputy Chief Health Officer

The ability to appoint more than one DCHO is consistent with a number of other jurisdictions. For example:

- the Commonwealth currently has four Deputy Chief Medical Officers connected with the COVID-19 response. Additionally, there is also a Deputy Chief Medical Officer – Mental Health;
- Victoria has two DCHO positions – DCHO (communicable diseases) and DCHO environmental);
- South Australia has three DCHOs appointed in response to COVID-19 with responsibility divided into three separate streams: clinical systems/ICU surge capacity and elective surgery re-scheduling; primary care and out-of-hospital services such as aged care and the NDIS; and whole-of-government work such as education, corrections and child protection; and
- Western Australia has two DCHOs.

Notes on provisions

Amendment 1 – *Holidays Act 1983*

Amendment 1 inserts new part 9A (Amendment of Holidays Act 1983), which contains new clauses 22A and 22B.

Clause 22A provides that part 9A amends the *Holidays Act 1983*.

Clause 22B inserts new section 14 (Particular public holiday in 2021) in the Holidays Act.

Clause 14(1) provides that a public holiday is to be observed on 29 October 2021 in a participating district.

Clause 14(2) provides that the Minister may move the new public holiday on 29 October 2021 to another date by a notice published on the Department of Education's website if the Minister considers it necessary or desirable to do so having regard to the COVID-19 emergency.

Clause 14(3) provides that the notice published on the Department of Education's website is a statutory instrument.

Clause 14(4) provides that the Minister must, within 14 sitting days after the notice is published, table a copy of the notice in the Legislative Assembly.

Clause 14(5) provides that a reference to a public holiday in an industrial instrument (award or agreement) under the *Industrial Relations Act 2016* is taken, in a participating district, to include 29 October 2021 or the substituted day, if the Minister substitutes another day for the public holiday under subsection (1) for the participating district.

Clause 14(6) defines the COVID-19 emergency and the participating districts in which the 29 October 2021 public holiday will be observed. Participating districts are the area of Brisbane under the *City of Brisbane Act 2010* or the Moreton Bay or Scenic Rim local government areas as described in the *Local Government Regulation 2012*.

Amendment 2 – *Hospital and Health Boards Act 2011*

Amendment 2 inserts new part 9B (Amendment of Hospital and Health Boards Act 2011), which contains new clauses 22C to 22L.

Clause 22C provides that part 9B amends the *Hospital and Health Boards Act 2011*. New part 9B enables more than one deputy chief health officer (DCHO) to be appointed to ensure diverse technical expertise from various medical specialities is available to be stood up rapidly with appropriate statutory power in response to an emerging situation of significance facing Queensland.

Clause 22D amends the part 3 heading (Functions of chief executive, chief health officer and deputy chief health officer) by omitting 'deputy chief health officer' and replacing it with 'deputy chief health officers'.

Clause 22E amends the part 3, division 3 heading (Chief health officer and deputy chief health officer) by omitting 'deputy chief health officer' and replacing it with 'deputy chief health officers'.

Clause 22F(1) amends the heading for section 53AA (Deputy chief health officer) by omitting 'officer' and replacing it with 'officers'.

Clause 22F(2) amends section 53AA(1) (Deputy chief health officer) by omitting 'a deputy chief health officer' and replacing it with '1 or more deputy chief health officers'.

Clause 22F(3) amends section 53AA(2) and (3) (Deputy chief health officer) by omitting 'The' and replacing it with 'A'.

Clause 22G(1) amends the heading for section 53AB (Functions of deputy chief health officer) by omitting 'officer' and replacing it with 'officers'.

Clause 22G(2) amends section 53AB (Functions of deputy chief health officer) by omitting 'functions of the' and replacing it with 'functions of a'.

Clause 22H amends section 53AC (Delegation by chief health officer) by omitting 'the deputy' and replacing it with 'a deputy'.

Clause 22I amends section 139A(1)(ca) (Meaning of *designated person*) by omitting 'the' and replacing it with 'a'.

Clause 22J amends section 266(ba) and (g)(iiia) (Appointments and authority) by omitting 'the' and replacing it with 'a'.

Clause 22K amends section 267(ca) (Signatures) by omitting 'the' and replacing it with 'a'.

Clause 22L amends the definition of *deputy chief health officer* in schedule 2 (Dictionary) by omitting 'the' and replacing it with 'a'.

Amendment 3 – *Industrial Relations Act 2016*

Amendment 3 inserts new part 9C (Amendment of Industrial Relations Act 2016), which contains new clauses 22M and 22N.

Clause 22M provides that part 9C amends the *Industrial Relations Act 2016*.

Clause 22N amends the last dot point in paragraph (a) of the definition of *public holiday* in schedule 5 (Dictionary) of the Industrial Relations Act to reference new section 14 in the Holidays Act. The amendment provides for the new public holiday on 29 October 2021 in participating districts.

This is a minor consequential amendment to ensure the public holiday is recognised for industrial relations purposes in the Industrial Relations Act.

Amendment 4 – *Public Health Act 2005*

Amendment 4 replaces section 362A (Purpose of part) of the *Public Health Act 2005*.

Clause 30A omits and replaces section 362A (Purpose of part) with new section 362A (Purposes of part) to clarify that that the purposes of the part are to:

- confer additional powers for the COVID-19 emergency on the chief health officer and emergency officers; and
- to protect the confidentiality of particular personal information collected in relation to the COVID-19 emergency.

Section 362A already conferred additional powers for the COVID-19 emergency on the chief health officer and emergency officer. New section 362A ensures that the purpose of part 7A (Particular powers for COVID-19 emergency) also protects the confidentiality of particular personal information collected in relation to the COVID-19 emergency. This includes information collected through a COVID-19 application, as defined in new section 362MAB.

Amendment 5 – *Public Health Act 2005*

Amendment 5 amends section 362FA (Delegation) of the *Public Health Act 2005*.

Clause 30B amends section 362FA(1)(a) (Delegation) by omitting 'the' and replacing it with 'a'. This amendment clarifies that the Chief Health Officer (CHO) may delegate functions or powers under the Public Health Act to any person appointed as a DCHO.

Amendment 6 – *Public Health Act 2005*

Amendment 6 inserts new chapter 8, part 7A, division 6 (Protection of personal information), which contains new clauses 362MAA to 362MAI.

Clause 362MAA (Application of division) provides that division 6 (Protection of personal information) applies if personal information is collected by using a COVID-19 application in accordance with a requirement under the Public Health Act or if personal information is collected, other than by using a COVID-19 application, if under the Public Health Act, a person is required to collect, or make all reasonable efforts to collect, the personal information by using the COVID-19 application and it is not possible for the person to collect the personal information by using the COVID-19 application. An example of a requirement under the Public Health Act is a requirement under a public health direction or a direction given under division 3.

Clause 362MAB (Definitions for division) provides definitions of terms for division 6 (Protection of personal information).

Clause 362MAC (Meaning of *COVID-19 application*) defines what constitutes a COVID-19 application. Clause 362MAC(1) provides that the application used for the purpose of contact tracing, known as the *Check in Qld* app, is a COVID-19 application.

Clause 362MAC(2) provides that a regulation may prescribe another application to be a COVID-19 application if the application is developed or used for the purpose of contact tracing

or developed or used for another purpose relating to the COVID-19 emergency that is prescribed by regulation for the application.

Clause 362MAC(3) provides that for this section *application* means an application or other program used on a device to display or store information electronically.

Clause 362MAD (Relationship of division with other provisions) sets out the relationship between division 6 and other provisions and laws. Clause 362MAD(1) provides that division 6 (Protection of personal information) applies despite chapter 3, part 3, division 3.

Clause 362MAD(2) provides that if a provision of division 6 (Protection of personal information) is inconsistent with another provision of the Public Health Act or another law, the provision of this division prevails to the extent of the inconsistency with existing laws.

Clause 362MAE (Extraterritorial application of division) provides that it is Parliament's intention that division 6 (Protection of personal information) has effect outside Queensland and in relation to persons outside Queensland.

Clause 362MAF (Confidentiality of relevant information) is a new offence provision. Clause 362MAF(1) provides the section applies to a relevant person who, in that capacity, has acquired or has access to relevant information. 'Relevant person' is defined in clause 362MAB.

Clause 362MAF(2) provides it is an offence if the relevant person discloses the relevant information to anyone else, or uses the relevant information, other than under division 6 (Protection of personal information). The offence carries a maximum penalty of 100 penalty units.

Clause 362MAF(3) provides that subsection (4) applies to a relevant person who is an information holder.

Clause 362MAF(4) provides it is an offence if the relevant person fails to take all reasonable steps to ensure a person who works at a business, activity or undertaking owned, controlled or operated by the relevant person does not disclose or use the relevant information, unless the relevant information is disclosed at the request of the relevant person and for a purpose for which the relevant person may disclose the relevant information under section 362MAH(2)(a) or (b). The offence carries a maximum penalty of 100 penalty units.

The offence provision will principally apply to public servants, including contact tracers and emergency officers, with access to contact tracing information and staff of the Department of Communities, Housing and Digital Economy who are the data custodians for the *Check in Qld* App. However, in limited circumstances, business owners collecting contact tracing information in a paper-based form will also be subject to the requirement to only use the information for contact tracing purposes. That is, the business owner may be asked to produce the contact tracing information in the event a person diagnosed or exposed to COVID-19 attended their business premises. Under the amendments, the business owner is not permitted to use the information for any other purposes. Business owners will be required to take reasonable steps to ensure their staff do not disclose or misuse the information.

Clause 362MAG (Disclosure or use by relevant persons other than information holders) deals with how relevant information may be used or disclosed by relevant persons other than

information holders. Clause 362MAG(1) provides this section applies to a relevant person, other than an information holder, who has acquired or has access to relevant information in that capacity.

Clause 362MAG(2) provides that the relevant person may disclose or use the relevant information with the consent of the individual to whom the relevant information relates, or if the individual is unable to consent, with the consent of a parent or legal guardian of the individual, or to the extent the disclosure or use is for:

- contact tracing or a purpose related to contact tracing (for example, ensuring the integrity or security of the relevant information); or
- if the relevant information is collected by using a COVID-19 application prescribed under section 362MAC(2) and a purpose is prescribed for the application under section 362MAC(2)(b), the relevant information may be disclosed or used for the prescribed purpose; or
- ensuring a person's compliance with obligations under a relevant provision; or
- investigating or prosecuting an offence against a relevant provision; or
- deriving statistical or summary information.

Clause 362MAG(3) defines the phrase *statistical or summary information* which means statistical or summary information from which an individual's identity is not apparent or cannot reasonably be ascertained.

Clause 362MAH (Disclosure by information holders) deals with how relevant information may be disclosed by information holders. Clause 362MAH(1) provides this section applies to a relevant person who is an information holder and in that capacity, has acquired or has access to relevant information.

Clause 362MAH(2) provides that the relevant person may disclose the relevant information with the consent of the individual to whom the relevant information relates, or if the individual is unable to consent, with the consent of a parent or legal guardian of the individual or to a relevant person mentioned in section 362MAB, definition *relevant person*, paragraph (a) to the extent the disclosure is for:

- contact tracing or a purpose related to contact tracing, including, for example, ensuring the integrity or security of the relevant information; or
- ensuring a person's compliance with obligations under a relevant provision; or
- investigating or prosecuting an offence against a relevant provision.

Clause 362MAI (Limits on use of relevant information and derived evidence) provides additional protections for relevant information and derived evidence. Clause 362MAI(1) provides that relevant information or derived evidence cannot be accessed under any order, whether of a judicial or administrative nature, other than an order for the purpose of a relevant provision and is not admissible in any proceeding, other than a proceeding under a relevant provision.

Clause 362MAI(2) provides that a person cannot be compelled to produce relevant information or derived evidence, or give evidence relating to relevant information or derived evidence in any proceeding, other than a proceeding under a relevant provision, or in compliance with a requirement under an Act or legal process, other than a requirement relating to a proceeding under a relevant provision.

Clause 362MAI(3) provides that subsections (1) and (2) do not apply if the information or evidence is accessed, admitted, produced or given with the consent of the individual to whom the information relates, or if the individual is unable to consent, with the consent of a parent or legal guardian of the individual.

Clause 362MAI(4) defines *derived evidence* and *order*. *Derived evidence* means any information, document or other thing, obtained as a direct or indirect result of relevant information. *Order* includes a direction, a decision on an application under an Act for access to information or a document (for example, an application under the *Information Privacy Act 2009* or the *Right to Information Act 2009*) and another process.

Amendment 7 – *Public Health Act 2005*

Amendment 7 inserts new clause 33A, which amends the note in section 456(3)(b) (Protecting prescribed persons from liability) by inserting 'a' after ', chief health officer,'. This amendment ensures that any deputy chief officer will not be civilly liable for an act done, or omission made, honestly and without negligence under the Public Health Act.

Amendment 8 – *Public Health Act 2005*

Amendment 8 amends the heading for division 1 in clause 34 of the Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021 by omitting 'Provision' and replacing it with 'Provisions'.

Amendment 9 – *Public Health Act 2005*

Amendment 9 inserts new section 507A and division 1A (Provisions applying on omission of chapter 8, part 7A), which contains new clauses 507B to 507E.

Clause 507A (Application of ch 8, pt 7A, div 6) provides that chapter 8, part 7A, division 6, which relates to particular powers for the COVID-19 emergency, applies in relation to relevant information, whether this information is collected before or after the commencement.

Clause 507B (Application of division) provides that division 1A applies on the omission of chapter 8, part 7A (Particular powers for COVID-19 emergency).

Clause 507B(2) provides that division 1A does not limit section 20 of the *Acts Interpretation Act 1954*.

Clause 507C (Interpretation) sets out interpretation provisions for division 1A. Clause 507C(1) defines the term *former* for division 1A. It provides *former*, for a provision of this Act, means the provision as in force from time to time before the omission.

Clause 507C(2) provides that a reference in a provision of division 1A to the omission generally, is a reference to the omission of chapter 8, pat 7A.

Clause 507C(3) provides that words defined under former chapter 8, part 7A and used in division 1A have the same meaning as they had under the former part.

Clause 507D (Continuation of confidentiality requirements) is a transitional provision providing for the continuation of confidentiality requirements after the omission. Clause 507D(1) provides that the section applies in relation to a relevant person who, in that capacity, has acquired or has access to relevant information collected before the omission, whether the relevant person acquires or has access to the relevant information before or after the omission.

Clause 507D(2) provides that despite the omission, former chapter 8, part 7A, division 6 continues to apply in relation to the relevant person.

Clause 507D(3) provides that, to remove any doubt, it is declared that a proceeding for an offence against former section 362MAF, may, after the omission, be started or continued under that section as if the section had not been omitted.

Clause 507E (Continuation of limits on use of relevant information and derived evidence) provides that despite the omission, former section 362MAI continues to apply in relation to:

(a) relevant information collected before the omission;
(b) derived evidence, if the evidence was obtained as a direct or indirect result of relevant information mentioned in paragraph (a); and
(c) evidence relating to relevant information mentioned in paragraph (a) or derived evidence mentioned in paragraph (b).

Amendment 10 – *Right to Information Act 2009*

Amendment 10 inserts new part 15 (Amendment of Right to Information Act 2009), which contains new clauses 55 and 56.

Clause 55 provides that part 15 amends the *Right to Information Act 2009*.

Clause 56 amends schedule 3, section 12(1) to insert a reference to the *Public Health Act 2005*, chapter 8, part 7A, division 6 and chapter 12, part 8, division 1A. Schedule 3 sets out the types of information the disclosure of which the Parliament has considered would, on balance, be contrary to the public interest.

Amendment 11 – *Transport Operations (Passenger Transport) Act 1994*

Amendment 11 inserts new part 16 (Amendment of Transport Operations (Passenger Transport) Act 1994), which contains new clauses 57 and 58.

Clause 57 provides that part 16 amends the *Transport Operations (Passenger Transport) Act 1994*.

Clause 58 amends paragraph (b)(ii) of the definition of *relevant offence* in schedule 3 of the Transport Operations (Passenger Transport) Act as a consequence of the repeal of the *Personalised Transport Ombudsman Act 2019*. A relevant offence for chapter 11, part 4B or 4C of the Transport Operations (Passenger Transport) Act will include an offence against section 143AC in force before the section was repealed on 9 March 2020.

Amendment 12 – *Personalised Transport Ombudsman Act 2019*

Amendment 12 inserts new part 17 (Repeal).

Clause 59 repeals the *Personalised Transport Ombudsman Act 2019*. This will ensure that a Personalised Transport Ombudsman cannot be appointed, and the Office of the Personalised Transport Ombudsman is not established.

Amendment 13 – Long title

Amendment 13 amends the long title of the Bill to refer to the amendments to the *Holidays Act 1983*, *Hospital and Health Boards Act 2011* and the *Industrial Relations Act 2016*.

Amendment 14 – Long title

Amendment 14 amends the long title of the Bill to refer to the amendments to the *Right to Information Act 2009* and the *Transport Operations (Passenger Transport) Act 1994*.

Amendment 15 – Long title

Amendment 15 amends the long title of the Bill to refer to the repeal of the *Personalised Transport Ombudsman Act 2019*.