

Justice Legislation (COVID-19 Emergency Response—Community Titles Schemes and Other Matters) Regulation 2020

Explanatory notes for SL 2020 No. 250

made under the

Body Corporate and Community Management Act 1997

Building Units and Group Titles Act 1980

Collections Act 1966

COVID-19 Emergency Response Act 2020

Liquor Act 1992

Tourism Services Act 2003

General Outline

Short title

Justice Legislation (COVID-19 Emergency Response—Community Titles Schemes and Other Matters) Regulation 2020

Authorising law

Body Corporate and Community Management Act 1997 in reliance on sections 8 and 9 of the *COVID-19 Emergency Response Act 2020*

Building Units and Group Titles Act 1980 in reliance on sections 8 and 9 of the *COVID-19 Emergency Response Act 2020*

Section 322 of the *Body Corporate and Community Management Act 1997*

Section 134 of the *Building Units and Group Titles Act 1980*

Collections Act 1966 in reliance on section 13 of the *COVID-19 Emergency Response Act 2020*

Sections 202 and 235 of the *Liquor Act 1992*

Section 30B of the *Statutory Instruments Act 1992*

Section 22 of the *Tourism Services Act 2003*

Policy objectives and the reasons for them

On 29 January 2020, the Minister for Health and Minister for Ambulance Services declared a public health emergency under section 319 of the *Public Health Act 2005* (Public Health Act) due to the outbreak of COVID-19 (COVID-19 emergency).

The COVID-19 emergency has had a significant impact on all of Queensland, including bodies corporate in community titles schemes, tourism operators and liquor licensees. The hospitality and tourism sectors have been severely impacted as a result of travel restrictions and the forced closure of non-essential businesses, such as hotels, clubs, bars and restaurants, under COVID-19 related public health directions.

The policy objectives of the *Justice Legislation (COVID-19 Emergency Response—Community Titles Schemes and Other Matters) Regulation 2020* (the Regulation) are to:

- protect the health, safety and welfare of persons in the community titles sector during the COVID-19 emergency;
- legislatively validate past actions that body corporate committees may have taken in relation to general meetings and committee meetings to protect the safety and welfare of persons in the community titles sector during the COVID-19 emergency;
- ensure continued access to dispute resolution provided under the BCCM Act and BUGT Act during the COVID-19 emergency;
- legislatively validate the waiver of fees associated with certain liquor licensing applications made between 1 February 2020 and 31 July 2020 inclusive;
- provide financial relief for inbound tour operators by waiving registration renewal fees on registrations that expire between 1 February 2020 and 31 January 2021; and
- provide the chief executive with the ability to extend the timeframes for the preparation and lodgement of financial statements and returns under the *Collections Act 1966* (Collections Act) during the COVID-19 emergency.

COVID-19 Emergency Response Act 2020

Parts of the Regulation are made pursuant to the *COVID-19 Emergency Response Act 2020* (COVID-19 Response Act). The COVID-19 Response Act commenced on 23 April 2020. The purposes of the COVID-19 Response Act (as provided in section 2) include:

- protecting the health, safety and welfare of persons affected by the COVID-19 emergency; and
- facilitating the continuance of public administration, judicial process, small business and other activities disrupted by the COVID-19 emergency, including by easing regulatory requirements and establishing an office of small business commissioner.

The COVID-19 Response Act includes additional regulation-making provisions to make extraordinary regulations under affected Acts. Under section 5, a Minister administering an affected Act may recommend to the Governor in Council the making of an extraordinary regulation only if satisfied it is necessary for a purpose of the COVID-19 Response Act.

Part 3 of the COVID-19 Response Act relates to reducing physical contact between persons. Section 8, in part 3, of the COVID-19 Response Act provides an additional regulation-making power in relation to requirements or permissions under an Act for a person to physically attend a place or meeting or for an entity to call or hold a meeting for a particular purpose or a particular matter. Section 9, in part 3, of the COVID-19 Response Act provides a regulation-making power in relation to requirements or permissions under an Act related to documents.

Part 4 of the COVID-19 Response Act relates to modifying statutory time limits. Section 13, in part 4, provides an additional regulation-making power to modify a statutory time limit under an Act where an Act does not expressly authorise an entity to modify the period.

Community titles schemes measures

The *Body Corporate and Community Management Act 1997* (BCCM Act) provides administrative, governance, dispute resolution and other arrangements for community titles schemes in Queensland. To provide flexible governance arrangements for different scheme types, the BCCM Act is constructed so that management processes and procedures are provided in regulation modules designed for different types of schemes, and certain fees are prescribed in a separate regulation. Six regulation modules currently support the BCCM Act, those being the:

- *Body Corporate and Community Management (Accommodation Module) Regulation 2008* (Accommodation Module);
- *Body Corporate and Community Management (Commercial Module) Regulation 2008* (Commercial Module);
- *Body Corporate and Community Management Regulation 2008* (BCCM regulation);
- *Body Corporate and Community Management (Small Schemes Module) Regulation 2008* (Small Schemes Module);
- *Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011* (Specified Two-lot Schemes Module); and
- *Body Corporate and Community Management (Standard Module) Regulation 2008* (Standard Module).

The *Building Units and Group Titles Act 1980* (BUGT Act) provides for the administration, governance, dispute resolution and other arrangements for a relatively small number of subsidiary schemes within developments under 'specified Acts' (for example, the *Integrated Resort Development Act 1987*, *Mixed Use Development Act 1993* and *Sanctuary Cove Resort Act 1985*). The BUGT Act is supported by the *Building Units and Group Titles Regulation 2008* (BUGT Regulation).

Protecting health, safety and welfare

Attendance and voting at committee meetings and general meetings

For community titles schemes under the Accommodation, Commercial and Standard Modules, a committee meeting must be held at a specified physical location, committee members have a right to attend and vote in person at the meeting, and attendance at a meeting by electronic means is not explicitly dealt with. Comparable requirements apply to BUGT Act schemes.

A community titles scheme under the BCCM Act (apart from a scheme under the Specified Two-lot Schemes Module) must hold an annual general meeting within three months after the end of the scheme's financial year. A scheme under the BUGT Act must hold an annual general meeting in each year on or after the anniversary of the first annual general meeting but not later than two months after that anniversary.

A general meeting of the body corporate for a community titles scheme under the Accommodation, Commercial, Small Schemes and Standard Modules, or for a BUGT Act scheme, must occur at a designated place, and voters for the meeting have a right to attend and vote at the meeting in person.

For BCCM Act schemes under the Accommodation, Commercial and Standard Modules, a system of electronic voting may be used for voting on motions at a general meeting or for committee elections, but only if it has previously been authorised by resolution of the body corporate at a general meeting. The BUGT Act does not make any allowance for using systems of electronic voting.

For most BCCM Act schemes, a minimum number of voters must be present in person at the meeting for a quorum to be achieved. For BCCM Act schemes (other than the Small Schemes Module) and schemes under the BUGT Act, the capacity of voters to attend and vote 'live' at a meeting by means of remote attendance such as a video link or audio link is not explicitly accommodated.

The impacts of the COVID-19 emergency in respect of social distancing and quarantine requirements means there is a need to facilitate alternative arrangements that minimise the physical presence of persons at committee and general meetings.

Access to registers and documents

Under the BCCM Act and BUGT Act, the body corporate must allow particular persons to inspect the body corporate records. Procedures for general meetings also require rolls, forms and papers to be available for personal inspection at the meeting.

The Commissioner for Body Corporate and Community Management must also allow interested persons for a dispute resolution application to inspect applications and submissions relevant to the application.

These requirements may require physical proximity between the person inspecting the records and the person responsible for providing access to the records.

The impacts of the COVID-19 emergency in respect of social distancing and quarantine requirements means there is a need to facilitate alternative arrangements for the inspection of documents that minimises physical proximity of persons during the COVID-19 emergency.

Restricting access to common property

For schemes under the BCCM Act, the committee is restricted from making decisions changing rights, privileges, or obligations of lot owners, which may include decisions to restrict access to common property.

The impacts of the COVID-19 emergency in respect of social distancing and quarantine requirements means there is a need to ensure that committees are able to respond in an effective and timely way to health directions.

Legislative validation of particular actions taken since 19 March 2020

Shortly after the declaration of the COVID-19 emergency, the Office of the Commissioner for Body Corporate and Community Management provided information to bodies corporate and residents about how the potential impact of COVID-19 on schemes could be minimised. That information included guidance that as long as bodies corporate make reasonable attempts to comply with the legislative requirements for holding general meetings, instances of non-compliance that do not affect the voting outcomes will be unlikely to affect the validity of meetings.

This information reflects a general position taken by adjudicators, as well as reflected in judicial interpretation of the BCCM Act, that non-compliance of an insubstantial nature should not imperil the actions of bodies corporate or their committees.

It is expected that because of the impacts of the COVID-19 emergency in respect of social distance and quarantine requirements, bodies corporate may have held general meetings and committee meetings that are not strictly in compliance with the statutory requirements.

As a result, there is a need to validate actions taken by committees in relation to the holding of meetings that may have resulted in non-compliance, where the committee reasonably believed a public health direction would otherwise be contravened. It is also necessary to validate remote attendance and electronic voting procedures that may have been introduced for the meeting. This will ensure certainty that body corporate decisions are validly made and reduce disputes about technical non-compliance with the legislation.

Ensuring continued access to dispute resolution

Under the BCCM Act, the Commissioner for Body Corporate and Community Management may waive a dispute resolution application fee in cases of financial hardship, but does not have power to waive fees for obtaining copies of particular documents, relating to a dispute resolution application, including submissions, in cases of financial hardship. Obtaining these documents is important for parties to a dispute to exercise their rights, including to make a response to submissions.

Under the BUGT Act, a referee may waive fees payable to the referee, but only in cases of extreme financial hardship.

Like other parts of the community, the COVID-19 emergency has had financial impacts on the community titles sector, including for both bodies corporate and individual unit owners. To avoid compounding financial hardship that may be experienced at this time, and to ensure access to dispute resolution for persons experiencing financial hardship due to the COVID-19 emergency, there is a need to ensure the Commissioner and referee have the flexibility to waive relevant fees to potentially assist people affected by the COVID-19 emergency who may be unable to pay fees due to financial hardship.

Liquor Regulation 2002 amendments

A further policy objective of the Regulation is to legislatively validate the administrative arrangements that waived fees on liquor licensing applications made between 1 February 2020 and 31 July 2020 inclusive. This fee relief was one of several tourism industry support initiatives announced in February 2020 as part of the Government's \$27.25 million industry package. The package was in response to restrictions on international travel imposed by the Commonwealth Government stemming from the international outbreak of

COVID-19. The restrictions negatively impacted Queensland's tourism and hospitality industries through a drop in tourism numbers. The initiative assisted licensees with activities related to attracting customers and catering to private functions, such as changing trading hours or varying the licensed area of the premises.

Tourism Services Regulation 2003 amendments

The Regulation also applies a waiver of registration renewal fees for inbound tour operators if their registration is due to expire between 1 February 2020 and 31 January 2021. This validates and extends administrative arrangements that have previously provided for the waiver, which was announced to the industry in February 2020.

Collections Act 1966 amendments

During the COVID-19 emergency, registered charities, community purpose associations and promoters of appeals for support may not, for various reasons, be able to meet the legislative timeframes with respect to their financial reporting obligations due to social distancing or self-isolation restrictions.

The Regulation provides the chief executive with the ability to extend the timeframes for the preparation and lodgement of financial statements and returns under the Collections Act. The extension of timeframes supports public health responses to the COVID-19 emergency.

Achievement of policy objectives

Community titles schemes measures

The Regulation achieves its policy objectives relating to community titles schemes as set out in the following paragraphs. The provisions in the Regulation relating to community titles schemes expire on 31 December 2020.

Protecting health, safety and welfare

The Regulation achieves the policy objective of protecting the health, safety and welfare of persons affected by the COVID-19 emergency in the community titles sector by modifying arrangements and requirements for community titles schemes under the BCCM Act (other than for schemes under the Specified Two-lot Schemes Module), and schemes under the BUGT Act, as discussed in the following paragraphs.

Attendance and voting at committee meetings and general meetings

The Regulation allows committees to modify the way general meetings and committee meetings are held in certain circumstances. Where a committee reasonably believes a public health direction would be contravened if a requirement related to holding a meeting is complied with or if a person exercises an entitlement related to holding a meeting, for example an entitlement to attend the meeting in person, the requirement or entitlement is suspended, and the committee must modify the way the meeting is held. The requirement or entitlement is suspended, and the way the meeting is to be held must be modified, to the extent reasonably necessary to ensure the public health direction is not contravened.

Examples are provided of modified ways to hold the meeting, including limiting the number of people who may physically attend the meeting, allowing attendance and voting at the meeting by audio link or audiovisual link, or holding the meeting on the papers. The Regulation also states that the committee may do anything reasonably necessary to ensure the meeting is held in a way that does not contravene a public health direction.

The Regulation also allows the committee to make arrangements for persons entitled to attend the meeting to do so remotely where a person attends from another location, is able to receive reasonably contemporaneous communication of the business of the meeting being conducted, and is able to communicate a vote on a motion or for a committee election in a reasonably contemporaneous way. To ensure this allowance is applied fairly, the committee is required to take all reasonable steps to ensure that if an arrangement is made for remote attendance, that it can be used by each person entitled to attend the meeting.

A person who attends the meeting remotely is taken to be present personally at the meeting, which ensures that persons attending remotely will count towards quorum requirements and requirements for a minimum number of persons to be present in person at a general meeting.

The Regulation does not limit the obligations of the secretary of the body corporate to prepare and provide voting papers for the meeting to lot owners, or a person's entitlement to attend or vote at the meeting by proxy or written or electronic voting paper.

The Regulation also provides that the committee may make arrangements to allow electronic votes for a committee meeting or general meeting. This may allow the casting of an electronic vote for a motion, including a secret ballot motion, or for a committee election. To ensure this allowance is applied fairly, the committee is required to take all reasonable steps to ensure that if an arrangement is made for electronic voting, that it can be used by each person entitled to vote at the meeting.

The arrangements for electronic voting must not allow a person to vote if they are not entitled to vote, or have already voted, and for a secret ballot vote, must not allow the person's identity to be associated with the vote. The way an electronic vote is cast must comply with requirements under the *Electronic Transactions (Queensland) Act 2001* about how a document must be signed or sent electronically and, for a vote cast using an electronic form of a voting paper or ballot paper, any accompanying instructions.

The Regulation sets out that the committee's power to make these arrangements to allow electronic votes does not limit a person's entitlement under a body corporate law to vote in another way that does not involve physically attending the meeting, for example, by proxy, or by written or electronic voting paper.

The Regulation sets out that for a committee meeting or general meeting where there are requirements to have particular documents available for inspection, or allow a voting tally sheet to be inspected, or for something to be done in open view of the meeting, that reasonable steps can be taken to comply with the requirement in another way if the person required to do the thing and another person who is attending the meeting are not physically present in the same place.

The Regulation also ensures that lot owners are adequately informed of decisions or arrangements made by the committee in regard to modifying how a meeting is held, enabling remote attendance, or providing for electronic votes, by including requirements that the committee must give notice about the decisions or arrangements to relevant persons. The notice must be given with the notice for meeting, or as soon as possible before the meeting if the notice for the meeting has already been given.

Access to registers and documents

The Regulation allows a body corporate to meet a requirement to allow an interested person to inspect the body corporate's records by giving the interested person a copy of the records, or providing electronic access to the records, subject to the interested person paying the relevant fee for being given the copy or provided electronic access. The Regulation sets the fee for giving electronic access to an interested person to inspect a body corporate record to be the same as the fee for inspecting the records.

As the BUGT Act does not deal with requirements to provide copies of body corporate records (other than for copies of the by-laws), the Regulation sets the fee per page for providing copies of records to the same amount as the fee per page for a copy of the by-laws.

The Regulation also allows requests made to the Commissioner for Body Corporate and Community Management to inspect documents relevant to dispute resolution applications to be satisfied by providing copies of the documents upon payment of the relevant fee.

Restricting access to common property

The Regulation inserts a new section in each of the Accommodation, Commercial, Small Schemes and Standard Modules setting out that despite a decision changing rights, privileges or obligations of lot owners being a restricted issue for the committee, such a decision is not a decision on a restricted issue in specified circumstances (those circumstances are that the decision is in relation to changing arrangements for access to, or use of, common property and body corporate assets, and the committee considers the change is reasonably necessary to ensure compliance with a public health direction, and the decision states that it stops having effect on the earlier of the day the public health direction stops having effect or 31 December 2020).

Legislative validation of particular actions taken since 19 March 2020

The Regulation achieves the policy objective of legislatively validating past actions that body corporate committees may have taken in relation to general meetings and committee meetings to protect the safety and welfare of persons in the community titles sector during the COVID-19 emergency by retrospectively applying, with necessary modifications, the provisions in the Regulation relating to the holding of meetings, including provisions providing for the suspension of requirements and entitlements relating to meetings and the modification of the way a meeting is held, as well as provisions allowing the committee to make arrangements for remote attendance and electronic voting.

A transitional provision deals with compliance during the period between 19 March 2020 and notification of the Regulation, in recognition that it would not be possible for body corporate committees to comply with particular obligations that require an action to have been done in a specific way in regard to remote attendance, electronic voting, or notification of changes made, without being aware of the requirements in advance. The

transitional provision also ensures that committee actions to change the way meetings were held in order to not contravene a public health direction are retrospectively validated, without going so far as to require that such changes must have been made if the relevant circumstances applied. The transitional provision states that particular obligations did not apply during this period.

The scope of the modifications to procedures and requirements that is allowed under these provisions is consistent with the scope contemplated in guidance provided by the Office of the Commissioner for Body Corporate and Community Management to bodies corporate during the COVID-19 emergency about how instances of non-compliance that do not affect voting outcomes are unlikely to affect the validity of meetings.

The retrospective application of these provisions will provide certainty for committees that have taken actions in regard to holding meetings that may have resulted in non-compliance, where the committee reasonably believed a public health direction would otherwise be contravened. It will also provide certainty where remote attendance or electronic voting procedures were introduced for the meeting.

Ensuring continued access to dispute resolution

The Regulation achieves the policy objective to ensure continued access to dispute resolution provided under the BCCM Act and BUGT Act during the COVID-19 emergency by amending the BCCM Regulation and the BUGT Regulation to expand the capacity of the Commissioner for Body Corporate and Community Management and the referee to waive fees related to dispute resolution.

The Regulation inserts a new section in the BCCM Regulation providing that the Commissioner for Body Corporate and Community Management may waive all or part of the fee payable for an application under section 246 of the BCCM Act to inspect or obtain copies of particular documents relating to a dispute resolution application, including submissions made about an application, if satisfied payment of the fee would cause the applicant financial hardship.

The Regulation amends the BUGT Regulation to provide that the referee may excuse a person from paying a fee payable to the referee if satisfied the person is suffering 'financial hardship' (instead of 'extreme financial hardship').

Liquor Regulation 2002 amendments

The Regulation achieves the policy objective by amending the *Liquor Regulation 2002* (Liquor Regulation) to exempt from payment of the prescribed fee, any application to change liquor trading hours or vary a licensed area of the premises made between 1 February 2020 and 31 July 2020 (both dates inclusive), and where applicable, the refund of any fees paid by the applicant for the application.

Current legislative environment

Under the *Liquor Act 1992* (Liquor Act), certain applications relating to a licence or permit, including applications to change liquor trading hours or vary a licensed area of the premises, must be accompanied by a prescribed fee.

Section 235(2)(c) of the Liquor Act provides that the Governor in Council may make a regulation with respect to fees, including the refunding of fees. Section 202(3) of the Liquor Act also provides that fees payable in respect of a permit are as prescribed by regulation.

Section 36D of the Liquor Regulation provides that the fees payable for the purpose of the Liquor Act, other than relevant fees, are stated in Schedule 1. The prescribed fees associated with applications to change liquor trading hours or vary a licensed area of the premises are stated at items 2(g), 2(h), 2(k) and 3(a) under Schedule 1 of the Liquor Regulation.

Mechanism for fee waiver

Section 30B(1) of the *Statutory Instruments Act 1992* (Statutory Instruments Act) provides that, if a power is conferred under a law for a statutory instrument to prescribe a fee, the power also includes a power to exempt a person or matter from payment of the fee, or waive payment of the fee for any person or matter. As sections 202(3) and 235(2)(c) of the Liquor Act confer a power for the Liquor Regulation to prescribe fees, it is considered section 30B(1) of the Statutory Instruments Act provides suitable authority for the Liquor Regulation to also exempt or waive payment of the prescribed fees.

Retrospective operation of fee waiver

On 18 February 2020, the Government committed to an industry recovery package that automatically waived fees on certain liquor licensing applications made between 1 February 2020 and 31 July 2020 and backdated refunds of fees paid on those applications to 1 February 2020. These commitments effectively provided for the retrospective operation of the initiative.

Section 34 of the Statutory Instruments Act provides that a beneficial provision of a statutory instrument may be given retrospective operation if the statutory instrument expressly provides for that operation. Accordingly, subordinate legislation can only include a provision that operates retrospectively if that provision is beneficial – that is, it does not operate to the disadvantage of a person other than the State. As the amendments benefit licensees, it is considered section 34 of the Statutory Instruments Act allows for the waiver of fees (achieved via legislative exemption) for the relevant liquor applications to operate retrospectively.

Amendments

New section 37 of the Liquor Regulation provides that despite section 36D, no fee is payable in relation to any of the specified applications (i.e. applications to change trading hours or vary a licensed area) made between 1 February 2020 and 31 July 2020, both dates inclusive. New section 37AA of the Liquor Regulation provides that the commissioner must refund the fee paid by an applicant for an application to which new section 37 relates. As the fee waiver is a temporary measure in response to the COVID-19 public health emergency, the Regulation provides that the new provisions expire on 31 December 2020.

Tourism Services Regulation 2003 amendments

The Regulation achieves the policy objective by amending the *Tourism Services Regulation 2003* to allow a fee exemption for applicants who apply to renew their registration as an inbound tour operator. The exemption applies to the renewal of registrations that are due to expire between 1 February 2020 and 31 January 2021.

The amendment also provides for the refund of registration renewal fees for applications subject to the fee exemption.

Current legislative environment

Inbound tour operators are licensed under the *Tourism Services Act 2003* to sell Queensland tourism packages wholesale or retail to overseas purchasers. A registrant may apply to the commissioner for renewal of the registrant's registration before the registration expires and has an option under the *Tourism Services Act* to select either a one or three-year registration period.

Inbound tourism operators selecting a three-year registration period pay a registration renewal fee equivalent to the one-year renewal fee (\$787) multiplied by three.

Mechanism for fee waiver

Section 30B(1) of the *Statutory Instruments Act 1992* (Statutory Instruments Act) provides that, if a power is conferred under a law for a statutory instrument to prescribe a fee, the power also includes a power to exempt a person or matter from payment of the fee, or waive payment of the fee for any person or matter. As section 21(2) of the *Tourism Services Act* confers a power for the *Tourism Services Regulation* to prescribe fees, it is considered section 30B(1) of the *Statutory Instruments Act* provides suitable authority for the *Tourism Services Regulation* to also exempt or waive payment of the prescribed fees.

The relevant provisions of the Regulation are required to commence retrospectively in order to validate administrative arrangements that have applied since the original announcement of the waiver in February 2020.

Amendments

New section 3A of the *Tourism Services Regulation* provides a one-year fee exemption for applicants who renew registrations that expire between 1 February 2020 and 31 January 2021. For inbound tourism operators who elect to renew their registration for a three-year period, the exemption is reflected in a reduced registration renewal fee of \$1,574, which is equivalent to the regular annual fee (\$787) multiplied by two (rather than multiplied by three as is usually the case).

New Section 3B allows the Commissioner to refund the portion of any fee paid by an applicant for the renewal of a registration that expires in the relevant term if the fee exceeds the amount in section 3A.

Collections Act 1966 amendments

Current legislative environment

Sections 31 and 32 of the *Collections Act* provide that every registered charity or

association whose objects are a community purpose and promoter of an appeal for support must, on the close of a prescribed or specified period of time, prepare a financial statement and have the financial statement audited. The audited financial statement must be submitted to the chief executive along with an annual return.

The prescribed time for the lodgement of the financial statement and return is generally within seven months of the end of the entity's financial year unless requested earlier if the entity stops functioning or if the Minister asks for the information.

During the COVID-19 emergency, registered charities, community purpose associations and promoters of appeals for support may not, for various reasons, be able to meet the legislative timeframes with respect to their financial reporting obligations. For example, during self-isolation, an auditor may be unable to gain access to a not-for-profit organisation's financial documents in order to audit those documents. In turn, a registered charity, community purpose association or promoter of an appeal for support will not be able to lodge their financial statement in time.

Amendments

Section 13 of the COVID-19 Act provides that an extraordinary regulation may be made to alter a statutory time limit, or authorise an entity having a function under the relevant statute to modify the time period.

The Collections Act will be modified to allow the chief executive to extend the timeframes for the preparation and lodgement of financial statements and returns. Notification of the extension will be published by way of notice on the Department's website or in writing depending on whether the extension is applied generally or to a particular class of entities or a particular entity. Under the COVID-19 Act, timeframes can be extended until no later than 31 December 2020

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy objectives of the authorising laws.

Inconsistency with policy objectives of other legislation

The regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

Liquor Regulation 2002 and Tourism Service Regulation 2003 amendments

The waiver of fees for the specified liquor applications has been implemented administratively by the Office of Liquor and Gaming Regulation since the Government announcement of the initiative on 18 February 2020. Similarly, the waiver of renew fees for registration as an inbound tour operator has been implemented administratively by the Office of Fair Trading. While these administrative actions achieve the policy intent, it is considered that they should be validated by legislative changes to ensure the fee waivers are legally effective.

Other policy objectives

There are no alternative ways of achieving the other policy objectives.

Benefits and costs of implementation

Community titles schemes measures

Benefits and costs for the community

The provision requiring the committee to modify the way a meeting is held to the extent necessary to ensure the meeting is held in a way that doesn't contravene a public health direction will ensure directions are complied with in the holding of general meetings and committee meetings during the COVID-19 emergency period and will protect the health, safety and welfare of people required, or entitled, to attend meetings.

The provisions permitting committees to make arrangements for remote attendance and electronic voting at a meeting will facilitate the holding of meetings in a way that is in compliance with public health directions and protects the health, safety and welfare of people required, or entitled, to attend meetings.

The retrospective application of the provisions for suspending certain requirements and entitlements related to the holding of a general meeting and modifying the way a meeting is held, and provisions allowing a committee to make arrangements for remote attendance and electronic voting, will increase certainty for committees, bodies corporate and lot owners about the legitimacy of meetings already held with modifications that were reasonably necessary to comply with health directions and to protect the health, safety and welfare of people required, or entitled, to attend meetings. This measure should also help reduce the potential for disputes associated with the outcomes of relevant meetings.

The provision allowing reasonable steps to be taken to meet particular requirements for meetings, such as having a document available for inspection at the meeting, ensures the transparency and integrity of meeting and voting processes is maintained.

The provision requiring that lot owners and other people entitled to attend a meeting be given a notice about modifications to the way a meeting is to be held or arrangements put in place for remote attendance or electronic voting will ensure lot owners and other people entitled to attend meetings are adequately informed of modified procedures and will contribute to the effectiveness of those modifications, although it may involve minor additional costs for bodies corporate.

The provisions for requests for inspection of body corporate records to be satisfied by way of providing copies or electronic access, or for inspection of documents relating to a dispute resolution application to be satisfied by way of providing copies enables in-person inspections of records during the COVID-19 emergency period to be avoided to protect the health and safety of interested persons, as well as members of bodies corporate or staff of the Office of the Commissioner for Body Corporate and Community Management. The provisions may have a small financial impact on an applicant as fees for copies may exceed fees for inspection in some circumstances.

Provisions providing that, despite a decision changing rights, privileges or obligations of lot owners being a restricted issue for the committee, such a decision is not a decision on a restricted issue in specified circumstances ensures the committee may make timely decisions about access to common property and assets to ensure compliance with health directions. The provisions may also reduce disputes about relevant decisions made to ensure compliance with public health directions during the COVID-19 emergency period.

The provisions providing the Commissioner for Body Corporate and Community Management under the BCCM Act, and referees under the BUGT Act, with increased capacity to waive fees associated with dispute resolution processes, if satisfied a person is suffering financial hardship, will also assist in decreasing financial stress, including financial stress resulting from COVID-19, and support access to dispute resolution.

Benefits and costs to Government

It is anticipated that the temporary requirements and processes included in the Regulation will assist to clarify the rights and obligations of bodies corporate, lot owners, occupiers and other people involved in community titles schemes during the COVID-19 emergency period, and may result in fewer disputes about these rights and obligations. Similarly, the retrospective application of provisions relating to the holding of general and committee meetings may result in fewer disputes about the outcomes of relevant meetings held between 19 March 2020 and the notification of the Regulation.

The increased capacity for relevant fees to be waived by the Commissioner for Body Corporate and Community Management under the BCCM Act or by the referee under the BUGT Act is not considered material.

Liquor Regulation 2002 amendments

During the waiver period, 1 February 2020 to 31 July 2020, the prescribed fees for the specified liquor licensing applications ranged from \$71.65 to \$213.70. The initiative, legislatively validated by the Regulation, provided a financial benefit to all liquor licensees that made a relevant application by removing the requirement for the prescribed fee to be paid for the application. The net financial benefit derived by each affected liquor licensee is directly dependent upon the application, or applications, made by the licensee during the waiver period.

Between 1 February 2020 and 31 July 2020, a total of 495 relevant liquor licensing applications were made, including:

- 92 ongoing extended trading hours approvals (\$19,660.40);
- 76 one-off extended trading hours permits (\$5,445.40);
- 151 applications to vary a licensed area on a temporary basis (\$10,819.15); and
- 176 applications to vary a licensed area on a permanent basis (\$16,570.40).

The total cost to Government from implementation of the initiative was \$52,495.35, significantly less than the cost estimate of \$95,828.

***Tourism Services Regulation 2003* amendments**

The total value of waived registration renewal fees for inbound tour operators over the 12-month period is approximately \$44,840 (should all applicants with renewal fees due in 2020 re-register).

Consistency with fundamental legislative principles

Some provisions in the Regulation raise fundamental legislative principle issues. However, it is considered that ultimately, the relevant provisions in the Regulation either do not contravene fundamental legislative principles, or any contravention is justified having regard to the relevant provisions of the *Legislative Standards Act 1992*.

Community titles schemes measures

The Regulation may potentially breach (or be inconsistent with) the fundamental legislative principle that legislation have sufficient regard to rights and liberties of individuals, as it provides for the suspension of a requirement or entitlement relating to holding a body corporate general meeting or committee meeting if the committee for a body corporate believes a public health direction would be contravened if the requirement is complied with or a person exercises an entitlement. This provision may result in the rights of lot owners or the representatives of lot owners to attend and vote at body corporate general meetings or committee meetings in person being suspended, if it is reasonably necessary to suspend physical attendance to ensure the meeting is held in a way that does not contravene a public health direction made under the Public Health Act.

However, lot owners or representatives of lot owners will continue to be able to exercise their right to vote on motions to be determined at a general meeting or committee meeting by existing methods that do not require in-person attendance. For general meetings, existing voting methods that do not require in-person attendance include voting by completing a written voting paper and returning it to the secretary prior to the start of the meeting, or by casting a vote using an electronic voting system (if the use of electronic voting systems has been authorised by the body corporate prior to the commencement of the Regulation). For committee meetings, there is an existing capacity for committees to make decisions without conducting in-person meetings, as committees can vote on motions outside a committee meeting.

Also, the Regulation provides body corporate committees with capacity to make arrangements to enable each person who is entitled to attend a meeting to attend remotely and to cast an electronic vote for motions to be decided at a general meeting or committee meeting, or for the choosing of committee members at a general meeting.

The measures are aimed at providing bodies corporate, via their committees, with flexibility to support the public health response to COVID-19 by enabling the body corporate to undertake its statutory functions, such as making decisions at body corporate general meetings and committee meetings, in a way that complies with relevant public health directions and reduces the threat to public health during the COVID-19 emergency period. It is considered that any potential breach of the principle that legislation have sufficient regard to the rights and liberties of individuals, arising from the temporary suspension of requirements or entitlements relating to holding a body corporate general meeting or committee meeting, is justified to protect the health, safety and welfare of persons affected by the COVID-19 emergency in the community titles sector.

The Regulation may also potentially breach (or be inconsistent with) the fundamental legislative principle that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively. The COVID-19 Response Act, section 8 provides that a regulation made under these sections may have retrospective operation to a day not earlier than 19 March 2020. The Regulation provides for temporary measures providing for the suspension of requirements and entitlements relating to meetings and the modification of the way a meeting is held, as well as temporary measures allowing the committee to make arrangements for remote attendance and electronic voting, to apply retrospectively from 19 March 2020.

This potential breach of fundamental legislative principles is considered justified, as these provisions will provide certainty in relation to the validity of decisions made at body corporate general meetings and committee meetings conducted from 19 March 2020 where bodies corporate or committees have taken reasonable actions to protect the health and safety of members of the community titles sector affected by COVID-19 emergency.

The Regulation may also depart from the fundamental legislative principle that legislation have sufficient regard to the rights and liberties of individuals, as it temporarily allows body corporate committees to make decisions to change the rights, privileges or obligations of lot owners if the change is in relation to access to, or the use of, common property or body corporate assets, if necessary to ensure compliance with a public health direction. For example, this provision will enable committees to place restrictions on access to, or the use of, common property facilities (such as a common property swimming pool) if a public health direction relevant to the use of, or access to, the facility is in force.

However, this amendment is designed to support the public health response to the COVID-19 emergency to ensure bodies corporate are able to manage the common property and body corporate assets in a way that complies with relevant public health directions and reduces the threat to public health during the COVID-19 emergency period. Accordingly, it is considered that any potential inconsistencies with fundamental legislative principles arising from these temporary measures are justified to protect the health, safety and welfare of persons affected by the COVID-19 emergency in the community titles sector.

Liquor Regulation 2002 and Tourism Services Regulation 2003 - Retrospective fee waivers

The amendments to the respective regulations legislatively validate the administrative waiver and refund of application fees that occurred prior to the date of commencement, effectively providing for the retrospective operation of the provisions. This may potentially breach the fundamental legislative principle which requires that legislative changes must not adversely affect an individual's rights and liberties, or impose obligations, retrospectively.

However, the waiver of certain liquor application fees and inbound tour operator registration renewal fees (by way of legislative exemption) supports the relevant licensees by reducing the economic impact resulting from the COVID-19 pandemic and is in the interest of and to the benefit of these individuals.

The respective amendments will not operate to the disadvantage of any person, other than the State. Accordingly, it is considered these amendments will not adversely affect rights and liberties retrospectively, and therefore the fundamental legislative principle is not considered to be breached.

Amendments relating to *Collections Act 1966*

The modification of the Collections Act is considered consistent with fundamental legislative principles.

Consultation

Community titles schemes measures

A consultation draft of the community titles scheme measures in the Regulation was provided to:

- Australian College of Strata Lawyers;
- Australian Resident Accommodation Managers Association;
- Owners Corporation Network;
- Strata Community Australia (QLD); and
- Unit Owners Association of Queensland.

Stakeholder groups broadly supported the community titles schemes measures and made suggestions for improvements, a number of which have been included in the Regulation.

In accordance with the *Queensland Government Guide to Better Regulation* (the Guide), the Office of Best Practice Regulation (OBPR) was consulted in relation to the proposed community titles schemes measures. The OBPR advised that as the proposed measures were unlikely to result in significant adverse impacts, no further regulatory impact analysis was required.

***Liquor Regulation 2002* amendments**

Consultation with liquor industry stakeholders was not undertaken as the amendments to the Liquor Regulation legislatively validate the waiver and refund of fees that occurred administratively prior to commencement. It is not anticipated there will be any objection to the amendments as the fee waiver was an emergency response initiative aimed at providing immediate financial relief to affected licensees.

In accordance with the Guide, the OBPR was consulted in relation to the proposal. OBPR considered the proposal unlikely to result in significant adverse impacts and determined no further regulatory impact analysis is required.

***Tourism Services Regulation 2003* amendments**

Direct consultation on the amendments providing for a waiver of registration renewal fees for inbound tour operators has not been undertaken. However, as the waiver is already in place due to administrative arrangement, stakeholders are already aware of the measure. The waiver benefits affected stakeholders and objections to the formalised waiver of the relevant fees is not anticipated.

In accordance with the Guide, the OBPR was consulted in relation to the proposal. OBPR considered the proposal unlikely to result in significant adverse impacts and determined that no further regulatory impact analysis is required.

Collection Act 1966 amendments

No direct consultation was undertaken with entities regulated under the Collections Act. The amendment seeks to ease the regulatory burden temporarily by providing the chief executive with the ability to extend the timeframes for the preparation and lodgement of financial statements and returns and is not likely to be viewed negatively by the sector.