

# COVID-19 Emergency Response Bill 2020

## Explanatory Notes

### Short title

The short title of the Bill is the COVID-19 Emergency Response Bill 2020 (the Bill).

### Policy objectives and the reasons for them

#### Background

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 in China, its pandemic potential due to cases spreading to other countries and the public health implications within Queensland resulting from recently arrived travellers from the epicentre of the outbreak (COVID-19 emergency). The COVID-19 emergency was declared for all of Queensland.

On 11 March 2020, the Director-General of the World Health Organization (WHO) declared COVID-19 a global pandemic.

COVID-19 represents a significant risk to the health and wellbeing of many Queenslanders. It also has the potential to cause adverse economic and social consequences.

As a first response, the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* (Public Health Emergency Act) was urgently passed by Parliament on 18 March 2020. The Public Health Emergency Act included the following key amendments:

- amendments to the Public Health Act to strengthen powers of the chief health officer and emergency officers appointed under the Public Health Act for the COVID-19 emergency to implement social distancing measures, including regulating mass gatherings, isolating or quarantining people suspected or known to have been exposed to COVID-19 and protecting vulnerable populations, such as the elderly;
- amendments to the Public Health Act to provide that the compensation provisions that apply to declared public health emergencies do not apply to the COVID-19 emergency;
- changes to the *Planning Act 2016* and *Economic Development Act 2012* to ensure important services can continue to be provided to the community;
- a raft of amendments to relevant Acts to facilitate the holding of the 2020 quadrennial local government election and State by-elections in a way that

minimised serious risks to the health and safety of persons caused by the COVID-19 emergency; and

- the *Constitution of Queensland 2001* to allow meetings of Executive Council to be held via technology, such as teleconferencing or videoconferencing.

The Bill represents a second stage of reforms to address the COVID-19 emergency.

### **National Cabinet decisions**

On 29 March 2020, National Cabinet agreed that states and territories would implement a moratorium on evictions for the next six months for residential tenancies that are unable to meet rent commitments due to the impact of the COVID-19 emergency.

On 7 April 2020, National Cabinet agreed that states and territories would implement a mandatory code of conduct, including via legislation or regulation as appropriate, for the purpose of imposing a set of good faith leasing principles for application to commercial leases in response to the financial hardship being experienced by some tenants due to business disruption, closures, restrictions on movement and social distancing due to the COVID-19 emergency (National Cabinet decision).

### **Summary of the Bill**

The policy objectives of the Bill are to:

- amend the *Parliament of Queensland Act 2001* (the Parliament of Queensland Act) to:
  - enable meetings of the Legislative Assembly to take place, by whole or in part, via technology such as teleconferencing or videoconferencing during the current COVID-19 emergency; and
  - clarify that Members of Parliament may participate in parliamentary committee meetings via technological means;
- establish a power to make emergency regulations for the residential tenancy and rooming accommodation sectors to address the impacts of the COVID-19 emergency;
- facilitate implementation of the National Cabinet decision in relation to good faith leasing principles for relevant non-residential leases in Queensland;
- provide for the establishment of a temporary Queensland Small Business Commissioner (Small Business Commissioner) to deliver expanded advocacy functions for Queensland small business and administer mediation services in relation to small business tenancy disputes; and
- establish a legislative modification framework of general application across the statute book (the modification framework) allowing legislative requirements to be modified in the following areas, should that be required:
  - attendance at places or meetings, making and associated use of documents and physical presence requirements
  - statutory timeframes; and
  - proceedings of courts and tribunals.

Each of these issues is discussed in further detail below.

### Parliament of Queensland Act

The current laws, practices and procedures of the Legislative Assembly generally assume that the business of the Assembly will be conducted by members being physically present during sittings.

The current COVID-19 emergency and the social distancing and other measures that have been implemented in response have necessitated consideration about how the Legislative Assembly sits, meets and makes decisions.

While the Legislative Assembly currently has the power to adopt Standing Orders for the conduct of its proceedings, amendments to the Parliament of Queensland Act are required to be passed before the Assembly can adopt Standing Orders to meet via electronic means during the COVID-19 emergency.

### Residential tenancies and rooming accommodation

The COVID-19 emergency has had a significant impact on Queenslanders in the residential tenancy and rooming accommodation sectors. Many tenants and rooming accommodation residents face excessive hardship, which may impact their ability to maintain rent payments. Social distancing requirements may also impact obligations under tenancy law, including inspections of premises.

It is therefore necessary to provide the ability to implement measures to ensure the stability of residential tenancies and rooming accommodation in Queensland during the COVID-19 emergency and minimise the impact of obligations under the *Residential Tenancies and Rooming Accommodation Act 2008* (Residential Tenancies and Rooming Accommodation Act) that may conflict with COVID-19 community health directives.

### Non-residential tenancies and Small Business Commissioner

It is necessary to provide for the implementation of the National Cabinet decision in relation to good faith leasing principles for negotiations between landlords and tenants impacted by the COVID-19 emergency.

Queensland, unlike other states, does not have a Small Business Commissioner who can act as a single point of information and advice, particularly in relation to dispute resolution for small businesses.

The complexity of the operating environment for small businesses has increased considerably in recent weeks as a result of measures to reduce the spread of COVID-19. The absence of a Small Business Commissioner with dispute resolution support capacity places Queensland small businesses at a disadvantage to other jurisdictions and hampers their ability to easily access advice and support.

The establishment of a Small Business Commissioner in Queensland will increase the likelihood of small business non-residential lease disputes being resolved earlier, avoid protracted negotiation and additional costs for small business, and reduce strain on existing mediation and resolution services. A dedicated support function that specifically meets the needs of small business and provides them with access to advice

and assistance in relation to resolving small business tenancy disputes will deliver time, money and resource savings.

### Modification framework

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

The following areas have been identified that may require modification of legislative requirements.

#### ***Attendance at places or meetings, making and associated use of documents and physical presence requirements***

Legislation across Queensland's statute book requires the making (or variation or revocation) of documents such as wills, powers of attorney, enduring powers of attorney, advance health directives, statutory declarations and deeds, to be signed and witnessed in the 'presence' of an eligible witness. The requirement to be present requires physical presence of the signatory and the witnesses at the time the documents are executed.

In addition, legislation across the statute book requires physical attendance of a person for particular purposes including: taking an oath; answering questions before an officeholder; conducting meetings and conferences; and visiting or inspecting a person, site, or building.

Given restrictions and requirements associated with social distancing due to the COVID-19 emergency, it will be necessary to implement a range of measures to enable actions that are otherwise done in person to be done through other means, including by using a range of communication technologies. It may also be necessary to vary arrangements for how meetings and other actions (such as inspections) are carried out.

#### ***Statutory timeframes***

The impacts of the COVID-19 emergency on individuals and their livelihoods and on government resourcing and capacity may mean that it may not be possible to meet existing legislative timeframes for doing things. The ability to modify statutory periods, where necessary is therefore required. Flexibility may also be required where restrictions on movement and personal interactions because of the COVID-19 emergency impacts compliance with strict time limits (for example, for the lodgement of applications, giving of notices, and timeframes for response).

#### ***Proceedings of courts and tribunals***

There are a range of processes and procedures of courts, tribunals and similar entities that are not compatible with health advice regarding social distancing (for example,

personal appearance requirements or requirements for documents to be signed in the presence of another). In addition, the availability of resources and services of courts and tribunals and those agencies servicing them is likely to be impacted by the COVID-19 emergency (for example, the ability to constitute a tribunal in a certain manner or to effect personal service).

Modification framework provisions are required to enable the continued functioning of courts, tribunals and other entities impacted by the COVID-19 emergency whilst also ensuring consistency and compliance with health advice.

## **Achievement of policy objectives**

The Bill's main purposes are to:

- protect the health, safety and welfare of persons affected by the COVID-19 emergency;
- facilitate 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 the Small Business Commissioner;
- provide for matters related to residential, retail and prescribed leases affected by the COVID-19 emergency; and
- support the Queensland rental sector during the COVID-19 emergency period.

### Parliament of Queensland Act

The Bill amends the Parliament of Queensland Act to:

- set out that the Legislative Assembly may sit and transact business via telephone, video or other electronic means during the COVID-19 emergency;
- allow members to attend, form a quorum and vote via electronic means or through the use of a proxy at a sitting held during the COVID-19 emergency;
- give the Assembly authority to make Standing rules and orders to further set out the mechanics of how it will meet and conduct business via electronic means during the COVID-19 emergency; and
- insert definitions for 'present' and 'voting' that clarify that members may take part in meetings of the statutory committees of the Assembly either in person, or by telephone, video or other electronic means.

### Residential tenancies and rooming accommodation

The Bill provides for a regulation-making power to give effect to the National Cabinet decision of 29 March 2020 to impose a moratorium on evictions for residential tenants and residents who are in financial distress and are unable to meet their commitments due to the impact of the COVID-19 emergency. The Bill also removes obligations for owners and providers to undertake routine repairs and inspections where they are incompatible with social distancing and other community health objectives.

### Non-residential tenancies and Small Business Commissioner

The Bill provides for a regulation-making power for implementing the National Cabinet decision in relation to good faith leasing principles for relevant leases in Queensland, including to:

- prohibit the recovery of possession of premises under a relevant lease by a lessor of the premises from a lessee of the premises;
- prohibit the termination of a relevant lease by a lessor or owner of premises;
- regulate or prevent the exercise or enforcement of another right of a lessor of the premises under a relevant lease or other agreement relating to the premises;
- exempt a lessee, or a class of lessees, from the operation of a provision of an Act, relevant lease or other agreement relating to the leasing of the premises;
- require parties to a relevant lease to have regard to particular matters or principles, or a prescribed standard, code or other document, when negotiating or disputing a matter in relation to a relevant lease;
- require a mediator, conciliator, arbitrator, tribunal, court or other decision-maker to have regard to particular matters or principles, or a prescribed standard, code or other document, in mediating, conciliating, hearing or deciding a matter or proceeding relating to a relevant lease;
- provide for a dispute resolution process for disputes relating to relevant leases; or
- other matters necessary to facilitate the above.

The Bill also provides for the establishment of the Small Business Commissioner and includes specific regulation-making powers, which deliver on the policy intent.

The functions of the Small Business Commissioner established under the Bill include to:

- provide information and advisory services to the public about matters relevant to small businesses, particularly in relation to COVID-19 response measures;
- assist small businesses in reaching an informal resolution for disputes relating to small business leases during the COVID-19 emergency period; and
- administer a mediation process prescribed by regulation in relation to small business tenancy disputes.

### Amendments relating to the expiry of subordinate legislation and commencement of laws

The Bill also amends the *Statutory Instruments Act 1992* (Statutory Instruments Act) and *Acts Interpretation Act 1954* (Acts Interpretation Act) to provide a regulation-making power in relation to the automatic expiry of subordinate legislation and commencement of laws to allow an extension until 31 December 2020 if it is necessary for a purpose of the Bill.

### Modification framework

The modification framework established under the Bill provides a toolkit for addressing emerging issues that Government and the community are experiencing, and will continue to experience, during the COVID-19 emergency.

To achieve this, the Bill provides for two different types of secondary instruments to be made under the modification framework, should they be required:

- Extraordinary regulations – these are subordinate legislation, drafted by the Office of Queensland Parliamentary Counsel (Parliamentary Counsel), made by Executive Council, published on the Parliamentary Counsel website, tabled in Parliament and subject to disallowance processes; and
- Statutory instruments – these are drafted by the entity, made by the entity or a Minister, published on a Queensland Government website, tabled in Parliament and subject to disallowance processes.

A limited exception is provided for under the Bill where notices are issued providing exceptions to statutory timeframes for modifications applying to particular persons.

The Bill makes clear that any extraordinary regulations or statutory instruments may only be made if the Minister or responsible entity is satisfied that the regulation or instrument is necessary for a purpose of the Bill.

The Bill provides for limited retrospective application to 19 March 2020 in some provisions of the modification framework.

Once commenced, the Act and all instruments and regulations made under the Act will expire on 31 December 2020.

A further safeguard is provided to ensure that no extraordinary regulations or statutory instruments enacted under the modification framework are able to be exercised so as to amend or override the *Human Rights Act 2019* (Human Rights Act), or any particular provision of the Human Rights Act, thus preserving its important human rights protections.

The modification framework allows requirements, should the need arise, to be modified in the following areas.

***Attendance at places or meetings, making and associated use of documents and physical presence requirements***

The Bill provides that a regulation may be made to provide alternative arrangements for how documents are made, meetings are held and attendances are conducted in order to minimise the need for people to be proximate to other people. These provisions will potentially apply to a wide variety of matters across many Acts which require or permit the making of a document in a particular way or require or permit an attendance or meeting and will, for example:

- allow wills, enduring powers of attorney, general powers of attorney and advance health directives to be made electronically in certain circumstances or otherwise made in circumstances where the document can be witnessed using audio visual technology;
- allow persons to be summonsed to give evidence via audio visual technology;
- allow inspections of premises to be conducted using audio visual technology;

- allow body corporate meetings to be held using audio visual technology or instead be held by the circulation of materials upon which a vote is conducted;
- allow documents to be served on a person by post or email where appropriate;
- allow deeds to be made electronically; or
- allow requirements to be suspended and alternative arrangements to be put in place.

### ***Statutory timeframes***

The Bill provides for modification of timeframes and periods under an Act for the doing or expiry of a thing under three categories.

Where power to modify already exists, the Bill provides that the power to modify the period includes a ground that it is necessary for a purpose of the Bill. Where the modification in these circumstances applies to a particular person, it may be exercised by a notice issued to the person stating the modification and reasons for it. If the modification applies generally or to particular classes of persons or matters, the modification may be made by statutory instrument. This instrument must be published on a relevant website (as defined in the Bill) and is subject to other requirements set out in the Bill, including a requirement for tabling in the Legislative Assembly.

Where no power to modify already exists, the Bill includes power to make an extraordinary regulation allowing a period to be modified if the Minister is satisfied it is necessary for a purpose of the Bill.

In relation to proceedings, the Bill similarly provides for an extraordinary regulation to be made modifying a period. If modification applies to a particular proceeding, a court (which is defined broadly to include a tribunal and entity with a judicial or quasi-judicial function) may also modify the period through the issuing of a notice to the parties involved stating the modification and reasons for the modification.

### ***Proceedings of courts and tribunals***

The Bill provides regulation-making powers to modify legislative requirements and provide for alternative arrangements in relation to proceedings in a court, tribunal or other entity with judicial or quasi-judicial functions. This may include allowing for:

- alternative processes or methods for making, signing, filing, giving or verifying documents or presenting indictments;
- the use of audio visual or audio links during proceedings in certain circumstances;
- the restriction of public access to proceedings;
- the alternative constitution of courts, tribunals or other entities;
- an alternative method of service where personal service is ordinarily required;
- a videorecording of a witness's evidence to be viewed and heard in the proceeding instead of direct testimony;
- proceedings to be conducted in alternative locations; and
- other alternative procedural arrangements for proceedings.

To provide sufficient scope to respond to the COVID-19 emergency, the Bill provides the opportunity for a general regulation under the Bill once enacted to deal with matters across various proceedings as well as regulations applying more specifically to proceedings under an enabling Act.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives.

## **Estimated cost for government implementation**

The costs associated with undertaking meetings of the Legislative Assembly by electronic means during the COVID-19 emergency will be met from within the existing budget of the Parliamentary Service or through cost savings realised by reduced travel of members to Brisbane.

Any increase in demand for mediation services and tribunal/court proceedings through the implementation of the good faith leasing principles for relevant non-residential leases will have resource implications (that cannot presently be quantified) for the Queensland Civil and Administrative Tribunal and the Queensland Courts. These costs will need to be addressed through the ordinary budgetary processes.

Temporary establishment of a Small Business Commissioner will have resourcing implications for the Department of Employment, Small Business and Training in terms of staffing to provide additional services and support for small business. These costs will be addressed through ordinary budgetary processes.

The financial implications of the measures implemented under the modification framework established by the Bill will depend on the specific arrangements put in place through the regulation or instrument made under the framework. Any costs will need to be considered as part of the approval of such regulation or instrument.

## **Consistency with fundamental legislative principles**

### Parliament of Queensland Act

While amendments to the Parliament of Queensland Act under the Bill are generally consistent with fundamental legislative principles, it is noted that Clause 31 of the Bill provides the Legislative Assembly with the authority to make Standing rules and orders to establish a system of proxy voting during the COVID-19 emergency that differs from the proxy voting provisions under Chapter 2, Part 5 of the Parliament of Queensland Act. This may represent a potential departure from the fundamental legislative principle that requires legislation have sufficient regard to the institution of Parliament (section 4(2)(b) *Legislative Standards Act 1992* (Legislative Standards Act)).

While this could be perceived as being an inconsistency in that it might provide for the amendment of an Act by means other than by another Act, the amendments are justified as having sufficient regard to the institution of Parliament as any Standing rules and orders that the Legislative Assembly adopts with respect to proxy voting during

COVID-19 will be subject to a majority vote of members of the Assembly themselves, not another entity, such as executive government.

Furthermore, any proposal to adopt Standing rules and orders with respect to proxy voting during COVID-19 will be subject to the scrutiny of all members of the Legislative Assembly.

#### Residential tenancies and rooming accommodation

Amendments to the Residential Tenancies and Rooming Accommodation Act under the Bill primarily engage the fundamental legislative principle that requires legislation have sufficient regard to the institution of Parliament, including authorising the amendment of an Act only by another Act (section 4 (4)(c) Legislative Standards Act). The regulation-making power allows for rights and obligations under the Residential Tenancies and Rooming Accommodation Act to be altered through the making of emergency regulations. As noted above, this is justified in view of the urgency of the COVID-19 emergency and is mitigated by the time-limited nature of the amendments.

#### Non-residential tenancies

The regulation-making power for implementing the National Cabinet decision in relation to good faith leasing principles for relevant non-residential leases in Queensland potentially breaches the fundamental legislative principles to the extent that it may not have sufficient regard to the institution of Parliament (section 4(2)(b) Legislative Standards Act) or the rights and liberties of individuals (section 4(2)(a) Legislative Standards Act).

This is because it allows for regulations to be made that may be inconsistent with a provision of an Act or a law to the extent necessary to achieve the purpose of the regulation and this Act; and that interfere with and override the legal rights of landlords under current legislation and lease arrangements.

The wide regulation-making power is justified because there needs to be flexibility in providing for the detail of the implementation of the National Cabinet decision in relation to good faith leasing principles and this may involve overriding Acts and laws that would ordinarily apply.

Overriding landlords ordinary property rights is justified by the need to respond to the financial hardship being experienced by some tenants due to closures and restrictions on movement and social distancing which the COVID-19 emergency has caused (and will continue to cause) and to provide a fair sharing of the burden of the pandemic between landlords and tenants.

#### Amendments relating to the expiry of subordinate legislation and commencement of laws

Amendments relating to the automatic commencement of legislation and automatic expiry of subordinate legislation may raise fundamental legislative principle issues relating to the appropriate delegation of legislative power (section 4(4)(a) of the *Legislative Standards Act 1992*). However, the amendments in the Bill do not provide

for complete or indefinite exclusion of general provisions relating to automatic commencement and expiry. The Bill only allows a short limited period of extension and postponement for a stated period before December 2020 and any extension must be necessary for a purpose of the Bill.

### Modification framework

The Bill includes a legislative modification framework of general application that applies across the statute book. The legislative modification framework approach adopted by the Bill is similar to approaches employed in other jurisdictions to respond to the COVID-19 emergency and is considered justified given the urgent and critical nature of the Bill.

In this context, the Bill is generally consistent with the fundamental legislative principles in the Legislative Standards Act.

The most significant potential breach of the fundamental legislative principles relates to the nature of the modification framework established by the Bill to the extent that it may not have sufficient regard to the institution of Parliament (section 4(2)(b) Legislative Standards Act) or the rights and liberties of individuals (section 4(2)(a) Legislative Standards Act).

The modification framework established by the Bill enables various Acts to be amended by subordinate legislation (such as a regulation or notice), should that be required. The use of secondary instruments to implement the modification framework ('Henry VIII clauses') 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 global amendments facilitated by the modification framework will impact on fundamental legislative principles in different ways, but broadly represent a further potential departure from this fundamental legislative principle in the sense that amendments may:

- allow the delegation of legislative power in cases and to persons in circumstances where the power may not ordinarily be considered to be sufficiently defined or subject to appropriate review (section 4(4)(a) Legislative Standards Act); and
- subject the exercise of a delegated legislative power to what may ordinarily be considered to be insufficient scrutiny by the Legislative Assembly (section 4(4)(b) Legislative Standards Act).

Potential fundamental legislative principle departures associated with each specific category of global amendment are discussed in further detail below. Broadly, however, the global amendments also represent a potential departure from the fundamental legislative principle requiring that legislation has sufficient regard to rights and liberties of individuals (section 4(2)(a) of the Legislative Standards Act) in the sense that amendments may:

- make rights and liberties, or obligations, dependent on administrative power in circumstances where the power may not ordinarily be considered to be sufficiently defined or subject to appropriate review (section 4(3)(a) Legislative Standards Act);
- not be consistent with principles of natural justice, and in particular the right to be heard and the right to procedural fairness (section 4(3)(b) Legislative Standards Act);
- allow the delegation of administrative power in cases, and to persons, that may not be considered appropriate (section 4(3)(c) Legislative Standards Act), were it not for the state of emergency currently in place in Queensland; and
- adversely affect rights and liberties, or impose obligations, retrospectively (section 4(3)(g) Legislative Standards Act).

### **Overarching justification for departures from fundamental legislative principles**

The COVID-19 emergency is an extraordinary, unprecedented situation that, in turn, requires a commensurate response.

The provisions in the Bill are considered justified to allow Ministers ultimate discretion to take immediate executive action to make the necessary interventions to mitigate the spread of COVID-19 in the community; facilitate continued functioning of institutions and economy to the extent possible in the pandemic; and to allow for timely, targeted and flexible responses caused by COVID-19 and public health restrictions, such as social distancing measures.

While the modification framework is broad, the Bill applies general safeguards in relation to each of the modification framework provisions. In particular, the Bill makes clear that any extraordinary regulations or statutory instruments may only be made if the Minister or responsible entity is satisfied that the regulation or instrument is necessary for a purpose of the Bill. The modification framework is also strictly time limited providing that upon commencement, the Act and all instruments and regulations made under the Act expire on 31 December 2020.

A further safeguard is provided in the Bill to ensure that no extraordinary regulations or statutory instruments enacted under the modification framework are able to be exercised so as to amend or override the Human Rights Act, or any particular provision of the Human Rights Act, thus preserving its important human rights protections.

Further, the broad modification framework and regulation-making powers therein are considered justified given the scope of Acts affected by the COVID-19 emergency, as it is not practical given the nature of the changes that may be required to make specific amendments across the statute book.

### **Specific justification for departures from fundamental legislative principles – modification framework**

Potential breaches of fundamental legislative principles for each of the global amendments are addressed below. Additional justification is provided, where required, in addition to the overarching justification outlined above.

***Attendance at places or meetings, making and associated use of documents and physical presence requirements***

Provisions in the Bill regarding the making and associated use of documents, meetings and physical presence requirements represent a potential departure from the fundamental legislative principle that requires legislation to have sufficient regard to the rights and liberties of individuals, including common law rights to privacy and confidentiality. For example, these provisions enable altered arrangements to be prescribed to allow documents to be signed and witnessed electronically which may increase the potential for identity theft and fraud or for undue influence and unconscionable dealing in the absence of personal witnessing requirements.

These provisions enable altered arrangements to be prescribed with respect to a vast array of matters. Such altered arrangements may allow oaths to be taken using audio visual technology, documents to be prepared using technology, persons to make appearances using technology or conduct inspections electronically. Such altered arrangements may represent a potential departure from the fundamental legislative principle that requires legislation to have sufficient regard to the rights and liberties of individuals, including natural justice (section 4(3)(b) Legislative Standards Act). This may be the case for disadvantaged groups or persons residing in rural or remote locations who have disproportionate access to technology, giving rise to concerns about procedural fairness. Further, any prescribed altered arrangements that allow remote inspection of places vulnerable residents reside (for example, adults who lack capacity, the elderly, and at-risk children) may raise concerns that the needs of vulnerable groups are not being appropriately met.

These provisions are considered justified given the extraordinary nature of the COVID-19 emergency, and the requirement for restrictions in the interests of public health and safety.

These provisions are considered reasonable and justified to facilitate the continued functioning of the justice system, execution of important personal documents, and operation of various entities. Allowing for altered arrangements for making documents such as wills, powers of attorney, enduring powers of attorney and advance health directives to be witnessed, for example using audio visual technology, will mean that these important documents associated with end of life decision making and estate planning can continue to be made even with the requirements for social distancing.

A power to retrospectively apply regulations to 19 March 2020 is a potential departure from the rights and liberties of an individual in so far as it may be perceived to adversely affect rights and liberties, or impose obligations retrospectively (s.4(3)(g) Legislative Standards Act). In this regard, the Bill provides for the retrospective application to 19 March 2020 of regulations made in relation to altered arrangements for requirements about personal attendance and meetings. Retrospective application is seen as necessary as since the declaration of a public health emergency due to COVID-19 by the Minister for Health and Minister for Ambulance Services, there has been a need for persons to ensure compatibility with health advice regarding social distancing which may have been contradictory to requirements in relation to attending places or meetings for

particular purposes or matters. Allowing for retrospective application will reduce a person's liability at law for complying with social distancing requirements and ensure the validity of meetings conducted in a way that complies with the social distancing requirements.

### ***Statutory time limits***

The extent to which the modification provisions for statutory time limits in the Bill raise fundamental legislative principles issues in addition to those outlined above, will depend on the extent to which they are ultimately utilised.

Providing for retrospective operation of modifications to time periods potentially departs from the fundamental legislative principle that requires that legislation should not adversely affect rights and liberties or impose obligations retrospectively.

Also where the provisions of the Bill are utilised to make regulations authorising an entity under an Act to delegate or subdelegate a power to modify a time period, potential for breaches of the fundamental legislative principle requiring that legislation should only allow the delegation or subdelegation of administrative power in appropriate cases will arise.

Where particular persons and parties are affected, the requirement to provide written notice of the modification and reasons for it seeks to ensure procedural fairness. While the power to modify timeframes for proceedings may impact the right of an individual to a reasonably expeditious hearing, conversely it may serve to ensure that principles of procedural fairness can continue to be upheld, for example, where the extension of a time period is made to ensure parties to proceedings have adequate time to prepare and present a case.

Having regard to the safeguards outlined above applying to the provisions in the Bill, the provisions relating to statutory time limits are considered sufficiently justified to provide the necessary flexibility to appropriately and effectively respond to statutory time limits in the context of the COVID-19 pandemic and are likely to operate to the benefit of individuals.

### ***Proceedings of courts and tribunals***

Provisions in the Bill relating to proceedings of courts, tribunals and other relevant entities represent a potential departure from the fundamental legislative principle that requires legislation have sufficient regard to the rights and liberties of individuals, including consistency with the principles of natural justice and freedom of movement (section 4(3)(b) Legislative Standards Act), because of the potential to restrict public access to proceedings which would otherwise be open. There may also be a perception of a reduced right to be heard and greater potential for bias where the constitution of a decision-making body is altered. The power to replace personal attendance with audio or audio visual mechanisms may also potentially infringe the right to be heard in that it may have a disproportionate impact on disadvantaged members of the community who have limited access to information technology, or familiarity with information technology systems (section 4(3)(b)).

Amendments enabling alternate forms of service of documents also represent a potential departure from this fundamental legislative principle, as this may compromise the understanding of the recipient of the effect of the document, and their corresponding rights and obligations.

The provisions are considered reasonable and justified to enable the continued functioning of courts, tribunals and other entities supporting judicial process and the administration of justice during the COVID-19 emergency whilst also ensuring consistency and compliance with health advice.

The power to retrospectively apply regulations made in this part to 19 March 2020 is a potential departure from the rights and liberties of an individual in so far as it may be perceived to adversely affect rights and liberties, or impose obligations retrospectively (s.4(3)(g) Legislative Standards Act). The Bill provides for the retrospective application to 19 March 2020 of regulations made in relation to processes or methods for document filing and verification; methods for presenting indictments; the use of audio and audio visual links in proceedings; and the restriction of access to a proceeding by members of the public.

The outbreak of the COVID-19 emergency has resulted in a need for changes to some processes and procedures of courts, tribunals and similar entities to ensure compatibility with health advice regarding social distancing while also ensuring the ongoing access to and delivery of essential justice services.

The power to retrospectively apply a regulation is limited to procedural arrangements related to proceedings.

## **Consultation**

Consultation has been undertaken with the Speaker of Legislative Assembly and the Clerk of the Parliament on a draft of the Parliament of Queensland Act amendments. However, no consultation with the community has been undertaken in the preparation of these amendments.

Representatives of rental tenants and owners, including extensive consultation with industry stakeholders such as the Real Estate Institute of Queensland and Tenants' Queensland, and the Residential Tenancies Authority were consulted in the development of the emergency regulation-making power for the residential tenancies and rooming accommodation sectors.

Consultation with industry stakeholders, including the National Retail Association and the Property Council of Australia Qld Division, was undertaken by Queensland Treasury in connection with the National Cabinet decision in relation to good faith leasing principles for commercial leases.

The *Queensland Small Business Strategy Discussion Paper* was released for public consultation during November/December 2019 and sought feedback from Queensland small business owners and key stakeholders. Feedback indicated that Queensland small business would benefit greatly from expanding and strengthening the functions of the current Small Business Champion, including making the role full-time. There was strong support for Queensland offering dispute resolution services to reduce costs and time to small business.

Heads of Jurisdiction, the Queensland Law Society and the Bar Association of Queensland and other stakeholders have all raised with Government the need for legislative amendments to respond to some of the emerging issues addressed through the modification framework.

Given the urgent nature of the Bill, consultation with other non-government stakeholders on the modification framework has not been possible.

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state. However, in developing the Bill consideration has been given to legislative responses to the COVID-19 emergency in other jurisdictions: the *COVID-19 Legislation Amendment (Emergency Measures) Act 2020* (NSW); the *COVID-19 Emergency Response Act 2020* (SA); the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (Tas); and the *COVID-19 Emergency Response Act 2020* (ACT).

It is noted that in response to COVID-19, other Australian and international jurisdictions are adopting measures to enable their parliaments to meet and ensure appropriate social distancing and other measures can occur.

Legislative responses toward implementation of the National Cabinet decision in relation to good faith leasing principles in other State and Territory jurisdictions to date has been considered in the preparation of the Bill.

The emergency regulation-making power for residential tenancies and rooming accommodation sectors is intended to support the introduction of, among other measures, a six-month moratorium on evictions caused by the impacts of the COVID-19 emergency, which was an outcome of National Cabinet on 29 March 2020. Several other state and territory jurisdictions have already implemented similar measures.

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# Notes on provisions

## Part 1 Preliminary

*Clause 1* provides that, when enacted, the short title of the Act will be the *COVID-19 Emergency Response Act 2020* (the Act).

*Clause 2* provides that the main purposes of the Act are:

- to protect the health, safety and welfare of persons affected by the COVID-19 emergency; and
- to facilitate 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; and
- to provide for matters related to residential, retail and prescribed leases affected by the COVID-19 emergency; and
- to support the Queensland rental sector during the COVID-19 emergency period.

*Clause 3* provides that the dictionary in Schedule 1 defines particular words used throughout the Act.

*Clause 4* provides how the Act interacts with any other Act or law. The clause makes clear that the Act applies despite any other Act or law but preserves the operation of the *Human Rights Act 2019*.

The clause also states that references in sections 5(5) and 6(3) of the Act which provide that an extraordinary regulation or statutory instrument may be inconsistent with any other Act to the extent necessary to achieve a purpose of this Act, does not include a reference to being inconsistent with the *Human Rights Act 2019*.

## Part 2 Powers to make regulations and instruments

*Clause 5* outlines the operation of extraordinary regulations. The clause provides that sections 8 (Regulation-making power relating to attendance at places or meetings), 9 (Regulation-making power for particular matters relating to documents), 13 (Regulation-making power to modify statutory time limit), 15(3)(a) (Regulation-making power to modify statutory time limit related to proceeding) and 17 (Regulation-making powers under enabling Acts) of the Act are each an additional regulation-making provision.

An Act to which an additional regulation-making provision applies is an ‘affected Act’. A regulation made under an affected Act in reliance on an additional regulation-making provision is an extraordinary regulation.

The clause provides the Minister administering an affected Act may recommend the making of an extraordinary regulation under the Act only if the Minister is satisfied the regulation is necessary for a purpose of this Act.

An extraordinary regulation made under an affected Act may be inconsistent with the affected Act, and any other Act, to the extent necessary to achieve a purpose of this Act.

To the extent a person's act or omission complies with an extraordinary regulation made under an affected Act, the person does not incur civil or criminal liability under the affected Act for the act or omission.

An extraordinary regulation must declare it is made under the relevant additional regulation-making provision.

An additional regulation-making provision does not limit any other regulation-making power conferred under an affected Act.

The clause requires that the tabling of an extraordinary regulation must occur within 14 days.

*Clause 6* outlines the operation of a statutory instrument made under section 12 of the Act. An Act to which section 12 applies is an affected Act.

Subclause (2) provides that an entity may make a statutory instrument under an affected Act in reliance on section 12(3)(a) only if satisfied the instrument is necessary for a purpose of this Act.

The statutory instrument may be inconsistent with the affected Act, and any other Act, to the extent necessary to achieve a purpose of this Act.

To the extent a person's act or omission complies with the statutory instrument, the person does not incur civil or criminal liability under the affected Act for the act or omission.

The statutory instrument must declare it is made under section 12(3)(a) of the Act.

Section 49, 50 and 51 of the *Statutory Instruments Act 1992* apply to the statutory instrument as if the instrument were subordinate legislation. This means the statutory instrument is subject to tabling and disallowance processes.

The clause requires that the tabling of a statutory instrument must occur within 14 days. To remove any doubt the clause provides that the notes under section 49(1) of the *Statutory Instruments Act 1992* do not apply to the statutory instrument.

*Clause 7* provides that words used in an extraordinary regulation or a statutory instrument under section 12(3)(a) that are defined in this Act have the same meaning as the words have in this Act, subject to a contrary intention in the regulation or instrument.

### **Part 3      Reducing physical contact between persons**

*Clause 8* provides a 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. The regulation, which may be made under an Act with such a requirement or permission, can establish altered arrangements for the attendance or meeting.

This section applies to a wide variety of matters across many Acts which require or permit an attendance or meeting, for example:

- meetings of boards, committees, commissions and many other types of meetings;
- a meeting of one person with another person for a particular purpose;
- a requirement or permission for a conference to be held for a particular purpose;
- a physical examination by a registered health practitioner required for a specific purpose;
- a visit or inspection by a person of a particular site or facility for a particular purpose;
- an attendance or appearance by a person in response to a summons or similar requirement under an Act to answer questions; or
- appearance before a person to take an oath.

The regulation may make provision about how the purpose or matter can be achieved or otherwise dealt with in a modified way. This may include matters directly related to achieving the purpose or matter as well as anything incidental to the purpose or matter.

For example, a regulation may:

- allow a meeting to be conducted using communication technology;
- modify procedures and requirements relating to meetings, including procedures and requirements about quorum, voting, decision-making and the way decisions are recorded;
- provide alternative ways that a person may produce information or a stated thing for the purposes of the meeting;
- suspend a requirement for a meeting to be held or for a person to attend a meeting;
- provide alternatives for an attendance or inspection (such as requiring information to be shared or provided in other ways, or communication technology to be used in lieu of a physical visit); or
- empower the chief executive to exercise discretion about whether, when or how attendance is to be required, suspend a requirement for an entity to call or hold a meeting, or issue guidelines regarding the modified arrangements.

*Clause 9* provides a regulation-making power in relation to requirements or permissions under an Act or a common law rule as to how documents are made and used. This includes who can sign a document, how the signing process occurs, who can witness a document and how the witnessing process occurs, content that the document must contain (including attestations and certifications), obligations on the signatories and witnesses in making the document, how a document is filed or lodged with specific entities for specific purposes, how a document is served or given to a person or entity, whether, when, how or where an advertisement is displayed, and how documents and information are retained.

This section will enable a regulation to be made to put in place modified arrangements for making documents such as wills, general powers of attorney, enduring powers of

attorney, advance health directives, statutory declarations, deeds and many other types of documents.

A regulation will also be able to be made about how documents are given to other people and entities, including personal service requirements. The regulation may provide for matters directly related to the modified requirements or arrangements in relation to a relevant matter as well as anything incidental to the modified requirements or arrangements in relation to a relevant matter.

For example, a regulation under this section may:

- allow a document to be witnessed using contemporaneous audio visual communication technology and/or vary the persons who are eligible to witness a document in this way;
- add or remove a need for verification of identity to be done in a particular way in the making of a document;
- remove the need for a document to be witnessed;
- dispense with the requirement for a seal to be used;
- require signatories and witnesses to follow certain processes, record information in or attached to a document, and keep particular records in making a document under the new arrangements;
- allow documents or notices to be sent by post, email or text message instead of being required to be given personally;
- require certain people to personally deliver documents (for example, requiring a local person to effect delivery instead of another person who is not local to the delivery area); or
- require notices or advertisements to be displayed online, or accessible via an online register, or sent to a person(s) by post, email or text message rather than being physically mounted at a particular location.

## **Part 4      Modifying statutory time limits**

*Clause 10* provides the definitions applying to this part.

*Clause 11* clarifies that a reference in this part to doing a thing includes a reference to omitting to do a thing.

*Clause 12* provides a power for an entity to modify a statutory time limit.

Subclause (1) provides the power to modify a statutory time limit applies where an entity is already expressly authorised under an Act to modify a period within which an entity is authorised (which includes required) to do a thing (e.g. ask for a document) or a period at the end of which a thing expires (e.g. a permit). An ‘entity’ is defined broadly in schedule 1 of the *Acts Interpretation Act 1954* to include a person and an unincorporated body.

Subclause (2) provides that the power of the entity to modify a period is taken to include a power to modify on the ground that the entity is satisfied that the modification is

necessary for a purpose of the Act. The purposes of the Act are set out in Clause 2 (Main Purposes) of the Bill.

Subclause (3) provides that an entity may modify a period in reliance on the additional ground provided for in subclause (2) by statutory instrument (if the modification applies generally or to particular classes of persons or matters) or by a notice given to the person stating the modification and the reasons for the modification (if the modification applies to a particular person). Clause 6 of the Bill (Statutory Instruments under section 12) applies to statutory instruments made under subclause (3)(a).

Subclause (4) provides that where the power to modify a statutory time limit applies to a particular person, the power may be exercised either on the entity's own initiative or on the application of a particular person interested in the modification of the period.

Subclause (5) provides that where a period is extended under this clause, it may only be extended for a period that ends on or before 31 December 2020.

Subclause (6) provides that a statutory instrument under subclause (3)(a) may have retrospective operation to a day not earlier than 19 March 2020.

Subclause (7) provides that a statutory instrument made under subclause (3)(a) must be published on a relevant website (defined in Schedule 1 (Dictionary)).

Subclause (8) clarifies that the clause is not intended to limit the operation of clause 13 (Regulation-making power to modify statutory time limits).

Subclause (9) clarifies the scope of what is meant by a period within which an entity is authorised to do a thing.

Subclause (10) defines the term 'expire'.

*Clause 13* creates a regulation-making power to modify statutory time limits.

Subclause (1) provides a regulation-making power where an Act provides for a period within which an entity is authorised to do a thing or a period at the end of which a thing expires, but the Act does not already expressly authorise an entity to modify the period.

In addition to the examples of things mentioned in clause 12, subclause (1) provides that a period at the end of which a thing expires includes a savings or transitional regulation.

Subclause (2) provides that the Act is taken to include a power to make a regulation providing for the period to be modified. Clause 5 (Extraordinary Regulations) of the Bill applies to regulations made under clause 13.

Subclause (3) clarifies the scope of the regulation-making power under this clause, including that a regulation may expressly modify the period, authorise an entity having a function under the Act to modify the period or authorise an entity having a function under the Act to delegate or sub-delegate any authorisation the entity has been given to modify the period.

Subclause (4) provides that where a period is extended under this clause, it may only be extended for a period that ends on or before 31 December 2020.

Subclause (5) allows for the retrospective operation of a regulation made under this clause to a day not earlier than 19 March 2020.

Subclause (6) clarifies the scope of what is meant by a period within which an entity is authorised to do a thing.

## **Part 5 Proceedings**

*Clause 14* provides the definitions for this part. Definitions include the term ‘proceeding’ (see also the definition of ‘proceeding’ in Schedule 1 of the *Acts Interpretation Act 1954*) to include various things before a ‘relevant entity’ as defined.

*Clause 15* allows the modification of statutory time limits relating to proceedings.

Subclause (1) provides a regulation-making power and power of a court in limited circumstances to modify a period under an Act within which an entity is authorised or required to do a thing in relation to a proceeding. The subclause includes examples of what ‘do a thing relating to a proceeding’ may include. This provision and those in Part 4 of the Bill are not intended to interfere with a court’s discretion or apply to the duration of court orders.

Subclause (2) provides that the period may only be modified on the ground the modification is necessary for a purpose of this Act. The purposes of this Act are set out in Clause 2 (Main Purposes) of the Bill.

Subclause (3) provides that the power to modify in subclause (2) may be exercised either by a regulation made under the Act providing for the period (if the modification applies generally or to particular classes of persons or matters) or by a court that has jurisdiction relating to the proceeding by giving each party to the proceeding a notice stating the modification and the reasons for the modification (if the modification applies to a particular proceeding).

Subclause (4) provides that where a regulation extends a period under this clause, the period may only be extended for a period that ends on or before 31 December 2020.

Subclause (5) provides that where the power to modify statutory time limits relating to proceedings is being exercised by a court in relation to a particular proceeding, the power may be exercised on the court’s own initiative or on the application of a party to the proceeding.

Subclause (6) allows for the retrospective operation of a regulation made under this clause to a day not earlier than 19 March 2020.

Subclause (7) clarifies that the clause does not limit any other power of the court to modify a period.

Subclause (8) clarifies the scope of the power provided under this clause in relation to certain specific provisions in various Acts. This is not an exhaustive list.

Subclause (9) clarifies the scope of what is meant by a period within which an entity is authorised to do a thing.

Subclause (10) provides that the term ‘court’ includes a tribunal and an entity having a judicial or quasi-judicial function.

*Clause 16* provides that a regulation may be made under this Act for any of the following in relation to proceedings before a relevant entity:

- alternative processes or methods for making, signing, filing, giving or verifying documents;
- alternative methods for presenting indictments;
- the use of audio visual links or audio links to enable persons to appear before a relevant entity, to give evidence or make submissions, or to take an oath or make an affirmation;
- the restriction of public access to the proceedings which would otherwise be open.

Where a regulation is made for the use of audio visual or audio links to enable persons to appear before a relevant entity, a person who appears in the way provided by the regulation is taken to be present before the relevant entity.

A regulation made under section 16(1) is taken to be an extraordinary regulation.

For the purposes of being an extraordinary regulation:

- a regulation made under section 16(1) is taken to be an additional regulation-making provision within the meaning of section 5(1) of the Act; and
- a reference in section 5 of the Act to an extraordinary regulation under an affected Act is taken to be a reference to a regulation made under section 16(1); and
- section 5(4) of the Act applies as if the reference in that section to the Minister administering an affected Act were a reference to the Minister administering this Act; and
- section 5(5), (6) and (8) of the Act apply as if a reference in the section to an affected Act, other than a reference to an extraordinary regulation under an affected Act, were a reference to the enabling Act for a proceeding before a relevant entity in relation to which a regulation made under subsection 16(1) applies.

These provisions clarify the application of section 5 of the Act to an extraordinary regulation made under section 16(1).

The terms ‘audio link’, ‘audio visual link’ and ‘verify’ are defined for the purposes of the section.

*Clause 17* provides that the enabling Act for a proceeding before a relevant entity is taken to include a power to make a regulation for any of the following in relation to the proceeding:

- alternative processes or methods for making, signing, filing, giving or verifying documents;
- alternative methods for presenting indictments;
- the use of audio visual links or audio links to enable persons to appear before a relevant entity, to give evidence or make submissions, or to take an oath or make an affirmation;
- the restriction of public access to the proceedings which would otherwise be open;
- alternative provisions about the constitution of a relevant entity for conducting the proceeding;
- provision for an alternative method of service to satisfy a requirement about personal service of a document in the proceeding;
- provision for a videorecording of a witness's evidence to be viewed and heard in the proceeding instead of direct testimony;
- provision for the proceeding to be conducted in an alternative location;
- other procedural arrangements in relation to the proceeding.

A regulation under an enabling Act providing for matters to do with alternative processes or methods for documents; alternative methods for presenting indictments; the use of audio visual links or audio links; and the restriction of access to proceedings by members of the public may have retrospective application to a day not earlier than 19 March 2020

If there is an inconsistency between a regulation made under section 16 and a regulation made under the enabling Act mentioned in section 17, the regulation made under the enabling Act prevails to the extent of the inconsistency.

*Clause 18* provides that this part does not limit the application of a provision in part 3 (Reducing physical contact between persons) or part 4 (Modifying statutory time limits), other than section 12(3)(a), in relation to a proceeding before a relevant entity.

## **Part 6 Small business commissioner**

*Clause 19* provides for the appointment of a small business commissioner, with the appointment to end 31 December 2020.

*Clause 20* provides for the functions of the small business commissioner, which are: to provide information and advisory services to the public about matters relevant to small businesses, particularly in relation to COVID-19 response measures; to assist small businesses in reaching an informal resolution for disputes relating to small business leases during the COVID-19 emergency period; and to administer a mediation process prescribed by regulation in relation to small business tenancy disputes.

The small business commissioner has all the powers necessary for performing these functions.

*Clause 21* provides for the preservation of rights for a person who is a public service officer if such person is appointed as commissioner.

*Clause 22* provides that the commissioner must keep the Minister (small business) reasonably informed about the performance of the commissioner's functions; and comply with a reasonable request by the Minister (small business) to give the Minister stated information about the performance of the commissioner's functions at stated times.

## **Part 7      Retail leases and other prescribed leases**

*Clause 23* provides for the making of a regulation in relation to relevant leases for responding to the COVID-19 emergency.

A **relevant lease** is a retail shop lease under the *Retail Shop Leases Act 1994*, or a lease prescribed by regulation.

The regulation may:

- prohibit the recovery of possession of premises under a relevant lease; or
- prohibit the termination of a relevant lease by a lessor or owner of premises; or
- regulate or prevent the exercise or enforcement of another right of a lessor of premises; or
- exempt a lessee, or a class of lessees, from the operation of a provision of an Act, relevant lease or other agreement relating to the leasing of premises; or
- require parties to a relevant lease to have regard to particular matters or principles, or a prescribed standard, code or other document, in negotiating or disputing a matter under or in relation to a relevant lease; or
- require a mediator, conciliator, arbitrator, tribunal, court or other decision-maker to have regard to particular matters or principles, or a prescribed standard, code or other document, in mediating, conciliating, hearing or deciding a matter or proceeding relating to a relevant lease; or
- provide for a dispute resolution process for disputes relating to relevant leases; or
- prescribe any other matter necessary for, or incidental to, facilitating a matter mentioned in the above paragraphs.

A regulation under this section may:

- be inconsistent with an Act or law, other than the *Human Rights Act 2019*, to the extent necessary to achieve a purpose of the regulation and this Act; and
- have retrospective operation to a day not earlier than the commencement of this Act; and
- provide for a maximum penalty of not more than 20 penalty units for a contravention of the regulation.

A regulation under this section expires on 31 December 2020.

The regulation must be tabled in the Legislative Assembly within 14 days after it is notified.

## Part 8 Residential tenancies and rooming accommodation

Clause 24 provides a regulation-making power for residential tenancies and rooming accommodation and clarifies that a regulation under this Act or the *Residential Tenancies and Rooming Accommodation Act 2008* may make provision for any matter necessary for responding to the COVID-19 emergency.

Subclause (1) provides examples of what matters may be considered necessary to respond to the COVID-19 emergency. These include, but are not limited to:

- that the rights, obligations and processes under the *Residential Tenancies and Rooming Accommodation Act 2008* can operate appropriately in consideration of COVID-19 response measures, and
- help achieve the objectives of the COVID-19 response measures, and
- support the Queensland residential rental sector during the COVID-19 emergency period.

Subclause (2) includes a list of what the regulation may provide for to achieve the intention of subsection (1) to respond to the COVID-19 emergency. The regulation may:

- impose a moratorium on evictions of tenants and residents during the COVID-19 emergency period in line with the National Cabinet decision, or
- change the grounds on which notices to leave may be given by the parties to a residential tenancy or rooming accommodation agreement, or
- enable the Residential Tenancies Authority to conciliate types of disputes about unpaid rent, or
- suspend a right or obligation under the *Residential Tenancies and Rooming Accommodation Act 2008* in identified circumstances, or
- allow applications to be made to, and decided by, an entity which may be different to what the *Residential Tenancies and Rooming Accommodation Act 2008* may indicate, or
- prohibit some matters from being listed on a tenancy database captured by the *Residential Tenancies and Rooming Accommodation Act 2008* (section 457), or
- amend a residential tenancy agreement or rooming accommodation agreement including, but not restricted to, extending the length of the agreement; or ending the agreement; or if there is more than one tenant or resident named on the agreement, ending the interest of a tenant or resident in the agreement; or
- extend the application of some provisions of the *Residential Tenancies and Rooming Accommodation Act 2008* to additional persons not currently covered by the *Residential Tenancies and Rooming Accommodation Act 2008*.

Subclause (3) allows the regulation to be inconsistent with an Act or law, other than *the Human Rights Act 2019*, to the extent that is necessary to achieve a purpose of the regulation and this Act in relation to COVID-19. The regulation can be retrospective to a day not earlier than 19 March 2020. It can also impose a penalty of not more than 100 penalty units for a contravention of specific parts of the regulation.

Subclause (4) provides that a person does not incur civil or criminal liability under the Act or law for any act or omission that is inconsistent with an Act or law to the extent a person's act or omission complies with a regulation made under this section. This does not limit subsection (3)(a).

Subclause (5) requires a regulation made under this section to declare it is made under this section.

Subclause (6) does not limit a regulation-making power under the *Residential Tenancies and Rooming Accommodation Act 2008*.

Subclause (7) provides that if there is an inconsistency between a regulation made under this section and any of the following, the regulation prevails to the extent of the inconsistency. These include: a provision of an Act or law, other than the *Human Rights Act 2019*, another regulation made under the *Residential Tenancies and Rooming Accommodation Act 2008*, and a standard term or special term of a residential tenancy agreement or rooming accommodation agreement.

Subclause (8) provides that a regulation made under this section will expire on 31 December 2020.

Subclause (9) clarifies how a reference to a time period applies to tabling. The *Statutory Instruments Act 1992*, section 49(1) applies to the tabling of a regulation made under this section, as if the reference to 14 sitting days were a reference to 14 days.

Subclause (10) defines certain terms used in this section.

## **Part 9 Expiry of Act**

*Clause 25* provides that the Act will expire on 31 December 2020.

## **Part 10 Amendment of Acts**

### **Division 1 Amendment of Acts Interpretation Act 1954**

*Clause 26* provides that this division amends the *Acts Interpretation Act 1954* (AIA).

*Clause 27* inserts new sections 15DB (Extension of period before commencement of postponed law – COVID-19 emergency) and 15DC (Extension of period before commencement of proclaimed law – COVID-19 emergency) after existing section 15DA.

New section 15DB provides allows the extension of the period before commencement of a postponed law by regulation.

Under existing section 15DA of the AIA a 'postponed law' is an Act that does not commence on the date of assent of the Act or a provision of an Act that does not commence on the date of assent of the Act that enacts the provision. Section 15DA provides for the automatic commencement of a postponed law that has not commenced

on the day following a one-year period from the date of assent for the postponed law. Subsection (3) of 15DA allows for a regulation to be made to extend the period before commencement of the postponed law to allow for a total postponement period prior to commencement of not more than 2 years from the assent day.

Subsection (1) in new section 15DB provides that the section applies where a regulation has already been made under existing section 15DA(3) and the postponed law has not yet commenced.

Subsection (2) allows for a regulation to be made further extending the period before commencement of the postponed law for a period ending on or before 31 December 2020.

Subsection (3) provides for the Acts under which a regulation may be made under this new section.

Subsection (4) provides that a regulation made under the section may only be made if the extension is necessary for a purpose of the *COVID-19 Emergency Response Act 2020*.

Subsection (5) provides that a regulation made under subsection (2) must declare that it is made under new section 15DB.

Subclause (6) clarifies that section 15DB applies despite section 15DA.

Subsection (7) provides that section 15DB expires on 31 December 2020.

Subsection (8) provides a definition for 'COVID-19 emergency'.

New section 15DC provides for the extension of a period before commencement of a proclaimed law.

Subsection (1) provides that a regulation under this new section can only be made if before the commencement of the section, a date for commencement of an Act or a provision of an Act had been fixed and the date for commencement had not passed.

Subsection (2) allows for a regulation under the section to be made within 7 days before the 'proclaimed day' to extend commencement for a period ending on or before 31 December 2020.

Subsection (3) provides that a regulation made under the section may only be made if the extension of the period is necessary for a purpose of the *COVID-19 Emergency Response Act 2020*.

Subsection (4) provides that the regulation must declare it is made under the section.

Subsection (5) clarifies that the section applies despite any other law.

Subsection (6) provides that the section expires on 31 December 2020.

Subsection (7) provides a definition for ‘COVID-19 emergency’.

## **Division 2 Amendment of Parliament of Queensland Act 2001**

*Clause 28* states that this division of the Bill amends the *Parliament of Queensland Act 2001*.

*Clause 29* inserts new definitions for Chapter 2 Part 2 (Miscellaneous) of the *Parliament of Queensland Act 2001* being ‘COVID-19 emergency’, ‘exceptional circumstances’, ‘parliamentary precinct’, ‘present’ and ‘voting’.

COVID-19 emergency refers to the declarations made under the *Public Health Act 2005*, section 319(2) for COVID-19.

Exceptional circumstances will arise when it is impractical for some or all members to travel to or meet in the parliamentary precinct because of the COVID-19 emergency.

Parliamentary precinct refers to the definition in the *Parliamentary Service Act 1988*.

Present will extend the meaning beyond physical presence to include being present at a meeting of the Assembly by telephone, video or other electronic means or by proxy, in exceptional circumstances.

Voting will extend the meaning to enable a member to vote in person or in exceptional circumstances by proxy or electronic means.

*Clause 30* inserts new section 10A which provides that in exceptional circumstances a meeting of the Legislative Assembly or a Committee of the Whole House may be held, and business transacted, using any technology that enables reasonably continuous and contemporaneous communication between the Speaker or Deputy Speaker presiding and the members present other than members present by proxy, and between the members present other than members present by proxy.

*Clause 31* inserts three new examples in section 11 of the type of Standing rules and orders that may be made by the Legislative Assembly that deal with how the Assembly may meet and conduct business in times of exceptional circumstances.

These examples do not limit the power of the Assembly as provided for in section 11(1) of the Act.

*Clause 32* amends section 12 to provide that a quorum of the Legislative Assembly exists if 16 members are present, exclusive of the Speaker or Deputy Speaker presiding.

During a meeting of the Assembly held in exceptional circumstances, members present by electronic means or by proxy can be included in the quorum count.

*Clause 33* inserts new definitions for ‘present’ and ‘voting’ for Chapter 5 (Statutory committees of the Assembly) of the Act.

*Clause 34* inserts new definitions into the dictionary of the Act as outlined in the clause.

## **Division 3 Amendment of Statutory Instruments Act 1992**

*Clause 35* states that this division amends the *Statutory Instruments Act 1992* (SIA).

*Clause 36* inserts new section 56B (Exemption from expiry-COVID-19 emergency).

Subsection (1) allows a regulation to be made to exempt subordinate legislation from expiry for a stated period ending on or before 31 December 2020.

Subsection (2) provides that the Minister may only recommend to the Governor-in-Council the making of a regulation under the section if the Minister responsible for the subordinate legislation has provided them with a notice stating that that the responsible Minister is satisfied that postponing the expiry of the subordinate legislation under this section is necessary for a purpose of the *COVID-19 Emergency Response Act 2020*.

Subsection (3) requires that the notice referred to in subsection (2) by the responsible Minister be tabled in the Legislative Assembly within 7 sitting days after the regulation is made.

Subsection (4) states that non-compliance with the tabling requirement does not affect the validity of the regulation.

Subsection (5) requires that any regulation made under the section must declare that it is made under this section.

Subsection (6) provides that the section expires on 31 December 2020.

Subsection (7) clarifies that a regulation may be made under this new section even if a regulation has previously been made under section 56A of the SIA exempting the subordinate legislation from expiry. However, this new section is not intended to interfere with the operation of section 56A.

Subsection (10) defines terms used in the section.

## **Schedule 1 Dictionary**

Schedule 1 is the dictionary and sets out the definition for words used in the Bill.