

Supplementary Explanatory Statement

Public Health Amendment Bill 2021 (No. 2)

Amendments proposed by Elizabeth Lee MLA

This explanatory statement relates to the Public Health Amendment Bill 2021 (No. 2) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly. The Statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

The intent of proposed amendments is to improve oversight and accountability of the powers to be granted to the Executive, ministers, and Chief Health Officer (CHO) by the bill. Proposed amendments address observations of the Justice and Community Safety (JACS) Committee in its scrutiny role, or were recommended by the Health and Community Wellbeing (HCW) Committee following its inquiry into the bill.

Proposed amendments 1, 2, 4, 9, 15, 16 and 17 would make the relevant instruments in the bill disallowable rather than notifiable. In the context of Covid-19 public health measures, which may significantly impinge on human rights, disallowance is an important oversight mechanism that must be available to the Assembly. This is in line with recommendation two of the HCW Committee's inquiry report on the bill. It also ameliorates the concerns raised by the JACS Committee (in its scrutiny role) in Scrutiny Report No. 12, February 2022, p. 9, and Scrutiny Report No. 15, April 2022, pp. 11-12.

Proposed amendment 3 stipulates that the CHO would not be able to make a vaccine direction in relation to an individual. This is in line with recommendation four of the HCW Committee's inquiry report on the bill. There has been no justification provided by the government as to why the CHO must have the powers to make directions in relation to an individual. JACS Scrutiny Report No. 12 identifies that the bill may significantly impact human rights (pp. 7-8); CHO directions in relation to a specific individual heighten this risk. Proposed amendments 5, 6, 7, 8, 10, 11, 12, and 13 are technical amendments giving effect to proposed amendment 3.

Proposed amendment 14 seeks to amend government amendments regarding external review of vaccination exemption decisions. It would relocate section 118ZH of the bill to subdivision 6C.6.1 as section 118ZCA, to make it clear that an external reviewer may be appointed for external review of an exemption decision in relation to any direction, including executive directions, not just ministerial and CHO directions.