



Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane Qld 4000

egc@parliament.qld.gov.au

Dear Madam/Sir

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

Kindly accept this submission, in relation to the above Bill.

The QCCL does not support the extension of the emergency powers to 30 April 2022. The QCCL would support an extension of the powers until 31 December 2021, when the question of whether they should be further extended can be considered.

At the start of the pandemic, the QCCL accepted that the following circumstances justified the emergency powers introduced by the government:

1. the community was threatened by a novel highly infectious disease for which there was no vaccine or effective treatments
2. the disease threatened to overwhelm the health system, resulting in the death of many people from both the disease itself and their inability to access other essential medical treatment.

Our position has always been, that those powers should not continue for any longer than is *absolutely necessary*.

The facts have of course now changed. There are now a number of safe and effective vaccines, which prevent serious illness and death ensuring that our hospital systems do not face the threat of being overwhelmed. The New York Times maintains a vaccine tracker website which lists some 128 vaccines which include nine authorised and eight approved vaccines, with the balance in clinical trials on humans¹. The clear implication is that there will be many more vaccines available in the next 6 to 12 months.

That website also references work being done to develop booster shots to counter variants which will also be available in a relatively short period of time.

The consequence of this is that in our opinion, once a vaccine has been offered to every adult Australian there is no further justification for emergency powers. As the Commonwealth Government continues to assure us that a vaccine will be offered to every adult Australian by 31 December, emergency powers should not be extended beyond that date. If that promise is not kept, then a further extension of the

¹ This does not include the many other vaccines candidates listed on the website which have not yet reached the stage of human trials.

powers can be considered at that time when it presumably will be possible to properly assess when that milestone will be reached

A response to that position would be to point to the situation of those who are immunocompromised, children and those who for whatever reason refuse to be vaccinated.

The first response to that argument is to point to the increasingly clear evidence that the vaccines will reduce the spread of the disease. Whilst there has been some reluctance by some experts to accept this proposition, many experts have long held that if the vaccine reduces viral load it will reduce the spread of the disease. The recent decision by the American Centres for Disease Control to say that those who have been fully vaccinated no longer need to wear masks, is clearly based on the view that the evidence supports the proposition that the vaccines prevent the spread of the disease. This view was also clearly expressed by President Biden's adviser on the topic Dr Fauci in his interview by Jon Lovett on the Pod Save America pod cast which was released on 18 May 2021².

We accept, that there is a debate about what percentage of the population must be vaccinated in order to achieve herd immunity. However, the fact that a significant percentage of the population has been vaccinated must mean that some level of protection is offered to everyone in the community³.

Secondly, the evidence still seems to be clear that children rarely get serious cases of Covid 19. The advantage in vaccinating children is in reducing spread by increasing herd immunity⁴. It is also clear, that further studies are being undertaken which is resulting in approvals for the vaccination of children, with the New York Times website reporting that on 10 May the Food and Drug administration authorised the use of the Pfizer vaccine for children aged between 12 and 15.

Finally, in relation to those who are immunocompromised, again, it appears that studies are being undertaken to assess the effectiveness of the vaccines in those people. And, as again, is the case with other vaccines different dosages may be required. Work is clearly proceeding on addressing these issues⁵.

In addition, those individuals can continue to wear a mask and use other protective strategies⁶. No one should be criticised or harassed for making the perfectly legitimate decision to do so.

In relation to those who refuse to be vaccinated, the Council's position is that no person should be compelled to take the vaccine who has a religious, personal, or philosophical objection to doing so. Anyone who decides not to be vaccinated, is exercising their rights to bodily integrity and to control their own medical treatment. They must be taken to have accepted the risk of being infected.

² See also Harris et al *Effect of Vaccination on Household Transmission of SARS-CoV-2 in England*. – Letter to the editor New England Journal of Medicine 23 June 2021 and Sheel Et al *Should I get my second AstraZeneca dose?* The Conversation 28 June 2021 – contact tracing data shows one dose of either vaccine can prevent spread to members of same household by around 50%

³ Brian Resnick *The CDC's mask guidelines are scientifically sound — if you actually read them* <https://www.vox.com/science-and-health/22442457/cdc-mask-vaccination-guidance-confusion> 21 May 2020

⁴ *COVID vaccines and kids: five questions as trials begin* <https://www.nature.com/articles/d41586-021-01061-4> 21 April 2021

⁵ *Op-Ed: Are the Immunosuppressed Responding to Two Doses?* <https://www.medpagetoday.com/infectiousdisease/covid19vaccine/92439>

⁶ *More advice on vaccines for immunocompromised patients* <https://www.cdc.gov/vaccines/covid-19/info-by-product/clinical-considerations.html>

Given that position, we do not support the achievement of herd immunity as the criterion for the ending of emergency measures, if that necessitates the compulsion of conscientious objectors to the taking of the vaccine.

Many are concerned about surveys showing that up to 30% of the population don't plan to be vaccinated. This compares with a childhood diseases vaccination rate of 95%⁷

The best available evidence would indicate that only about 2-3% of the general population, have beliefs, attitudes, and concerns that cause them to reject or delay some or all vaccines.⁸

Furthermore, there is good reason to believe that conscientious objectors represent only a small minority of the unvaccinated.

We believe the many commentators have rather patronizingly dismissed entirely understandable concerns about the rushed development of the vaccine and that the mRNA vaccines are untested technology. These concerns have been reinforced by issues with the Astra Zeneca vaccine and the inept handling of those concerns by Commonwealth and State authorities. We anticipate that as time passes, barring further controversies, resistance to vaccination will fall to more normal levels

Ultimately, sadly, it is never going to be possible to protect every person in our community from every possible risk⁹. In 2017 1200 people died of flu and in 2019 902 people died of the flu and 3915 were hospitalised in this country¹⁰. Those figures would no doubt be worse without a vaccine. But they were not used to justify large scale civil liberties restrictions. Whilst we accept that covid19 is more harmful and deadly than the flu, effective vaccines for covid19 must lead to a more proportionate response, which in our view means the end of large restrictions on the fundamental rights of Queenslanders.

It is said that these measures are justified by the precautionary principle. However, this principle does not sit well with individual liberty. It puts pressure on officials to take steps in the absence of clear evidence and gives permission for arbitrary decisions. Rather than balancing risk against liberty, the effect of this principle is that liberty is what you have left after all possible precautions have been taken. In effect it sets the value of liberty at naught before balancing commences.

The precautionary principle is a long-winded way of saying "Better safe than sorry". Better safe than sorry is not the standard for dealing with fundamental rights. Better safe than sorry is the motto of a police state. It would follow from better safe than sorry that all of us ought to be surveilled at all times so that nobody could commit a crime.

Currently of course, the vaccination program is in its early stages. This means of course that we accept that currently the state of emergency remains justified.

The Council has repeatedly called on the government to publicly identify the criteria which it will use to decide that the state of emergency is no longer required. We note it has again failed to do so when introducing this Bill.

⁷ Childhood immunization coverage - Commonwealth Department of Health 3 May 2021 <https://www.health.gov.au/health-topics/immunisation/childhood-immunisation-coverage>

⁸ Kristine Macartney, 'Forget 'no jab, no pay' schemes, there are better ways to boost vaccination', The Conversation, 27 February 2015; Prof Paul Ward, Submission to the Senate Standing Committees on Community Affairs, re Social Services Legislation Amendment (No Jab, No Pay) Bill 2015 (Submission 326), 12 October 2015

¹⁰ Review of the 2019 influenza season in Australia <https://www.immunisationcoalition.org.au/wp-content/uploads/2020/02/1-Barr-ASM-2020-presentation.pdf>

We are pleased to note that for the first time, on 2 July 2021, the Premier articulated a position on this issue, which would appear to be the same as ours that restrictions should go once “everyone is offered a vaccine”¹¹

The virus is not going to disappear any time soon. This means, we are eventually going to have to start finding ways to deal with it that are not draconian. The widespread availability of safe and effective vaccines makes it not only possible for us to cope with the virus in the way we cope with the flu, but dictates that the emergency measures which have been implemented to deal with it must also come to an end

We have maintained throughout this crisis the emergency powers are justified so long as they are necessary and proportionate and are in place for the absolute minimum period of time. It cannot be said at this time that the 30th of April 2022 is the absolute minimum. It may turn out that it is, but that assessment in our submission cannot be made now.

Our position is that the emergency should only be extended to 31 December, which is stated to be approximately, the time by which the vaccine will be made available to all adult Australians who want one. And based on current work being done, it will be possible also to vaccinate some children spreading the protection even further.

We also maintain that any extension should be accompanied by the following changes to the current regime

1. Detention and vaccination

Following the lead of Ireland, quarantine practice should be changed so that those who can demonstrate they are fully vaccinated are not required to quarantine in a hotel or other facility. It is not the same situation as a vaccine passport. This is a case where the government is detaining people with a view to preventing the spread of the virus. However, the evidence is clear that vaccinated person is far less likely to pass on the virus than an unvaccinated person. Such people should be entitled, at least, to quarantine at home subject to an appropriate testing regime.

2. Scrutiny

The extraordinary powers which have been granted, must be the subject of immediate scrutiny.

Effectively, the Chief Health Officer has become an unelected legislative chamber, her actions should and must be supervised by this Parliament¹². We note that neither this committee nor the health committee have had their references to inquire into the Government’s response renewed. This is in our submission entirely inappropriate. The need for supervision has not ceased, as the powers remain, and we do not know what uses they may be put to in the next six or 10 months.

It was, and remains, our position that the referral of the review of the government’s Covid response to standing committees was wrong. The government should establish a select committee, as was done in the Senate, with representatives of all parties in Parliament, chaired by a non-government member. However, the two standing committees are better than no parliamentary oversight at all.

¹¹ Quoted on the ABC News app at 10.56 am on 2 July 2021

¹² This is one of the bases upon which challenges to similar laws have succeeded in some states of the United States.

3. Review of decisions

The effect of the powers provided for in part 7A of the *Public Health Act*, is that an emergency officer, which includes every police officer in the State, is empowered to detain a person for 14 days.

In our view, it is fundamental that a person who is detained should have a right of review before a Court. The statement of compatibility with the *Human Rights Act* which accompanied the Bill pursuant to which part 7A was introduced justified the removal of the right of review on the basis that, due to the high number of people who would be detained, a right of appeal would impose significant burdens on the court and divert the resources of the public health officials. We see no basis for this proposition. It is the usual “floodgates” argument which has never been vindicated. Moreover, a right of review when a person is detained is fundamental. It is our view that emergency circumstances such as this cannot justify its removal.

Section 29 of the *Human Rights Act* prohibits the arbitrary detention of a person. Subsection 7 of that section specifically provides that a person deprived of liberty is entitled to apply to a court for a declaration regarding the lawfulness of their detention. It would be our view, that the absence of a right of review under part 7A of the *Public Health Act*, is a violation of the *Human Rights Act*.

We note that following its review of hotel quarantine Victoria has introduced a system of independent detention review officers who review all aspects of a person’s detention and provide a report to the Chief Health Officer. This aspect of the process means it is not a satisfactory substitute of review by a Court but it would at least be an improvement on the current regime, where the review process is a classic example of an appeal from Caesar unto Caesar.

4. Privacy

We can accept the case for the Check-in App. However, the privacy of the information must be protected. We call on the government to immediately pass legislation making law its promise that information collected by the App will only be used for contact tracing and most particularly not be accessible by law enforcement.

This legislation is most imperative now that it is to become mandatory to use the app in an extremely wide range of circumstances, which will result in the state having access to a comprehensive map of every Queenslanders’ movements for a period of 56 days.

The information is being Collected under compulsion for a specifically identified purpose. This makes it different from most of the information held by the government. As a matter of fundamental information privacy principles, the data should only be used for that purpose. This is what the government says its policy is but that is not the law.

It is our view, that the current provisions in the *Public Health Act* providing for the confidentiality of contact tracing data, do not apply to the data collected by the app, at least not before it is actually given to a contact tracer. In those circumstances, law-enforcement agencies do not need a warrant to access the data. But even if we are wrong about that, it is our view that Law enforcement should not have access to the data at all and legislation should be passed to provide for that.

It is our view, that such a law by giving people confidence that the information will not be used for any other purpose, will enhance the accuracy of the data being collected by ensuring that people do not provide false names and contact details.

We do not see such a law as an impediment to the police or other law enforcement officials. Police already have access to multiple sources of information. Police are not entitled to access all information held by government for example in relation to the Covid safe app, the Commonwealth parliament has passed a law which prohibits police access to that information.

Another example is that police are not able to access information held in relation to Social Security recipients. Ultimately, the fact that the police having access to this data might improve the efficiency of their crime detection is not sufficient to justify them being given access to data which has been collected in an emergency situation under compulsion for a specified purpose.

We trust this is of assistance to you in your deliberations.

Yours faithfully



Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties
6 July 2021