

Committee Secretary  
Health and Environment Committee  
Parliament House  
George Street  
Brisbane Qld 4000  
**Email:** hec@parliament.qld.gov.au

7<sup>th</sup> July 2021: 14:20hrs

Dear Committee Secretary,

I am writing in regard to: Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021, where Hon Yvette D’Ath MP, is proposing to extend a range of powers for the Queensland Government until April 2022.

1 **Summary statement: The QLD government does not have the legislative power to**  
2 **create and enforce the specific Bill in Question for a number of reasons listed**  
3 **below. This does not preclude the QLD government ‘recommending’ certain**  
4 **practices, but it cannot create and enforce legislation for the following reasons;**

5 Ref: Australian Federal Biosecurity Act 2015  
6 <https://www.legislation.gov.au/Details/C2017C00303>

7 Under section 8 of the Act, it states that the Act gives itself legal priority /authority (over the  
8 States) when it comes to public health risk related policy, insofar as that the State legislation  
9 must not be inconsistent with the Act – **EXCEPT** as per subsection (2)c. (referenced below), when  
10 a biosecurity emergency / human biosecurity emergency has been declared (such as in QLD) –In  
11 this instance, the federal laws supersede all (related) State Laws.

## 12 **8 Concurrent operation of State and Territory laws**

13 (c) *This Act does not exclude or limit the operation of a law of a State or Territory that is*  
14 *capable of operating concurrently with this Act (except as referred to in*  
15 *subsection (2)).*

16 (2) *Subsection (1) is subject to the following provisions:*

17 (c) *section 172 (prohibited goods);*

18 (b) *section 265 (ballast water);*

19 © *subsections 445(4), 446(4), 477(5) and 478(4) (biosecurity emergencies and human*  
20 *biosecurity emergencies).*

21 Section 475 of the biosecurity act sets out how a biosecurity emergency can be established, and  
22 on the 18<sup>th</sup> March 2020 this was declared by the Australian Governor General.

23 **475 Governor-General may declare that a human biosecurity emergency exists**

24 This does not preclude the States and territories doing so as well, but when a biosecurity  
25 emergency is declared at a federal level, States must be in lockstep with the federal legislation –  
26 the Biosecurity Act 2015.

27 Section 477 then sets out the requirements for the federal health minister;

28 **477 Health Minister may determine emergency requirements during human biosecurity**  
29 **emergency period**

- 30 (1) During a human biosecurity emergency period, the Health Minister may determine  
31 any requirement that he or she is satisfied is necessary:  
32 (a) to prevent or control:  
33 (i) the entry of the declaration listed human disease into Australian territory or  
34 a part of Australian territory; or  
35 (ii) the emergence, establishment or spread of the declaration listed human  
36 disease in Australian territory or a part of Australian territory; or  
37 (b) to prevent or control the spread of the declaration listed human disease to  
38 another country; or  
39 (c) if a recommendation has been made to the Health Minister by the World Health  
40 Organization under Part III of the International Health Regulations in relation to  
41 the declaration listed human disease—to give effect to the recommendation.

42 Note 1: A person who fails to comply with a requirement determined under this  
43 subsection may commit an offence (see section 479).

44 Note 2: For variation and revocation, see subsections 33(3) and (3AA) of the *Acts*  
45 *Interpretation Act 1901*.

46 (2) A determination made under subsection (1) is a legislative instrument, but section 42  
47 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

48 (3) Without limiting subsection (1), the requirements that the Health Minister may  
49 determine include the following:

50 **(a) requirements that apply to persons, goods or conveyances when entering or**  
51 **leaving specified places;**

52 **(b) requirements that restrict or prevent the movement of persons, goods or**  
53 **conveyances in or between specified places;**

54 **(c) requirements for specified places to be evacuated;**

55 **(d) if a recommendation has been made as referred to in paragraph (1)(c)—**  
56 **requirements for the purposes of giving effect to the recommendation.**

57 This means the biosecurity Act restricts what can and cannot be done during a declared  
58 biosecurity emergency to these areas above being; 477 (3) a, b, c & d. It does not give rise to

59 allow States & Territories to ‘innovate’ or ‘expand’ or ‘extrapolate’ new varieties of legislation in  
60 addition to these laws, as the **Australian Governor General had declared a biosecurity**  
61 **emergency on the 18<sup>th</sup> March 2020 (still in effect 07/07/21).**

62 This means the States and Territories cannot make laws that apply to a group of individuals (such  
63 as the Queensland population) which includes;

- 64 • Diagnosing
- 65 • Taking body samples
- 66 • Detaining individuals
- 67 • Restricting movements
- 68 • Directing people to wear clothing or equipment (such as masks)
- 69 • Directions to get tested
- 70 • Directions to get vaccinated
- 71 • Directions to get medicated
- 72 • Contact tracing
- 73 • Etc.

74 It is only when ‘a’ person (an individual) displays **signs and symptoms of a disease** & there is  
75 evidence of this, that a ‘authorised person’ (the Queensland Government and the CHO is not  
76 authorised & you cannot authorise distribution of power to the QLD Police or a QLD Health  
77 representative through a Bill of QLD Parliament) can make a specific requirement on an  
78 individual. That direction must come from a magistrate & must be a specific legal direction to  
79 that individual. This means that these federal laws (not even considering the State/territory laws  
80 for a moment) state that you must have signs and symptoms. If Australians / Queenslanders are  
81 not displaying signs and symptoms, and are continuing to be directed as a ‘group’ all common  
82 covid-19 directions currently in effect around Australia are, **categorically illegal**.

83 These directions are contains in sections 60 & 61 of the Biosecurity Act.

84 If people have signs and symptoms then there is a specific process to giving them health  
85 directions to reduce the risk on Australia.

86 Further, with specific regards to masks, section 88 of the Biosecurity Act is CLEAR – the order  
87 must be to an individual – not a group (such as Southeast QLD, or the ‘Sunshine Coast’ etc)  
88 (Section 88 below);

### 89 **88 Risk minimisation interventions**

- 90 (1) An individual may be required by a human biosecurity control order to wear either or both  
91 specified clothing and equipment that is designed to prevent a disease from emerging,  
92 establishing itself or spreading.
- 93 (2) The order must specify the following:
  - 94 (a) the circumstances in which the individual is required to wear the clothing and equipment;

- 95 (b) the period during which, or the times at which, the individual is required to wear the  
96 clothing and equipment;  
97 (c) instructions for wearing the clothing and equipment.

98 I submit to the committee that the current Bill under review and this proposed amendment &  
99 extension, together with all current Covid-19 style legislation in effect across Queensland is  
100 **CATAGORICALLY ILLEGAL** under the Australian Federal Biosecurity Act 2015 and the Queensland  
101 Government does not have the powers to create and enforce this Bill.

Sincerely,  
John Tyler  
Brisbane QLD Australia