Att: Economics and Governance Committee

Submission regarding the *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill* 2021 (Qld) (the Bill)

This document is submitted to the Committee in response to tabling of the Bill and the assorted Acts it seeks to extend beyond 30 September 2021. I will summarise the individual points first, before provided a broader overview under the respective headings to follow. I submit the following as a private individual who is a resident of Queensland. It does not represent the view of any company, group, organisation or agency.

I will be clear from the outset that I do not intend for this document to be an exhaustive explanation of the topics I am raising. Where I refer to legislation and Court decisions, I have not comprehensively quoted and cited each reference, so as to maintain the attention of the reader and the impact of the message I seek to convey. I have however provided relevant section numbers and excerpts as examples. This document is not intended to be an academic, research or authoritative legal document as I do not believe that it is what the Committee has called for or required. I am willing to prepare a fully referenced and supported document if so required.

I submit the subjects below to the Committee as I am confident in my position on each of them. I am also aware that a growing number of the Australian (and Queensland) population share these views. I have omitted others that, whilst I believe them, at present I do not have the resources available to support them with sufficient evidence. However, I believe that in the near future, I will be able to include them in further submissions and/or proceedings.

Summary

1. Constitutional issue – state laws are invalid

It is my view (and that of a great many others) that the majority of the legislation drafted and "enacted" by the Queensland legislature, relevant to the outbreak of COVID-19 and its "management", is invalid. I base this on the foundational principles of Constitutional Law, which are not complicated or confusing. Given the relative simplicity of the concept, it may indicate that the Queensland legislature has decided to ignore fundamental principles of our Australian legal system and numerous, resounding decisions of the High Court of Australia. I have provided several examples of the dominant Commonwealth law below, which should be followed.

2. Incompatible with Human Rights

The Bill's is accompanied by a 'Statement of Compatibility', prepared in accordance with Part 3 of the *Human Rights Act* 2019. Despite the deceptive title which invokes imagery of complete harmony with Human Rights, this Bill (more accurately, the Bill's direct effect of extending these invalid and draconian laws) crushes and ignores the God-given rights and liberties of individuals – in a State of no less than 5.2 million individuals.

1. Constitutional issue – state laws are invalid

The Parliamentary Education Office and Australian Government Solicitor published a version of Australian Constitution Act complete with Overview and Notes. These notes contain the following information which I have summarised in the two following paragraphs:

The Commonwealth government draws its legislative power from The Commonwealth of Australia Constitution Act 1900. There are limits to particular subjects that the Commonwealth may legislate, which are provided in section 51 and 52. Just because a subject is not expressly listed in those sections, does not mean that the Commonwealth cannot legislate in relation to that subject.

The States are not expressly limited in their power to legislate (as is the Commonwealth), but for several exceptions listed in the Australian Constitution which are not relevant to these submissions.

However, what is of prime importance is **section 109** of the Australian Constitution, which reads as follows, *"When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid."*

There are numerous decisions of the High Court of Australia which make it clear that this is the case not only when there are clear inconsistencies in Commonwealth and State obligations; but also where the Commonwealth has evinced an intention to "cover the field" by legislating on a particular subject.

The Commonwealth has enacted the *Biosecurity Act* 2015. I submit that the provisions of this Act have "covered the field" of the Queensland state laws which relate to the government's COVID19 response and "management".

Section 4 of this Act clearly outlines its objectives and includes (relevantly) that:

The objects of this Act are the following:

(a) to provide for managing the following:

(i) biosecurity risks;

(ii) the risk of contagion of a listed human disease or any other infectious human disease;

(iii) the risk of listed human diseases or any other infectious human diseases entering Australian territory or a part of Australian territory, or emerging, establishing themselves or spreading in Australian territory or a part of Australian territory;

…

(v) biosecurity emergencies and human biosecurity emergencies;

(b) to give effect to Australia's international rights and obligations, including under the International Health Regulations, the SPS Agreement, the Ballast Water Convention, the United Nations Convention on the Law of the Sea and the Biodiversity Convention.

Note: The expression biosecurity risk referred to in subparagraph (a)(i) has different meanings depending on whether it is for the purposes of Chapter 6 (managing biosecurity risks: monitoring, control and response) or another part of this Act (see sections 9 and 310).

Section 9 of the Biosecurity Act contains definitions of 'biosecurity risk' and 'contagion', sufficient to establish that COVID-19 falls within this broad remit. An outbreak of COVID19 is therefore well within the contemplation of this Act.

Section 60 of the Biosecurity Act outlines the procedure for imposing a human biosecurity order on an individual. It is critical to consider and understand the choice of the language used – in particular: **ONLY** and **INDIVIDUAL**. My emphasis has been added throughout the following text:

Imposing a human biosecurity control order on an *individual*

(1) The following officers may impose a human biosecurity control order on an individual:

(a) a chief human biosecurity officer;

(b) a human biosecurity officer;

(c) a biosecurity officer.

*Note 1: An officer who intends to impose a human biosecurity control order on an **individual** has certain powers under sections 68 and 69.*

…

*(2) A human biosecurity control order may be imposed on an **individual only** if the officer is satisfied that:*

*(a) the **individual** has one or more signs or symptoms of a listed human disease; or*

*(b) the **individual** has been exposed to:*

(i) a listed human disease; or

*(ii) another **individual** who has one or more signs or symptoms of a listed human disease; or*

*(c) the **individual** has failed to comply with an entry requirement in subsection 44(6) in relation to a listed human disease.*

*(3) To avoid doubt, an individual may fail to comply with an entry requirement in subsection 44(6) even if the **individual** is not able to comply with the requirement.*

(4) An officer may include one or more biosecurity measures specified in Subdivision B of Division 3 in a human biosecurity control order.

The clear, unambiguous language of section **60(2)** cannot be ignored. The powers the Biosecurity Act grants to the relevant authorities (which are strikingly similar to the Queensland Public Health Act provisions relevant to the response to COVID19 – they include quarantine, treatment etc etc) can be engaged **ONLY IN RESPECT TO AN INDIVIDUAL** and **ONLY IF THE RELEVANT OFFICER HAS SUFFICIENT GROUNDS TO ESTABLISH THAT THE INDIVIDUAL HAS BEEN OR MAY HAVE BEEN INFECTED.**

The express language of the Act highlights the critical consideration given to preserving the human rights of the individual and the recognition of extreme power the Act bestows upon those who can exercise it. There can be no mistaking that there is no provision for subjecting an arbitrary group, area or whole state to oppressive measures, in breach of numerous Human Rights – particularly without sufficient grounds.

The powers under the 'laws' that the Queensland government seek to rely on when issuing directions and regulations, fly in the face of the Commonwealth law. The indiscriminate nature upon which the entire healthy population of the State of Queensland (or various localities as per the various directions) are subjected to detention, monitoring, scrutiny and medical "services" juxtaposes the Commonwealth position. The Queensland state laws are entirely inconsistent with the Commonwealth and they are invalid.

It is apparent that the Queensland legislature and the Queensland government have at best, given no critical thought to the drafting of their legislation (as eluded to in the 'Statement of Compatibility'), or at worst, knowingly disregarded the authoritative and dominant Commonwealth Act – and the consequences of its invalidity.

The Commonwealth has also enacted the Privacy Act 1988. It includes provisions which relate to the forced use of COVID19 tracing application. It includes:

Requiring the use of COVIDSafe

(1) A person commits an offence if the person requires another person to:

(a) download COVIDSafe to a communication device; or

(b) have COVIDSafe in operation on a communication device; or

(c) consent to uploading COVID app data from a communication device to the National COVIDSafe Data Store.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(2) A person commits an offence if the person:

(a) refuses to enter into, or continue, a contract or arrangement with another person (including a contract of employment); or

(b) takes adverse action (within the meaning of the Fair Work Act 2009) against another person; or

(c) refuses to allow another person to enter:

(i) premises that are otherwise accessible to the public; or

(ii) premises that the other person has a right to enter; or

(d) refuses to allow another person to participate in an activity; or

(e) refuses to receive goods or services from another person, or insists on providing less monetary consideration for the goods or services; or

(f) refuses to provide goods or services to another person, or insists on receiving more monetary consideration for the goods or services;

on the ground that, or on grounds that include the ground that, the other person:

(g) has not downloaded COVIDSafe to a communication device; or

(h) does not have COVIDSafe in operation on a communication device; or

(i) has not consented to uploading COVID app data from a communication device to the National COVIDSafe Data Store.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

However despite this, the Queensland state laws impose a financial and/or term of imprisonment if an individual fails to provide the relevant data. The obvious inconsistencies are again apparent. It is clear beyond a shadow of doubt that the Commonwealth has evinced and intention to 'cover the field' with regards to the tracing of persons in order to enable an effective and measured response to a COVID19 outbreak.

The relevant state laws regarding the QLD COVID19 application and mandatory provision of data indiscriminately **IS INVALID.**

The resounding inconsistency between the Commonwealth and State legislation is that the Commonwealth takes the sensible approach of "quarantine (or treat, control etc) the sick" whereas the State laws take the arbitrary, blundering and devastating approach of "quarantine (or treat, control etc) everyone regardless".

I do not accept the reasoning of an "*all the other states are doing it*" type response in order to justify the state legislation. The Constitutional inconsistencies apply just as equally to their legislation, and they are also invalid.

The folly of the Queensland legislation is clear. The Bill which seeks to extend the relevant legislation cannot be enacted.

I submit that the Committee should not seek to progress this Bill based on this topic alone.

2. Incompatible with Human Rights

The 'Statement of Compatibility' provided with this Bill outlines and acknowledges the numerous Human Rights that are currently being violated by the Queensland government through the imposition of the current (and previous) series of health directions, orders, subordinate legislation and regulations.

Having read the Statement of Compatibility, I am amazed at the mental gymnastics that it presumably took the drafters of that document, in order to convince themselves that the Human Rights violations are necessary and proportionate. It is not until one reads the violations out aloud, that they really hit home.

My family and I have been personally negatively impacted and affected by the Queensland COVID19 response. It has placed a considerable burden on our day to day lives and our Human Rights have been completely disregarded.

I have heard countless anecdotes of individuals who have been negatively impacted by the Queensland Government's response to COVID-19 (as opposed to the COVID19 virus) are staggering. They attest to the disproportionate response and highlight how severe the breaches are.

They include (but are not limited to) situations where healthy individuals are arbitrarily quarantined and unable to visit dying family members (who are dying of non-COVID19 related illnesses or natural causes); individuals who cannot withstand the financial strain of being unable to operate their businesses (or who cannot afford to operate under the government-imposed measures); individuals being stopped, questioned and detained by law enforcement despite having medical exemptions and exercising their rights; and children who have, for all intents and purposes, been arbitrarily detained within the confines of their homes.

The Human Rights violations are particularly egregious given the fact that there is current legislation which provides a clear framework for conduct in the event of a biosecurity emergency (ie, the Biosecurity Act outlined above) and regarding the privacy of the individual (ie, the Privacy Act outlined above). The Commonwealth Acts clearly have the rights of the individual in mind and strike an excellent balance between them and a response to managing a biosecurity emergency (ie **only individuals** can be the subject of control orders, based upon tangible grounds and subject to review).

Although to the Queensland government and the legislature, each order, regulation and direction may appear innocuous and mild; the compounding impact they have upon the Queensland public is devastating.

The people with whom I have shared the Bill's 'Statement of Compatibility' document have not been blessed with the remarkable emotional detachment necessary to consider, reconcile or justify to themselves the extensive Human Rights violations are warranted, in the way that the drafters have been able to.

These violations cannot continue. This Bill should not pass.

Conclusion

As should be apparent from the content above, it is my submission that the *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill* 2021 (Qld) seeks to extend the relevant Queensland laws that are:

1) Invalid
2) Inconsistent with fundamental Human Rights

It is my conclusion that this Bill extends and promotes legislation that is invalid and disproportionately oppressive. In my view, extending these laws when on notice of these facts is not an acceptable course of action.

Sincerely
Rachel Adams

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