

Public Health and Other Legislation (COVID-19 Management) Amendment Bill 2022

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QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

Protecting Queenslanders' individual rights and liberties since 1967

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PUBLIC HEALTH AND OTHER LEGISLATION (COVID-19 MANAGEMENT) AMENDMENT BILL 2022

Kindly accept this submission on behalf of the QCCL in relation to the above Bill

This submission addresses the proposed new Chapter 3-part 5A

A. Amendment

We oppose this proposed amendment.

We have set out our position in relation to Covid emergency powers on several occasions in submissions to this Parliament. We do not intend to repeat the detail of that position on this occasion. If you wish to review those submissions, they can be found here:

1 Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022 <https://www.qccl.org.au/newsblog/l42g11i5gmq4tf98wt03i299qj9i3v>

2 Submission on Extension of Covid Emergency Powers July 2021
<https://www.qccl.org.au/newsblog/submission-on-extension-of-covid-emergency-powers?rq=Covid19>

3 Inquiry into the Queensland Government's health response to Covid19
<https://www.qccl.org.au/newsblog/enquiry-into-the-queensland-governments-health-response-to-covid-19?rq=Covid19>

Whilst the proposed powers are considerably narrower and therefore represent a considerable improvement over the previous arrangements, they should not proceed for the following reasons:

- 1) Yet again, the briefing paper does not provide any specific criteria the government will use to decide when all covid specific powers will no longer be necessary.
- 2) The emergency situation which justified the granting of emergency powers to the Chief Health Officer no longer exists. We now have highly effective vaccines, those who are immunocompromised and cannot get a benefit from vaccines¹, can use Evusheld. Finally, we now have highly effective treatments such as Paxlovid. There is a reasonable body of medical opinion which says that in the circumstances most Covid deaths are avoidable. It is for the government to justify the continuation of these emergency powers. In our view the current government approach would justify an extension of those powers

¹ Many immunocompromised people can in fact get a benefit from vaccination



for so long as the virus is circulating in our community which given the current state of our medicine will be forever².

- 3) As we have maintained from the beginning, we are very concerned that the long-term intervention into the lives of Queenslanders to micromanage them, is a norm changing arrangement. By the time these powers come to an end these micromanaging powers would have existed for almost 4 years. That is in our view far too long a period in a free society.
- 4) In 2001 and 2005 the Federal and State Parliaments passed laws designed to deal with terrorism. Most of those laws were subject to sunset clauses. Over 20 years later those laws remain in place, with the sunset period being regularly extended with very little debate. The liberty undermining principles contained in those laws have now been extended into numerous other areas of the criminal law, as we predicted they would. We do not wish the continuing existence of these powers to be used as justification for the micromanagement of people's lives in other areas.

The position that no Covid emergency powers are needed has been taken in a number of countries including Denmark³, Norway⁴, Switzerland⁵ and of course the United Kingdom. We see no reason not to follow the lead of these societies.

B. Analysis of the proposed amendments

As we have noted, the proposed new laws are welcome from the point of view that the powers of the Chief Health Officer will be considerably reduced. In fact, it looks very much like one of the suggestions we made in our submission to the committee reviewing the previous extension of the emergency powers, in that the Chief Health Officer has now been restricted to a specific list of measures that he can impose.

We comment on the specific measures as follows:

- a) Quarantine – the community is by now well and truly aware that it is no longer appropriate to “soldier on”
- b) Masks – they violate the fundamental right to be able to communicate. The evidence that mandates reduce infection is at best weak. A comparison of the course of the omicron wave in Australia, New Zealand, Japan, Taiwan and South Korea shows that the Omicron wave passed through all those countries to significant levels despite the different mask mandates in those countries⁶

² It is interesting to compare our situation to the Russian Flu which many now think was one of the coronaviruses which now causes the common cold rather than the flu. It first occurred between 1889 and 1893 continued to re appear in 1895, 1898 and 1899-1900. But of course, we have vaccines and highly effective treatments. – *“Taking pandemic sequelae seriously: from the Russian influenza to Covid 19 long haulers”* - The Lancet 12 October 2020

³ <https://en.coronasmitte.dk/travel-rules/covidtravelrules>

⁴ <https://www.fhi.no/en/op/novel-coronavirus-facts-advice/om-koronaveilederen/siste-oppdateringer-i-koronaveilederen/>

⁵ https://www.swissinfo.ch/eng/society/covid-19_coronavirus--the-situation-in-switzerland/45592192

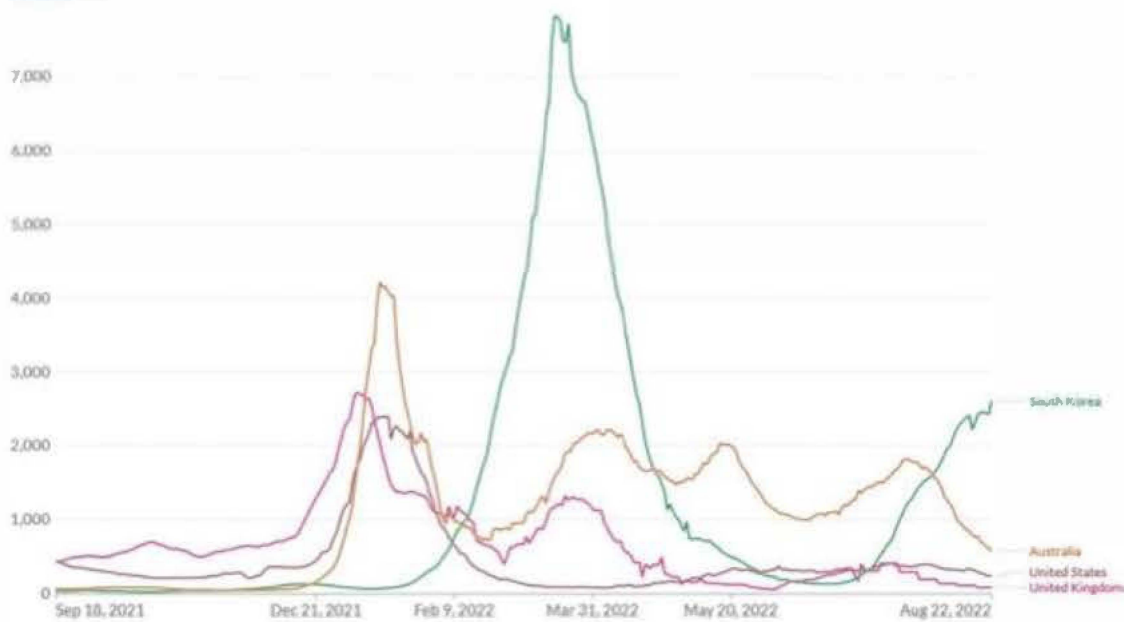
⁶ See also Ian Miller - *Unmasked- the global failure of covid mask mandates*. The author of this book finds time and again no significant difference between COVID rates in parts of the United States with mask mandates compared to those without, including places next door to one another. The author's methodology has been criticised. However, his fundamental point remains, his findings are consistent with the longstanding pre pandemic position of the World Health Organisation and the US CDC that

Daily new confirmed COVID-19 cases per million people

7 day rolling average. Due to limited testing, the number of confirmed cases is lower than the true number of infections.

Our World
in Data

LINEAR LOG



Source: Johns Hopkins University CSSE COVID-19 Data

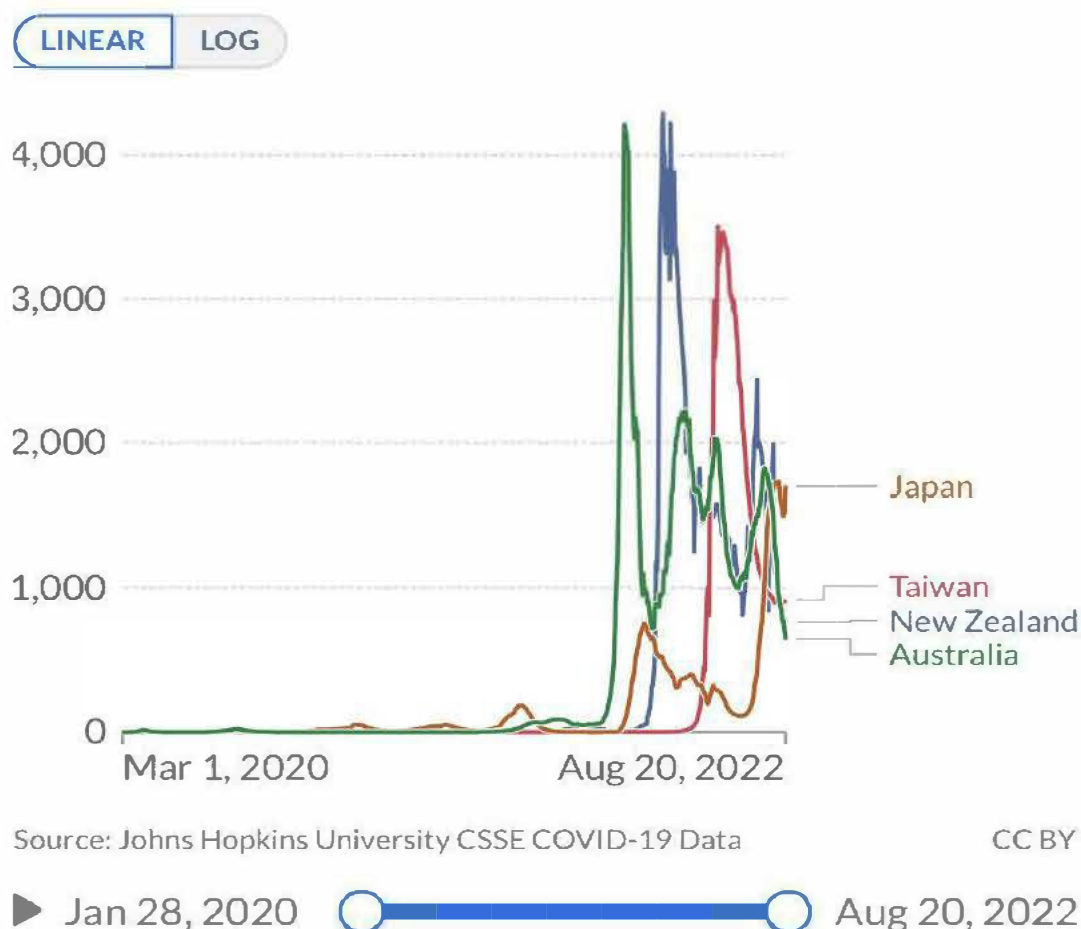
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there was no evidence that face mask mandates are effective in reducing the transmission of respiratory infections. His challenge is for authorities to explain themselves.

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- c) Mandatory vaccination - our position has been that respect of bodily integrity requires that any vaccination mandate contained a conscientious objection provision. However, when the virus is now circulating broadly in the community and vaccination clearly has only limited impact on transmissibility, we cannot see the rationale for vaccination mandates.

We welcome the fact that a health direction is now a disallowable instrument, so that, the Parliament can now debate and rule on directions made by the Chief Health Officer. We also welcome the provision that a direction expires after 90 days.

However, it is our submission that these further changes need to be made to better protect the civil liberties of Queenslanders. Those changes are as follows:

- 1) These powers should be exercised by the Minister. The decision to exercise these powers must be made by a democratically elected individual and not by an appointed public servant. The government should not be able to hide behind the Chief Health Officer in making these decisions. This has been our position from the very beginning.
- 2) It remains our position that the detention of persons should be the subject of right of review. The preferred mechanism review should be by appeal to a Magistrate. We note that in Victoria the law now provides a right of appeal to an independent review officer in all cases of detention by reason of the pandemic. We would prefer that a Court reviews the question of detention, but the Victorian model would be a vast improvement on our current system.
- 3) While the decision to require the Chief Health Officer to publish a statement of compatibility with the *Human Rights Act* is welcome, it is our submission that this Parliament needs to address the issue raised by the Queensland Human Rights Commission in its submission to the Community Support and Services committee in relation to the extension of the Covid emergency powers earlier this year⁷. In that submission at pages five and six, the Commission referred to a decision of the Federal Court which raises serious doubts as to whether the issuing of a direction by the chief health officer is reviewable by a court under the *Human Rights Act*. This parliament should take the opportunity to put it beyond doubt that the decision to issue a direction by the Chief Health Officer is reviewable under sections 58 and 59 of the *Human Rights Act*.
- 4) We object to proposed section 142R. The ordinary compensation provisions contained in the *Public Health Act* should apply to people who suffer losses as a result of directions made under this proposed part.

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
16 September 2022

⁷ <https://documents.parliament.qld.gov.au/com/CSSC-0A12/PHOLEEPAB2-2469/submissions/00000970.pdf>