

Health and Environment Committee

From: [REDACTED]
Sent: Wednesday, 13 January 2021 8:53 AM
To: Health and Environment Committee
Cc: Gareth Bosley
Subject: Submission concerning Public Health and other Legislation (Extension of Expiring Powers) Amendments Bill 2020

Categories: Submission

I make the following submission with respect to the current committee review of the Public Health and Other Legislation (Extension of Expiring Powers) Amendments Bill 2020

I hold grave concerns regarding the precedent that Section 319 of the Public Health Act and its recent application has set, with respect to individual freedoms, the over reach of government control and the diminution of democratic governance principles. Such powers are authoritarian and even totalitarian in their nature, application and outcome, stripping the community and individuals of their freedom and ability to make considered decisions, adversely impacting upon resilience and personal capacity/ autonomy and instead requiring that they abrogate personal responsibility for their safety and welfare to an unelected official.

In my view this is not a question of whether government has the right or ability to erode fundamental principles of democratic governance, as with a single house of parliament and a parliamentary majority, a sitting government can enter into legislation any act whilst being unfettered by the conventions of legislative development, such as committee review and parliamentary discussion and oversight. The use of omnibus bills and late night sittings is a salient example of a government who has developed a scant regard for underpinning principles of a democratic society and a contemptuous view of the public and their associated human rights. Instead this is a matter of government exercising due respect and deference for human rights, morale, ethical and democratic principles of sound governance, to temper their application of power.

The power granted to the Chief Health Officer (CHO), an unelected official are breathtaking, both in terms of their scope and the lack of any mechanism to provide oversight and review. In effect the CHO has the power to remove law abiding citizens liberty, their freedom of movement and potentially impose medical treatments upon individuals that would otherwise constitute a criminal assault. Something which previously only a duly constituted court could do, for example when sentencing a person found to have committed a crime. This point is particularly salient as courts often impose less restrictive penalties upon convicted persons by means of community corrections orders or probation. A confinement or movement order issued by the CHO goes far beyond penalties and impositions often applied by our courts, however such directions affect law abiding citizens who have committed no offence and are not reviewable, something that court imposed sentences can not even exempt from.

To invest such power within an unelected official, without a means of review, is a heinous attack on the fundamental principles of democratic governance and one that is open to abuse. A case in point is the CHO's direction that those in quarantine will not be provided cigarettes but rather nicotine replacement therapy. As a non smoker I am unaffected by such decisions and personally dislike smoking, however this is a clear case where an individual's personal

and professional antagonism towards what is still a legal activity, has potentially influenced her application of unfettered power, resulting in her denying law abiding citizens access to a lawful activity. Rather, subversively she has attempted to influence their behaviour long term, to stop smoking in line with her personal views, through imposing nicotine replacement therapy upon persons in state imposed quarantine. This sets a precedent for members of the public to lose autonomy over their health care choices, acceptance of treatment and even their capacity to make decision regarding their body, a fundamental human right.

The unfettered power to control the lives of members of the public, that this undemocratic provision has invested in an unelected official, lends itself to scope creep, as can be seen in the previous example.

Further to this, as the CHO's decisions are non-reviewable we have had farcical situations which erode public confidence, through the imposition of unjustifiable decrees and associated penalties, for example:

- With respect to the Health Direction of 8/1/21
 - that people had to wear masks when travelling on their own, in their own vehicles.
 - that people could fish for food, but not pleasure, raising the ludicrous prospect of people being fined for smiling whilst fishing
 - That a mask had to be worn when leaving the house, or checking your mail, but not when in your yard, unless you were mowing.
 - That an offence was created for not wearing a mask, backed with a penalty that the CHO had prescribed, but which was considered unenforceable by police
- That less than 300 entry permits to Qld were issued on compassionate grounds, yet more than 32000 permits were issued to truck drivers, many of whom would have originated from or travelled through Victoria during their outbreaks; or permitting large volumes of footballers and their entourages to enter into the state; and further that celebrities or wealthy individuals were exempted from hotel quarantine provisions that the rest of the population had no ability to deviate from.

Such examples engenders a view that the unprecedented powers handed to the CHO are not being utilised prudently, judiciously or equally regardless of wealth, status or profession. This constitutes an attack upon the foundational principles of our egalitarian society.

The government's own Human Rights Act, which was introduced with much fanfare as prescribing into legislation unassailable human rights that governments and officials (elected and unelected) can not transgress, was almost immediately cast aside. The powers invested in the CHO and many of her subsequent directions and orders clearly and egregiously breach or infract upon these prescribed human rights. With this precedent in place, do we now face a future where any Executive Director, or senior public servant could be given unfettered power to issue directions with legal ramifications (fine or imprisonment) to address perceived threats. Many examples could be foreseen, such as the Police Commissioner being given power to issue contemporaneous directions and create associated offence provisions not otherwise framed under legislation to address protests, emergencies, criminal offending and public safety: the Executive Director of Transport and Main Roads to create new offences for the furtherance of road safety; The Executive Director of the Department of Environment to create offences relating to or even preventing people's interaction with their environment, to address climate change. These are all examples of the CHO's current power being extrapolated and/or extended.

It is my submission that the unfettered, unconstrained and non-reviewable powers handed to the CHO to reach into peoples lives, to limit, remove or disregard their human rights and to control their movement, freedom of association and potentially their individual autonomy to control and make choices surrounding their body, are contrary to the Westminster conventions, an egregious assault on basic democratic governance principles and are a worrying move towards behaviour and governmental control usually associated with authoritarian or totalitarian regimes. A case in point is the recent language used by the Premier and CHO with respect to the 3 day lockdown of Brisbane commencing 8/1/21. The Premier prefaced the imposed restrictions with “we are asking people to” however this was disingenuous as such implied choice on the part of the individual to make an informed decision. Instead the CHO used very directive and authoritarian language such as “you are not to” and prescribed penalties for non-compliance which had not been reviewed or given consent to the peoples representatives within a democratic society via parliament.

Accordingly, to ensure that public confidence is maintained and to comply with accepted democratic principles and practice, the CHO’s powers must be withdrawn. Accordingly, any health direction must be approved by parliament and that such directions are consistent with human rights principles and the freedoms which are inextricable linked to and interwoven with democratic systems of governance and their authorising societies. A failure to do so has been seen and will further exacerbate a gradual slide towards totalitarianism and authoritarian governance by stealth, which Queensland residents have not had opportunity to provide consent too via plebiscite, constitutional referendum, explicit electoral processes or even review by our democratically elected representatives via robust (and not truncated) parliamentary process . These extraordinary powers have raised the spectre of an outrageous attack on our traditional way of life, freedoms and rights and could amount to an undemocratic change in our governance systems, away from representative democratic principles, towards authoritarian socialism; a move that ethically and morally the public should be consulted in and give explicit consent too.

Forwarded for your consideration

Gareth Bosley J.P Qual
MPSR, GCPM, BPol, AdvDip DisMan, AdvDip EmgMan, Dip SecRiskMan, Dip PubSafety

[REDACTED]

[REDACTED]

[REDACTED]