



Committee Secretary
Health and Environment Committee
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13 January 2021

Dear Committee Secretary

**PUBLIC HEALTH AND OTHER LEGISLATION (EXTENSION OF EXPIRING PROVISIONS) AMENDMENT
BILL 2020**

Thank you for the opportunity to provide this submission to the Committee regarding the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020*. I am a former public servant, at the national and state levels, and a professional economist with a Brisbane-based consulting business, and I believe I can make a useful contribution to this inquiry regarding the Queensland Government's decision-making process on COVID-19 measures. My contribution is structured around five propositions.

1. Queensland is relying heavily on one unelected official, but none of us is infallible.

I do not support the Bill as currently drafted, and I believe the Queensland Government should rethink its current COVID-19 decision making process, which places too much reliance on an unelected official, the Chief Health Officer (CHO).¹ It has been disappointing to see the Premier declare she has not made important decisions affecting the lives of millions of Queenslanders, but has delegated that decision making to the CHO, who, again, is unelected and not fully accountable to the public.

2. The Premier and her Cabinet should be the ultimate decision makers and they should seek outside advice and second opinions on controversial measures such as the Brisbane lockdown.

The Greater Brisbane lockdown was controversial, and the Premier should have sought out external views before agreeing to it. This decision appears to have been made with no appreciation of the importance of people's civil liberties. It was done due to an excessive application of the Precautionary Principle. But as the Obama administration's regulation czar Cass Sunstein has written in his book *The Cost-Benefit Revolution* (on p. 173):

...there is a serious, even devastating problem with the Precautionary Principle, at least in its crudest forms: risks are on all sides of social situations and efforts to reduce risks can themselves create risks.



What about the risks posed by lockdowns to mental health and to victims of domestic violence? How are these risks weighed up in decision making?

The CHO's call on the Greater Brisbane lockdown may not have been the correct one. The Committee is no doubt aware that ANU Professor Peter Collignon criticised the lockdown on 2GB radio, as reported by the *Courier-Mail* on Monday 11 January 2021:

A leading Australian infectious disease expert has criticised Greater Brisbane's snap three-day-lockdown, saying it was an "unreasonable" over-reaction that "won't solve the problem".

We also know that, as advised by the World Health Organization (WHO), lockdowns should be a last resort measure, when your public health system is at risk of being over-whelmed, given the fact lockdowns bring their own economic and social costs.

3. Public policy decision making depends on value judgments, and those value judgments are best made by elected Ministers, accountable to the public via the Parliament and at the ballot box.

In his 2020 Keeble Lecture to the Planning Institute of Australia (Qld) on 5 November 2020, former Queensland Government Minister Ian Walker made the timely and correct point that:

No expert advice is free of value based factors. There is no "neutral" advice. Don't ditch your values—but acknowledge that they are there and own them where appropriate.

Even if they are not always explicit about it, economists tend to adopt the same normative premise, that articulated by Jeremy Bentham, that our governments should act to achieve the greatest good or happiness for the greatest number. I would like to see the CHO explain the normative or ethical premises that take her from her 'is' statements to 'ought' statements. How does she resolve David Hume's is-ought problem? This has not always been clear. Some decisions of the CHO's appear to be based on a very strong Precautionary Principle (e.g. the Greater Brisbane lockdown), but others appear more Benthamite or utilitarian (e.g. decisions around movie stars and footballers). It is legitimate to question what value judgments the CHO is making and whether she is being consistent in her decision making.

4. While it is right for governments to protect public health, too little regard is being paid to civil liberties, and we should be very wary of making ordinary behaviour illegal.

Last weekend, 2 million plus residents of Greater Brisbane were subjected to a lockdown, even though at the time there was only one reported case of someone with the mutant COVID-19 virus.

Supporters of the lockdown could argue it was necessary to control the spread of the mutant COVID-19 virus. Possibly, but necessity could be used to justify highly undesirable interventions in the future. In 1783, in the House of Commons, the British statesman William Pitt the Younger said:

Necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves.



We should have a strong preference for governments simply *recommending* particular actions over *requiring* particular actions be performed with the threat of fines or charges if they are not.

5. None of this is to say that the economy should come before public health, but we need to recognise that some COVID-19 measures are highly costly and undesirable and need to be applied with caution.

Obviously, we need to control the spread of COVID-19 which is undeniably a serious disease. On 13 July 2020, I told the Queensland Parliamentary Inquiry into the Government's economic response to COVID-19:

Austan Goolsbee, who was chair of President Obama's Council of Economic Advisers, said that, in a time of pandemic, the best thing you can do for the economy has nothing to do with the economy.

The public health response is critical to ensuring the economy can safely re-open and can return to some semblance of normality as soon as possible. On the public health response, the government deserves credit.

It may be that in future years, after we've had a detailed look at evidence from across the world, we learn a different public health response may have had less of a short-run economic cost. But, at the moment, we're not 100 percent sure of the optimal public health response, and decision makers need to exercise their judgement.

I stand by that statement, although I have disagreed with some state government decisions since then, particularly regarding some interstate border restrictions and the Greater Brisbane lockdown. I think we can apply a more rational approach to decision making in the future, one which is not solely reliant on the CHO's advice and one in which the Premier or her Cabinet makes the decisions.

I understand the CHO is doing an exceedingly difficult job under incredible pressure, and she has generally done well. I do not mean to be too critical. I am expressing these views because I think we can do even better in our response, and prevent unnecessary job losses and business failures.

Thank you again for the opportunity to make this submission. I would be happy to discuss my views with you or Committee members at a mutually convenient time in the future. If you would like to discuss this submission, please contact my office on 07 3085 7417.

Yours faithfully,

Gene Tunny
Director, Adept Economics

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ⁱ I recognise that the Premier or the Health Minister cannot be expected to make every decision relevant to public health, so the relevant provision should be drafted in a way that allows the delegation of powers to officials to direct certain individuals (infected with COVID-19 or suspected of being infected) to get tested, isolate, or go into quarantine. But any decisions pertaining to whole populations in a geographical area should only be made by Ministers, in my view.