

Health and Environment Committee

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Public Submission to the Queensland Parliamentary Health and Environment Committee

Dear Chairperson and Members of the Health and Environment Committee

I make the following submission concerning the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020*. In particular, I direct my submission to the effect of the provisions providing emergency powers as described by the Minister in her explanatory speech:

This bill will allow the current legislative response measures implemented by the Palaszczuk government to continue for a further six months—until 30 September 2021. The bill will continue the amendments made by the Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020. These provisions give emergency powers to the Chief Health Officer and emergency officers to make directions to limit, and respond to, the spread of COVID-19 in Queensland. These powers have been critical to the success of the Palaszczuk government's health response as they allow for the implementation of requirements to restrict the movement of people and for people to enter hotel quarantine. (Hon Y D'Ath MP on 3 December 2020)

Governance model for extreme emergency powers

As we approach the second year of this pandemic with citizens and businesses suffering ongoing and extraordinary hardships as a result of ongoing border closures and other restrictions, I submit that the Queensland Parliament should ensure that the continued delegation of such public power is subject to a governance model that promotes:

1. Transparency and accountability

More power necessitates more safeguards, not less in the name of emergency.

Granted urgent decision-making is required during a viral pandemic and the possible may be preferred to the perfect. Our decision-makers are human; many of whom must have been working extraordinarily long hours. However, more the reason for decision-making processes to still be transparent and accountable notwithstanding powers for an emergency. We should maintain an expectation that the facts, evidence and reasons for decisions should be clear, documented as a public record, open and transparent, and consistent with administrative law decision-making principles. The role and authority of the decision-maker, whether as public servant or elected public official should be clear. The assurance of transparency and accountability is heightened by the circumstances of an historically and comparatively low number of sitting days for the Queensland Parliament, also a unicameral parliament.

Transparency of the evidence and reasons beyond 'based on health advice' and 'keeping Queenslanders safe' would assist with high consequence decisions (such as border control) particularly when the health advice of the Commonwealth Chief Health Officer, other State office holders, health specialist professionals and academics, or even the national body, the AHPPC, differ or hold a contrary view.

2. Expertise and evidence

Regardless of the holder of the office of the Chief Health Officer, the governance model that expects one person to make such extraordinary decisions is fraught. The Courier Mail reported that the Chief Health Officer has sought

advice from her spouse who reportedly has a specialist expertise but is not appointed nor elected to a role of influence.

Clearly from the mainstream media there is a diversity of opinion from well-regarded epidemiologists, virologists and other relevant specialist health professionals and academics. For major government decisions to be 'based on health advice', should not that chief health adviser be supported by a panel of eminent experts for there to be a healthy contestability and expert challenge to the thinking process? They may not all agree but at least if the governance model (and public understanding) included a formal structure and expectation for that debate, with experienced specialist expert panellists, to occur on an urgent basis (even virtually to be timely) before the CHO makes a formal determination, then not only could the decision-making process be stronger but the person in the CHO role would be better protected from any suggestion of undue political or business interests for example.

The governance model supporting these powers should also provide greater support to the decision-making process to avoid the arbitrariness of the stated 'end of the month' timetable for reviewing decisions. This would avoid the privations and hardships not to endure a day longer than necessary.

3. Risk management principles

The CHO has described her approach as being 'risk averse' against coronavirus case numbers. The appeal for the CHO's – chiefly health – responsibilities to favour this risk appetite is understandable, but it makes it challenging to weigh and balance the whole range of other relevant factors that are impacted by public health orders. Indeed, a risk averse approach against a single factor (virus numbers) is arguably a simplistic, easier approach that does not engage with a proportionate risk management approach that accounts for other harms or the complexity of the scenarios. Unfortunately, the duration and severity of this pandemic is harming a whole range of factors beyond coronavirus infection numbers. If risk management is measured, and therefore driven, by case numbers and political leadership cite anecdotes (from being stopped in the street or not being able to get a table at a café, for social and economic considerations for example), rather than proper evidence suitable for contestable major public policy decision-making, then the governance model for those decisions will struggle to deal with the multi-factorial challenges of this pandemic, and the wellbeing outcomes for Queensland.

Additionally, a public belief in a risk averse approach as protected by a blunt instrument such as border barriers can lead to a complacent public who want to 'protect their lifestyle' and not wear masks even on public transport or take other precautionary measures supported by reputable evidence, because the virus is portrayed or perceived as a problem of the southerners or others elsewhere because we have border barriers. Having lived with daily border transitions for most of the past year, I submit that believing that the border barriers can ever exclude the risk is a seriously flawed view. Particularly so, if trust in border control (by the capital city and other non-border residents) translates to complacency in getting tested and social distancing which is evident in comparative observations with other Australian states and territories.

Queensland's testing numbers appear low on a state comparison basis and are less clear by official reporting of numbers by 'testing period' or aggregated as 'over 100,000 over 6 days' which may sound like a high number but is not compared with other states who have not reported community transmission of the more infectious UK strain; nor high in the circumstances of ongoing wastewater testing results along the east coast of Queensland; nor given the spreading risk caused by a higher mobility of the Brisbane population to the north and south coasts last Friday evidenced by traffic and local experiences. Low testing numbers would surely yield lower reporting of actual case numbers which itself is a risk in making these risk-based decisions.

A risk management approach, on the publicly available scientific and health evidence, would appear to prioritise testing, contact tracing and social distancing behaviours more.

4. A regional voice

The governance model supporting the exercise of these public powers should include a process to provide a capability of understanding regional, rural and remote perspectives. Particularly, the set and forget feel of border closures and unacknowledged daily frustrations and privations these measures cause border residents call for the capital city decision-makers and dwellers to understand and appreciate these everyday realities.

The permit questions ask for the day of planned travel and there is no facility for a border resident to reply: everyday and multiple times for work and other family commitments. Authorities on the news telling frustrated drivers trying to cross the border to plan their trip better fails to take into account that work and schools start and finish at certain times, sports training similarly, work meetings also – we are not on holiday but border residents.

5. Competency in administration and implementation of decisions

One and a half to six hour waits in Queensland's summer sun on the Gold Coast when one is unwell and symptomatic is not conducive to promoting high testing numbers. The Queensland Health website has not listed all the available testing locations, e.g. Gold Coast did not list the drive through option at Carrara, which my family member would have chosen in preference to her fainting in the sun as the testing centre attended only managed to process 18 people in nearly one and a half hours.

6. Review and a genuine role for parliament

The Bill would appear to extend the delegation of extraordinary powers to the CHO and other unelected officials into a second year of this pandemic. What appropriate and genuine review role will Parliament establish to manage this delegation of powers and support the accountabilities of its democratically elected Members? How does the governance and decision-making model compare with other Australian jurisdictions?

Thank you for considering my submission. I draw on the views of many locals shared in my border community in offering these comments.

Yours sincerely

Michael Neighbour

