

QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

Protecting Queenslanders' individual rights and liberties since 1967

Watching Them While They're Watching You

The Secretary
Health and Environment Committee
Parliament House
QLD 4000

health@parliament.qld.gov.au

Dear Madam,

Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020

Please accept this submission in behalf of the QCCL in relation to the above enquiry.

The QCCL was established in 1967. It is an organisation of volunteers which exists to defend and promote the Civil Liberties and Civil Rights of Queenslanders.

1. Background

(a) States of Emergency

From the beginning, the QCCL has accepted the medical opinion that the coronavirus is deadly and consequently that a state of emergency designed to protect society from that virus can be justified.

The first and fundamental rule is that any state of emergency must be time limited ie subject to a sunset clause.

Whilst it is true that in a time of emergency it may be justifiable to restrict Civil Liberties temporarily, it is equally true to say that in a time of emergency, we must be very careful to protect our Civil Liberties

The extraordinary powers, even though they may be justifiable, demand immediate accountability.

(b) Social Norms

The Council is extremely concerned by the prospect that should these rules continue for a significant period of time, both the rulers and the ruled will become enured to these restrictions of basic rights and liberties.

In our submission this is an important factor to be taken into account in assessing both the nature and extent of the rules introduced to deal with the crisis and, most importantly, in ensuring that they are kept in place for the absolutely minimum necessary time.

(c) Role of compulsion

Treating sick or possibly sick people like enemies is counterproductive because it drives them underground and makes them avoid seeking diagnosis and treatment.

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This is also another reason that those who are detained must be given due process rights

2. Particular issues

(a) Time limits

This legislation will extend the Chief Health Officer's powers to make the extraordinary directions under Part 7A of the *Public Health Act* for another 6 months until 30 September 2021.

At this point in time the QCCL accepts that there is a justification for the continuation of the emergency provision as it will cover the projected period of the delivery of the vaccines. At this stage it is difficult to foresee the circumstances which would justify the renewal of these powers.

We repeat our submission, that this committee needs to obtain from the government a clear public statement of the criteria by which it will determine whether it will extend the declaration past September 30.

(b) Accountability

As noted above, the extraordinary powers which have been exercised, must be the subject of immediate scrutiny.

Effectively, the Chief Health Officer has become an unelected legislator, her actions should and must be supervised by this Parliament¹. We note that neither this committee nor the economics committee have had their references to inquire into the Government's response renewed. This is in our submission entirely inappropriate. The need for supervision has not ceased, as the powers remain and we do not know what uses they may be put to in the six months.

It was, and remains, our position that the referral of the review of the government's Covid response to standing committees was wrong. The government should have established a select committee, as was done in the Senate, with representatives of all parties in Parliament, chaired by a non-government member. However the two standing committees are better than no parliamentary oversight at all.

(c) Review of Detention

The effect of the powers provided for in part 7A of the *Public Health Act*, is that an emergency officer, which includes every police officer in the State, is empowered to detain a person for 14 days.

There is no right of review of this decision. We contrast this, with the provisions of part 7 where after 14 days an application must be made to a Magistrate to extend the period of detention and section 361 which allows a detained person to apply to a Magistrate for an order ending a person's detention.

¹ this is one of the bases upon which challenges to similar laws have succeeded in some states of the United States.

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In our view, it is fundamental that a person who is detained should have a right of review before a Court. The statement of compatibility with the *Human Rights Act* which accompanied the Bill pursuant to which part 7A was introduced justified the removal of the right of review on the basis that, due to the high number of people who would be detained, a right of appeal would impose significant burdens on the court and divert the resources of the public health officials. We see no basis for this proposition. It is the usual "floodgates" argument which has never been vindicated. Moreover, a right of review when a person is detained is fundamental. It is our view that emergency circumstances such as this cannot justify its removal.

Section 29 of the *Human Rights Act* prohibits the arbitrary detention of a person. Subsection 7 of that section specifically provides that a person deprived of liberty is entitled to apply to a court for a declaration regarding the lawfulness of their detention. It would be our view, that the absence of a right of review under part 7A of the *Public Health Act*, is a violation of the *Human Rights Act*.

The absence of a review provision has been brought into sharp focus by the recent decision of the Chief Health Officer to extend the detention of people in the Grand Chancellor Hotel by another 14 days. Whilst this order was subsequently rescinded it highlights the fact that the Chief Health Officer's powers are unrestrained. It is our view that detained individuals should have a right to challenge a decision to extend their detention beyond 14 days in the Magistrates Court and that if the Chief Health officer wanted to further extend the detention she would have to justify it to a Magistrate.

(d) Conditions of detention

The QCCL remains concerned about the conditions of detention. The Human Rights Commissioner has found that failure to allow those detained access to fresh air breaches, section 30 (1) of the *Human Rights Act* which provides that "all persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person".

We also take the view that as quarantine is for the protection of the community, the community should pay for it, unless there is some good reason not to, such as the person has left the country since the pandemic began for some reason other than personal or other family emergency.

(f) Privacy

We can accept the case for collecting the name and phone number of people going to café's and restaurants during the period of the emergency. However the privacy of the information must be protected.

Whilst it seems clear that the government is devoting resources to making sure that venues comply with these requirements, we ask what resources are being or will be devoted to ensuring the data is destroyed. It is not sufficient to say that complaints can be made to the Federal Privacy Commissioner, as the Commonwealth only applies to businesses with an annual turnover exceeding \$3 million. Most restaurants and cafes will be under this threshold²

² According to the Australian Small Business and Family Enterprise Ombudsman in 2020 97% of businesses have a turnover of less than \$5million and 93% less than \$2million. Small Business Counts December 2020 page 8 <https://www.asbfeo.gov.au/sites/default/files/ASBFEO%20Small%20Business%20Counts%20Dec%202020%20v2.pdf>

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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

22 January, 2021

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