15 November 2021(change)

The Premier Ms Annastacia Palaszczuk (Queensland)
Email: thepremier@premiers.qld.gov.au

The Acting Chief Health Officer Dr Peter Aitken (Queensland)
Email: news@health.qld.gov.au

Dear Ms Palaszczuk and Dr Aitken,

**For Your Urgent Attention: Vaccination of Authorised Workers**

My name is NAME. I am the DIRECTOR/MANAGER/SUPERVISOR/CEO of COMPANY NAME. I have been in this position for X YEARS. There are X NUMBER of employees who work for my company, and who rely on it to make a living.

I write to you in the aftermath of the Covid-19 mandatory vaccination requirements the Queensland (QLD) Government has introduced for certain workers.

The requirements apply to:

* Queensland Ambulance Service employees
* Hospital and Health Service Contractors
* Residential Aged Care Facility Workers
* Workers in Quarantine Facilities
* Certain workers with permission to cross into Queensland from New South Wales
* Freight or Logistic workers entering Queensland from another state or territory
* Health Service Employees (as required by a Health Employment Directive).

Public health directions:

* [Designated COVID-19 Hospital Network Direction (No. 4)](https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/designated-covid-19-hospital-network-direction)
* [Residential Aged Care Direction (No. 10)](https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/aged-care)
* [Requirements for Quarantine Facility Workers Direction (No. 4)](https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/quarantine-facility-workers-direction)
* [Border Restrictions Direction (No. 52)](https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/border-restrictions)
* [Workers in a healthcare setting (COVID-19 Vaccination Requirements) Direction](https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/workers-in-healthcare-setting)

The purpose of this letter is to give you insight into the position you have put me in. The Vaccination Direction forces me to implement your policy for you and puts me at risk of significant legal liability. This is not the job of employers in general, particularly in circumstances where the direction you want me to implement is in breach of several other laws, including the Public Health Act 2005 (QLD) itself (**the PH Act**).

1. **Implementing your direction puts me at significant risk of liability**

*The State of Emergency*

On 29 January 2020, the Minister for Health and Minister for Ambulance Services made an order declaring a Public Health Emergency due to COVID-19 under [section 319](https://www.legislation.qld.gov.au/link?guid=_d80fe517-332a-40fb-ada4-285f1cf975d1&id=sec.319&version.series.id=a0e0f082-c057-4815-b921-264c76837ae7&doc.id=act-2005-048&type=act)(2) of the [Public Health Act 2005 (QLD)](https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2005-048) (**the PH Act**).

**The PH Act,** [**s323**](https://www.legislation.qld.gov.au/link?guid=_3d0d7bd6-83c1-4462-9231-e3f51142bdf8&id=sec.323&version.series.id=a0e0f082-c057-4815-b921-264c76837ae7&doc.id=act-2005-048&type=act) notes that a Declared Public Health Emergency “may be extended by another declaration for further periods from time to time, but the total period that the declaration continues in force cannot exceed 90 days or, in the case of the emergency declaration in respect of the **COVID-19 pandemic, Part 4, clause 13 of the COVID 19 Emergency Response Act 2020,** allows for **the Queensland Government to modify statutory time limits to extend temporary measures for COVID-19.[[1]](#footnote-1)**

Since the initial declaration of the Public Health Emergency on 29 January 2020, the Declaration has been consistently extended on a needs basis, up to and including the most recent extension which took effect on 24 September 2021 and remains in force until 26 December 2021.[[2]](#footnote-2)

The effect of this is that the current declaration of a Public Health Emergency is due to expire on 26 December 2021. On that date, the Queensland’s Governor in Council could theoretically extend the declaration again, as has occurred many times. However, we note that;

* Extending the Public Health Emergency is not a given, nor is it automatic; and
* The Minister for Health or Queensland’s Governor in Council cannot extend the state of emergency indefinitely, given that the **COVID-19 Emergency Response Act 2020, Part 1, 4A(a) [[3]](#footnote-3)** sets an expiry date of 30 April 2022 or earlier for the COVID 19 legislation to expire.

On or around July 2021 and the months proceeding, several Mandatory Vaccination Directions came into effect. Like prior directions before it, the Mandatory Vaccination Directions are stated to be issued pursuant to the [Public Health Act 2005 (Qld)
Section 362B.](http://classic.austlii.edu.au/au/legis/qld/consol_act/pha2005126/s362b.html)

The Mandatory Vaccination Directions impose “obligations upon employers in relation to the vaccination of workers”.[[4]](#footnote-4)

***The Mandatory Vaccination Direction denies Procedural Fairness and Natural Justice***

The Mandatory Vaccination Direction asks me to direct my staff to receive a vaccine which many of them do not wish to receive. The worker must produce evidence of having received their vaccination dose - and evidence of having received the prescribed number of doses of their COVID-19 vaccination.

The employer, owner, occupier or person apparently in charge must;

(a) keep a record, either locally or centrally, of COVID-19 vaccination reported to it by a person to whom paragraph 29 applies. The information is collected and used for ensuring compliance with the Direction and to comply with Commonwealth reporting obligations; and

(b) The information must be stored in a secure database that is accessible to ***authorised persons*** only and maintained in accordance with the Information Privacy Act 2009 and the Public Records Act 2002. [[5]](#footnote-5)

The employer is not only playing the role of the owner/occupier or person in charge but also being made to act in the capacity of a GP by requesting to see and collect private and personal information regarding the health of their worker.

Furthermore, the assertion that workers featured in the direction must receive a first vaccine dose, or a second vaccine dose or book in to receive a vaccine, by a certain date, and that they will need to be fully vaccinated by a certain date in order to work implies an assumption that the state of emergency will be extended beyond 26 December 21; to continue the perpetual unnerving Covid 19 vaccination mandates.

Obviously, the pandemic is ever changing, and the response must match that change. Restrictive and mandatory measures should only be implemented as a last resort and when absolutely necessary. So, it is unclear how I can recommend or direct my staff to receive a vaccine to continue working for me based on a direction which requires them to take actions which are beyond the scope of the current state of emergency.

Although you may say that a vaccine mandate is temporary, several of my staff have pointed out to me that the act of receiving a vaccine is not. Once a vaccine is administered, it can never be removed. This puts my staff as well as myself in an impossible position.

Some staff may choose to take leave indefinitely until such a power will be unlawful or runs out; others may undergo the vaccination due to a lack of leave or an inability to get by without their job in the meantime.

All in all, there is an impression in the community that the Queensland Government has issued Media Publications and Mandatory Vaccination Directions as a means of coercion: to pressure as many people as possible into getting the vaccine before the impending deadlines made out by the Public Health Orders.

Many workers in Queensland have received or will receive a direction[[6]](#footnote-6) from their employer to be vaccinated by a certain date, telling them that they must have a booking for a vaccination by a particular day or they would not be able to work. This is frankly unreasonable and negates informed consent through the threat and loss of employment if the vaccination direction is not complied with.

As an employer, I will not participate in said coercion. I am not an accessory to Government policy, particularly when that policy is improperly made and ill-conceived.

**To be clear; I refuse to terminate staff** **who refuse to undergo vaccination, particularly in circumstances where I lack the lawful authority to do so.**

On this note, there are several other issues with the legality of your approach to vaccination.

1. **You are asking me to breach Work Health and Safety law and enterprise agreements**

As an employer, I cannot make sweeping changes to the workplace, or the requirements my employees are subject to, without notice. Any directions I give must also be lawful and reasonable. It is well known that there is “a legal requirement to consult with employees about significant changes in the workplace” and that these “are set out in legislation, awards and enterprise agreements”.[[7]](#footnote-7)

Specifically, in Queensland, s47, s48 and s49 of the *Work Health and Safety Act 2011 (QLD)* (**the WHS Act**) implements a duty for employers to consult with employees who are likely to be directly affected when doing any of the following (which clearly applies to the introduction of a vaccine mandate):[[8]](#footnote-8)

(1) Consultation is required in relation to the following health and safety matters—

(a) when identifying hazards and assessing risks to health and safety arising from the work carried out or to be carried out by the business or undertaking.

(b) when making decisions about ways to eliminate or minimise those risks;

(c) when making decisions about the adequacy of facilities for the welfare of workers;

(d) when proposing changes that may affect the health or safety of workers;

(e) when making decisions about the procedures for—

(i) consulting with workers; or

(ii) resolving work health or safety issues at the workplace; or

(iii) monitoring the health of workers; or

(iv) monitoring the conditions at any workplace under the management or control of the person conducting the business or undertaking; or

(v) providing information and training for workers; or

 (f) when carrying out any other activity prescribed under a regulation for this section[[9]](#footnote-9)

In addition, the WHS Act clearly states the form that this consultation must take, which includes:

(a) that relevant information about the matter is shared with workers; and

(b) that workers be given a reasonable opportunity—

(i) to express their views and to raise work health or safety issues in relation to the matter; and

(ii) to contribute to the decision-making process relating to the matter; and

(c) that the views of workers are taken into account by the person conducting the business or undertaking; and

(d) that the workers consulted are advised of the outcome of the consultation in a timely way.

(2) If the workers are represented by a health and safety representative, the consultation must involve that representative. [[10]](#footnote-10)

The Mandatory Vaccination Direction and the assertion within it that the worker must be vaccinated to continue their work completely ignores these provisions. I am unable to “share information about the matter” with employees when the matter is a medical procedure.

I am unable to give employees a “reasonable opportunity to express their views”, or to “take into account those views” in circumstances where you have given employers insufficient notice of the Vaccination Direction, nor have you consulted with us before implementing it. Importantly, you have also not given us an opportunity to consider the alternative measures which the WHS Act and regulations actually authorise to reduce workplace risk (vaccination not being one of them), which we are statutorily obligated to do at risk of significant penalty.

In other words, you are putting us in between a rock and a hard place. You are asking us to choose between:

* telling our staff they must get vaccinated and breaching Queensland Work Health and Safety law as a result;[[11]](#footnote-11) or
* telling our staff they do not need to be vaccinated despite your confusing messaging otherwise.

It is also unclear whether a direction I make for my staff to be vaccinated could be “lawful and reasonable”. The WHS Act 2011 forms a comprehensive and exhaustive statutory framework for workplace law in Queensland. The degree of specificity in the WHS Act in particular, which has 324 sections and 5 schedules, indicates that they are clearly intended to cover the field. Those legislative instruments clearly delegate to employers several means of mitigating workplace risk. **None of those means contain a requirement for employees to undergo any kind of medical intervention.** The issue of whether an employer can direct an employee to attend a medical examination has been explored quite extensively and can provide guidance here despite the requirement to undergo a medical intervention being a much more onerous one. In particular, in *Grant v BHP Coal Pty Ltd*,[[12]](#footnote-12) Dowsett, Barker and Rangiah JJ referred to the ‘principle of legality’, exploring its limits with reference to other authorities.

They said (with emphasis added:

87. In Starr v National Coal Board [1977] 1 All ER 243, Scarman LJ at 249 described a person’s right to personal liberty as a fundamental right which would be infringed by requiring the person to undergo a medical examination. It is settled that statutory provisions are not to be construed as abrogating fundamental rights or important common law rights, privileges and immunities in the absence of clear words or necessary implication to that effect: see, for example, Coco v The Queen (1994) 179 CLR 427 at 437; X7 v Australian Crime Commission (2013) 248 CLR 92 at [21], [86] and [158]. That principle is known as the principle of legality.

The WHS Act lacks such “clear words or necessary implication”.

It is unclear to me why you have taken this approach. It seems reckless and ill-thought out, which is surprising given your position. You must know that asserting yourself into the employer/employee relationship as well as the employee/doctor relationship so hurriedly is inconsistent with the state’s legislative frameworks. The lack of any kind of transitional arrangement or consideration as to the consequences of such a vaccination requirement is reckless, at least. You are forcing us as employers to breach the laws we must comply with without any thought or consideration for that. I believe that I have no choice but to say no. In such circumstances, I have the right not to follow what you’re telling me to do.

1. **The PH Act is being otherwise misused**

As noted above, the Mandatory Vaccination Direction, and other public health orders in Queensland, have been made pursuant to 362B of the Public Health Act. This is an oversimplification and a misuse of the broader public health legislative framework in Queensland as well as nationally.

*Inconsistency with the Biosecurity Act*

Section 477 of the *Biosecurity Act 2015* (Cth) (**the BSA**) allows the Federal Health Minister to determine emergency requirements during a human biosecurity emergency period. Australia has at all material times been in such a period pursuant to the BSA.

Section 477(1) of the BSA says:

“(1) During a human biosecurity emergency period, the Health Minister may determine any requirement that he or she is satisfied is necessary:

(a) to prevent or control:

(i) the entry of the declaration listed human disease into Australian territory or part of Australian territory; or

(ii) the emergence, establishment or spread of the declaration listed human disease in Australian territory or a part of Australian territory …”

In addition, Section 8 of the BSA provides that:

(1) This Act does not exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act (except as referred to in subsection (2)).

(2) Subsection (1) is subject to the following provisions:

(c) subsections … 477(5) and 478(4) (biosecurity emergencies and human biosecurity emergencies).”

So, if the (state) PH Act is incapable of operating concurrently with the (federal) BSA, then the (federal) BSA excludes or limits the operation of the (state) PH Act.

Second, even if the PH Act is capable of operating concurrently with the BSA, Subsection 2(c) notes that, in the case of “human biosecurity emergencies” (which the Covid-19 pandemic is), the BSA limits the operation of the PH Act anyway.

Either way it is interpreted, the BSA explicitly seeks to limit and exclude the operation of laws of States and Territories which concern human biosecurity emergencies, for the sake of avoiding inconsistency. This makes sense given the comprehensive and exhaustive nature of the BSA.

We also note Section 477(5) of the BSA, which says that:

(5) A requirement determined under subsection (1) applies despite any provision of any other Australian law.

Significantly, s477(6) also says that:

(6) A determination made under subsection (1) must not require an individual to be subject to a biosecurity measure of a kind set out in Subdivision B of Division 3 of Part 3 of Chapter 2.

Note: Subdivision B of Division 3 of Part 3 of Chapter 2 sets out the biosecurity measures that may be included in a human biosecurity control order.”

Overall, the intention of the comprehensive and exhaustive BSA is clearly to cover the field in relation to the management of human biosecurity emergencies. When (as now) Australia is in a human biosecurity emergency period, due to section s8(2), state laws on that subject, even if they are capable of operating concurrently with the Biosecurity Act, are excluded and inoperative.

It is also important to note that in the BSA, emergency requirements are qualified and restricted by the significant fact that biosecurity measures cannot request an individual to be isolated, detained, tested, vaccinated, medically treated or searched (amongst other actions) in the absence of a biosecurity control order issued to the individual. There are several checks and balances which apply to the issuing of such orders, in recognisance of their seriousness. In the face of such an exhaustive, carefully drafted and overriding federal legislative framework, it is inappropriate for emergency state powers to be used as a bypass to these checks and balances, particularly in circumstances where these powers, issued at the discretion of one Government Minister, seek to breach an individual’s human rights by requiring them to undergo vaccination at short notice in order to continue to make a living.

*The PH Act itself is being Misused*

Even if you reject the notion that the BSA excludes and limits the operation of state law in this way, and even if we leave the BSA aside entirely, s362B of the PH Act must be read and understood in the context of the PH Act as a whole. Concerningly, s362B is being used as if it stands alone as some kind of ultimate discretionary executive super power; immune from the checks and balances the remainder of the PH Act carefully imposes on it.

This misinterpretation of the applicability of s362B likely comes from the words of that section, which says that the emergency powers include to “give any other direction the chief health officer considers necessary to protect public health.” However, this must be read in tandem with the various limitations the rest of the PH Act places upon this section, and in tandem with the principles of statutory interpretation in general.

The following principles apply (with emphasis added):

* The task of construction must begin with a consideration of the text itself. **The language which has actually been employed in the text of legislation is the surest guide to legislative intention. The meaning of the text may require consideration of the context, which includes the general purpose and policy of a provision**, in particular the mischief it is seeking to remedy;[[13]](#footnote-13) and
* **The context in which the Section is construed includes the context of the wider legislation as a whole**. This also applies to delegated legislation (such as Directions made under s362B) which must be read in the context of its enabling legislation, being the PH Act.[[14]](#footnote-14)

So, s362B must be read in context with the rest of the PH Act. On this note, it should be said that, on the face of it, it would have been odd for Parliament to draft such a complex legislative framework for the facilitation and regulation of public health in Queensland, with so many checks and balances included, only for the Minister for Health to have the power through s362B to ignore all of that entirely at his or her sole discretion.

Furthermore, the inclusion in the PH Act of s21-23 demonstrates the intention of the legislature to mirror the requirement within the federal BSA to issue a biosecurity control order at the state level by authorising the issuance of a public health order to individuals on a similar basis. I extract the entire section below, because it clearly institutes a comprehensive and carefully constructed decision making process for the decision maker; the reason being a recognisance that the restriction of a person’s liberty is something which should only be approached with extreme caution.

**21) What public health order may require**

(1) A public health order may require a person to do something at a place that is—

(a) reasonably necessary to remove or reduce the risk to public health from a public health risk, or prevent a risk to public health from recurring; and

(b) appropriate in the circumstances having regard to the nature and seriousness of the risk to public health at the time the order is made.

(2) Without limiting subsection (1), a public health order may require a person to do any of the following at the place—

(a) clean or disinfect the place, or part of the place, or a structure or other thing at the place, in the way stated in the order;

(b) carry out insect or pest control at the place in the way stated in the order;

(c) demolish stated structures or other property at the place in the way stated in the order;

(d) remove stated material or items from the place to another place stated in the order in the way stated in the order

(e) dispose of stated material or items at the place in the way stated in the order, for example, by burying the material or items;

(f) destroy animals at the place or remove animals from the place for destruction at another place in the way stated in the order;

(g) stop using the place, or part of the place, for a stated purpose, within a stated period or until stated steps are taken.

(3) A public health order must—

(a) be in writing; and

(b) state a period within which the person to whom it is given must comply with the order.

(4) The period stated under subsection (3)(b) must be reasonable having regard to the risk to public health from the public health risk.

**23 Public health orders**

(1) If an authorised person reasonably believes that a person is responsible for a public health risk at a place, the authorised person may give a public health order to the person (the recipient).

(2) The public health order must state—

(a) the name and address of the recipient; and

(b) the nature of the public health risk; and

(c) the address of the place of the public health risk; and

(d) the steps the recipient must take, or action the recipient must stop, at the place to remove or reduce the risk to public health from the public health risk, or prevent the risk to public health from recurring; and

(e) the period within which the steps must be taken or the action must be stopped; and

(f) the name of the authorised person; and

(g) the name, address and contact details of the issuing authority; and

(h) that it is an offence for the recipient not to comply with the order, unless the recipient has a reasonable excuse; and

(i) that if the order is not complied with an application may be made to a magistrates court for an enforcement order.

(3) The public health order must also set out, or state the effect of, sections 387 and 388.

(4) The recipient must comply with the public health order, unless the recipient has a reasonable excuse

With specific regard to the requirement for a citizen to undergo vaccination, s125 notes that the person to whom a behavioural order applies and must comply with any of the following as specified in the order and subject to any of the conditions that the Magistrate considers are appropriate:

**125 1) A magistrate may make a behavioural order for a person if the magistrate is satisfied—**

(a) the person has a controlled notifiable condition; and

(b) either of the following may constitute an immediate risk to public health—

(i) the person’s condition;

(ii) the person’s condition and likely behaviour; and

(c) the person needs to do, or not do, stated things to avoid the person’s condition, or the person’s condition and likely behaviour, constituting a risk to public health; and

(d) the person has been counselled, or reasonable attempts have been made to counsel the person, about the condition and its possible effect on the person’s health and on public health.

(2) However, subsection (1)(d) does not apply if it is not practicable to counsel the person.

**126 What behavioural order may provide**

(1) A behavioural order for a person may provide that the person do any or all of the following for the period stated in the order—

(a) undergo counselling by a stated person or persons;

(b) refrain from stated conduct;

(c) refrain from visiting stated places;

(d) submit to supervision and monitoring by another person.

(2) For subsection (1)(d), the order may specify that the supervision and monitoring—

(a) be by a particular person or a person nominated by the chief executive; and

(b) be done in a stated way.

(3) Also, the order may be made subject to the conditions the magistrate considers appropriate. (4) An authorised person may enforce the order with the help, and using the force, that is reasonable in the circumstances.

Again, such a requirement is therefore subject to the other stringent requirements above. It simply does not make sense for the PH Act to go to such lengths to protect the rights of an individual against an unfair or unjust requirement to be vaccinated in the context of a public health order but for those same checks and balances not to apply to blanket directions made under s362B of the same Act. This is a misuse of the Act, potentially for the purposes of avoiding said checks and balances. The intention of the Minister in this regard is irrelevant; good intentions do not render actions lawful.

So, after all of that, here I am, being asked to implement a Government mandate for my staff to be vaccinated which seems to be based only on an ill-thought out Mandatory Vaccination Direction.

Even if there was a public health order or direction for my staff to be vaccinated made on the basis of s362B of the PH Act, that direction flies in the face of both;

* The primary piece of federal health legislation (the BSA), which it is inconsistent with; and
* The enabling legislation itself (the PH Act); the checks, balances and safeguards in which it completely ignores.

In addition to these issues, there are further statutes which you are asking us to breach on your behalf.

1. **You are ignoring the doctrine of informed consent**

The [*Queensland Human Rights Act 2019* (QLD)](https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2019-005) contains the following provision relevant to informed consent:

**17 Protection from torture and cruel, inhuman or degrading treatment**

A person must not be—

(a) subjected to torture; or

(b) treated or punished in a cruel, inhuman or degrading way; or

(c) subjected to medical or scientific experimentation or treatment without the person’s full, free and informed consent.

The Australian Human Rights Commission Act 1986 (Cth), which among several international human rights covenants and treaties which it attaches via schedules, attaches article 7 of the ICCPR, being:

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation The Therapeutic Goods Administration notes that the currently approved vaccines for Covid-19 in Australia are in Phase IV trials. The vaccines are in experimental phase IV trials.

Trials are incomplete and approvals were given without complete safety and efficacy data being available. The TGA says the following about the vaccines’ current “provisional approval”; [[15]](#footnote-15)

*“With rolling submissions, collaboration with international regulators, and proactively working with sponsors, it is expected the evaluation of COVID-19 vaccines will be significantly expedited without compromising on our strict standards of safety, quality and efficacy. However, the timeframe for the evaluation of each vaccine will ultimately depend on when the complete data package is provided by sponsors. We have not yet received a full data package from any company.”*

It is very difficult for us to implement your Mandatory Vaccination Direction in circumstances where our employees rightly tell us that they are concerned about the rushed approval and long-term safety implications of the vaccines, and when we ourselves do not have the expertise or training to reassure them. This is particularly problematic when we are only indemnified for adverse reactions or deaths if we facilitate vaccination in the workplace itself (which we elaborate on below).

Nonetheless, it is clear that the vaccines remain a novel technology, and we are uncomfortable directing our employees to receive it at short notice at the expense of their informed consent.

1. **You are asking us to breach Privacy, Discrimination and other laws**

If we ask or coerce our staff to get vaccinated against their will, we are very likely to find ourselves in breach of both privacy and discrimination statutes.

*Privacy*

We strongly encourage you to consider the interplay of your Media Release as well as the Mandatory Vaccination Direction with the *Privacy Act 1988* (Cth). Specifically, Australian Privacy Principle 3 allows for the collection of “solicited personal information”, which includes private medical information such as vaccination status, in very limited circumstances. This information must only be collected by lawful means, where it is reasonably necessary for the organisation’s functions or activities.

In this regard, we question whether it is lawful for us to collect our employees’ private medical information (their vaccination status) in circumstances where neither the HR Act 2019 or the PH Act 2005 include vaccination or any other form of medical procedure within their ambit. My business is not a medical body, nor a proxy for Government public health laws.

With regards to whether it is “reasonably necessary” for me to collect my employees’ vaccination status, my business has fulfilled its duties throughout the pandemic thus far without mandating vaccination. There have been no cases of Covid-19 within my workplace during this pandemic (DELETE OR CHANGE IF NOT RELEVANT). It is therefore difficult to argue that enforcing vaccination is “reasonably necessary” for my business to continue the job it has been doing successfully for almost two years, particularly given that, on the account of both the data and Government messaging, the worst of the pandemic (attributed mostly to an initial lack of familiarity and predictability with an increasingly better understood virus) has passed.

*Bullying and Harassment*

We are also deeply concerned that a mandatory direction issued by us to our employees that they receive a vaccination by a certain date could be construed as bullying or harassment, particularly if an employee is continually reminded, or pressured, to receive such vaccination.

If employees who have not been vaccinated are subject to separation, mistreatment or ostracisation this is also likely to amount to causes of action for affected employees.

*Discrimination*

The Mandatory Vaccination Direction potentiates liability for us in actions of discrimination and victimisation, particularly given that it does not give us appropriate time to consider medical exemptions, nor employees time to attain them.

We note that both the HR Act (QLD) (**the HR Act**), the Anti-discrimination Act 1991 (QLD) as well as the Federal discrimination statutes, including the Age Discrimination Act 2004 and the Disability Discrimination Act 1992, are intentionally broad in their ambit, particularly with regards to both ‘indirect discrimination’ and ‘victimisation’. It is very possible that employees who are unwilling to receive a Covid-19 vaccination, and are treated differently to vaccinated staff as a result, could fall within these definitions. As you may know, the Queensland Human Rights Commission and the Australian Human Rights Commission each offer no-cost forums for the resolution of complaints of discrimination. We are likely to be inundated with such complaints by employees if we are to mandate vaccination.

To illustrate this issue, we draw your attention to the definition of “disability” within the [Disability Discrimination Act 1992](https://www.legislation.gov.au/Details/C2018C00125) cth;

**disability means—**

**…**

**(c)  the presence in the body of organisms causing disease or illness; or**

**(d)  the presence in the body of organisms capable of causing disease or illness; or**

**….**

**(j) may exist in the future (including because of a genetic predisposition to that disability); (including because of a genetic predisposition to that disability**

So, if an employee is treated differently because they are not vaccinated, and therefore because of the idea that as a result of this, there exists “the presence in the body of organisms that may cause disease”, or even that they *may in future* have such organisms in their body, they have a valid claim of disability discrimination under the Act.

We also direct your attention to s106(g) of the WHS Act (QLD), which specifically prohibits discrimination by employers against employees. “Discrimination” under this section includes dismissing or terminating the worker, or treating them less favourably because, among other reasons, they:[[16]](#footnote-16)

…………

(g) assists or has assisted or proposes to assist, or gives or has given or proposes to give any information to any person exercising a power or performing a function under this Act; or

(h) raises or has raised or proposes to raise an issue or concern about work health and safety with—

(i) the person conducting a business or undertaking; or

(ii) an inspector; or

(iii) a WHS entry permit holder; or

(iv) a health and safety representative; or

(v) a work health and safety officer who is not the person conducting the business or undertaking; or

(vi) a member of a health and safety committee; or

(vii) another worker; or

(viii)any other person who has a duty under this Act in relation to the matter; or

(ix) any other person exercising a power or performing a function under this Act; or

…………

So, as a result of this section, an employee who seeks to raise an issue or concern about the safety implications of receiving a vaccine which their employer has made mandatory, and is treated differently to other employees as a result, is a victim of “discriminatory conduct” under this division. It is quite clear that a direction to receive a medical procedure at risk of termination is a form of economic duress, and so, we’re at risk of breaching the WHS Act prohibitions on discrimination also.

On a broader level, it is also concerning that the Mandatory Vaccination Direction applies to some workers, but not others. There has been a carve out of certain groups, such as the judiciary, on constitutional grounds, but you have not specified the grounds on which that carve out has been made. The idea that judges can avoid such a direction, but that many ordinary citizens can’t, is unfair and troublesome.

*Workers Compensation*

Whilst you, the Queensland Government, is forcing our hand as employers to regulate this Public Health Order mandating the vaccines, you are not directly providing us with an indemnity should the vaccine result in any injury and/or death to one of our employees. This means that we are completely exposed to direct liability from our employees should they become harmed through this process, including mental harm.

Given the insufficient time you have given us before our staff must be vaccinated, it is not possible for us to subsidize or facilitate vaccination. Most employers are simply directing their staff to undergo vaccination under the false assumption that they will not be held liable for adverse events. But the Government is not indemnifying employers directly, and neither is WorkSafe. As a result, there is no insurance, and as employers we are at significant risk of catastrophic liability.

1. **Conclusion**

As we said at the outset of this letter, our purpose here is to give you some insight into our position. We are confused and frustrated. The Mandatory Vaccination Direction puts us in the inappropriate position of both Government proxy and medical advisor, neither of which we are qualified nor willing to embody.

If we are to comply with your Mandatory Vaccination Directions, which are themselves inconsistent with both the BSA and the PH Act, we are likely to ourselves be in breach of workplace law, discrimination law, privacy law as well as the general principle of natural justice. We are also likely to be liable for any injury or adverse reaction that our employees suffer as a result of the vaccines.

Our employees are confused and frustrated, too. It is they who have brought to our attention many of the potential liabilities we have expressed in this letter.

We refuse to be placed in such a position.

We implore you to withdraw your Mandatory Vaccination Direction immediately. Remove from employers and their staff the misleading and unlawful pressure to undergo vaccination in circumstances where such pressure will only lead to legal and economic chaos.

Instead of using force, which implies a lack of trust in the people of Queensland, place your faith in the people of this state, that they may make the decision which they, as free citizens in a free democracy, deem prudent; without the strong hand of the Premier hanging over them.

Yours Sincerely,

NAME
POSITION

1. *COVID 19 Emergency Response Act 2020 (QLD), Part 4 clause 13.* [↑](#footnote-ref-1)
2. *Further extension of period of declared public health emergency—*[*View - Queensland Legislation - Queensland Government*](https://www.legislation.qld.gov.au/view/whole/html/asmade/sl-2021-0148) [↑](#footnote-ref-2)
3. *COVID 19 Emergency Response Act 2020 (QLD), Part 1 clause 4A(a)* [View - Queensland Legislation - Queensland Government](https://www.legislation.qld.gov.au/view/whole/html/inforce/current/act-2020-013) [↑](#footnote-ref-3)
4. [Chief Health Officer public health directions | Queensland Health](https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers) [↑](#footnote-ref-4)
5. Example of a Public Health Order to direct a person to be vaccinated [Residential Aged Care Direction (No. 10) | Queensland Health](https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/aged-care) [↑](#footnote-ref-5)
6. Chief Health Officer Public Health Directions [Chief Health Officer public health directions | Queensland Health](https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers) [↑](#footnote-ref-6)
7. *Consultation and Cooperation in the Workplace,* Fair Work Australia, <https://www.fairwork.gov.au/tools-and-resources/best-practice-guides/consultation-and-cooperation-in-the-workplace> [↑](#footnote-ref-7)
8. *Work Health and Safety Act 2011(QLD)* s47,s48,s49. [↑](#footnote-ref-8)
9. *Work Health and Safety Act 2011(QLD)* s49. [↑](#footnote-ref-9)
10. *Work Health and Safety Act 2011(QLD)* s48. [↑](#footnote-ref-10)
11. Breaching the duty to consult in s47 (1) attracts a Maximum penalty of—200 penalty units, pg 53 [Work Health and Safety Act 2011 (legislation.qld.gov.au)](https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2011-018) [↑](#footnote-ref-11)
12. [2017] FCAFC 42 at 87- 88. [↑](#footnote-ref-12)
13. *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR [47] (Hayne, Heydon, Crennan and Kiefel JJ). [↑](#footnote-ref-13)
14. *Master Education Services Pty Ltd v Ketchell* (2008) 236 CLR 101 [19] (Gummow ACJ, Kirby, Hayne, Crennan and Kiefell JJ). [↑](#footnote-ref-14)
15. <https://www.tga.gov.au/covid-19-vaccines-undergoing-evaluation> [↑](#footnote-ref-15)
16. Work Health and Safety Act 2011 [Work Health and Safety Act 2011 (legislation.qld.gov.au)](https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2011-018) [↑](#footnote-ref-16)