

26 August 2020

The Hon. Jill Hennessy
Attorney-General
Level 26, 121 Exhibition Street
Melbourne VIC 3000

By email only to: jill.hennessy@parliament.vic.gov.au

Dear Attorney,

**Public Health and Wellbeing Amendment (State of Emergency Extension and Other Matters)
Bill 2020**

The Law Institute of Victoria (**'LIV'**) wishes to raise some issues on behalf of its members regarding the exposure draft of the Public Health and Wellbeing Amendment (State of Emergency Extension and Other Matters) Bill 2020 (**'the Bill'**).

In considering the context of the Bill, the LIV understands that by 13 September, the date on which the current State of Emergency expires, the need for COVID-19 safety precautions will remain – and will for some time yet. The State of Emergency powers authorised within the *Public Health and Wellbeing Act 2008* (Vic) (**'the Act'**) allow for the enforcement of sensible, evidence-based regulations such as mask-wearing, limiting crowd sizes, requiring individuals who test COVID-19 positive to remain in home isolation and businesses to have COVID-19 workplace plans. The LIV agrees that such measures are important protections to keep our community safe. Additionally, it has been unfortunately well publicised that some Victorians have erroneously interpreted the laws surrounding the enforceability of these COVID-19 restrictions and as such have refused to comply, putting others at risk. It is therefore evident that as we move out of the State of Disaster and into Stages 3 and 2, for safety precautions to be complied with and remain effective, the Government will require lawful enforceability.

However, whilst accepting there is a need to extend the period of these powers for the safety of Victorians, the LIV questions whether an extension of 18 months is appropriate given the breadth of the powers granted by the Act. We also acknowledge that the six-month limit on the State of Emergency in the Act is unique to Victoria and presents some impractical consequences. It in fact appears unlikely that a global pandemic of this nature was foreseen in any of the Australian jurisdictions when drafting State of Emergency legislation. As demonstrated below, legislation in Queensland, NSW and Western Australia does not readily lend itself to protracted states of emergency.

Queensland

Section 323 of the *Public Health Act 2005* (Qld), allows for the Government to extend a declaration of a public health emergency, which is for a period of no more than 90 days. There is however no cap to further declarations of 90-day periods.

New South Wales

Section 35 of the *State Emergency and Rescue Management Act 1989* (NSW) allows for a state of emergency for a period of 30 days at a time. As with Queensland, there is no cap and an additional State of Emergency can be declared if more time is required. This may be inappropriate for COVID-19, given the circumstances are unlikely to change in such a short period of time.

Western Australia

Section 56 of the *Emergency Management Act 2005* (WA) states that 'the making of a state of emergency declaration does not prevent the making of further state of emergency declarations in relation to the same or a different emergency.' However, as per section 58(4), this extension must not exceed 14 days.

Conclusion

Whilst the LIV can see the utility and need of the Government to have these emergency powers extended, where human rights are to be limited, the *Charter of Human Rights and Responsibilities Act 2006* (Vic) requires these measures to be lawful, justified and proportionate. As such, the LIV urges government to consider whether 18 months is the appropriate and proportionate extension of time for a State of Emergency and suggests periodical reporting requirements to ensure these powers are strictly necessary and being used appropriately.

Should you wish to discuss this further, please feel free to contact us.

Yours sincerely,



Sam Pandya
President
Law Institute of Victoria



Adam Awty
Chief Executive
Law Institute of Victoria