



Hon Jill Hennessy MP

Attorney-General
Minister for Workplace Safety

Level 26, 121 Exhibition Street
Melbourne Victoria 3000
Telephone: (03) 8684 1111
DX: 210098

Our ref: 20094662

Mr Sam Pandya
President
Law Institute of Victoria
By email: president@liv.asn.au

Dear Mr Pandya

Sam

Thank you for your letter of 17 September 2020 regarding the COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Bill 2020.

Detention power

I note the concerns you have raised about the proposed amendments to the *Public Health and Wellbeing Act 2008* in relation to the power to issue detention notices, particularly as these powers may be used in relation to persons with a mental impairment.

As you may be aware, there is already a power under that Act for Authorised Officers to issue detention notices in certain circumstances. That power has been used to support mandatory quarantine arrangements, for example, for travellers returning from overseas. The amendments in the Bill will allow detention notices to be used in limited circumstances to pre-emptively address the public health risk posed by a defined category of 'high risk' individuals. This will allow action to be taken to *prevent* public health risks in limited appropriate circumstances, rather than the status quo where Authorised Officers can only respond after a quarantine or other direction has been breached, when the risk to public health may already have materialised.

I agree that this is a very significant power and should only be used in very limited and appropriate circumstances. The power to issue detention notices in the Bill is more targeted than the existing general power, and will provide limits and better guidance around when this power can and should be used to address public health risks in the context of the COVID-19 pandemic. Importantly, the power can only be used in relation to 'high risk' persons, being those who have been notified that they have been diagnosed with COVID-19 or notified they are a close contact. These individuals pose a significant public health risk and are already required to quarantine or self-isolate under the Chief Health Officer's Diagnosed Persons and Close Contacts Directions, available on the DHHS website. To issue a detention notice, the Authorised Officer must reasonably believe the person is likely to refuse or fail to comply with a quarantine or self-isolation direction. For example, this could be where the person has directly told the Authorised Officer that they do not intend to comply, or where the person has previously breached isolation or other Chief Health Officer directions.

Persons issued with a detention notice may be detained in a range of suitable locations, such as the person's residence, a hospital (for example, where the person is unwell and requires medical care) or emergency accommodation (for example, where the person cannot be supported to safely isolate or quarantine in their home). The suitability of the accommodation and consideration of supports the person may require could take account of any particular vulnerabilities the person may have – including, for example, mental impairment or other health conditions.

In these confined circumstances and in relation to this limited class of high risk individuals, I believe it is necessary and appropriate that the detention power be available to proactively address the public health risks posed to the Victorian community. I also note that, as is already the case, the power to issue a detention notice will only be exercised by a limited number of Authorised Officers who have the skills and training necessary to properly assess the public health risk posed by a high risk individual, take account of their individual vulnerabilities and circumstances, and determine whether detention is a necessary and appropriate response.

As is already the case, a number of important limits and safeguards will apply to the use of the detention power, including requirements for Authorised Officers to notify the Chief Health Officer in writing of a person's detention as soon as reasonable practical, and to review the person's detention at least every 24 hours to consider whether the detention remains reasonably necessary. The amendments in the Bill are also temporary and specific to the COVID-19 pandemic, and will therefore sunset on 26 April 2021.

Authorised Officer amendments

You also raised concerns about the amendments to enable additional classes of persons to be appointed as Authorised Officers under the Public Health and Wellbeing Act.

Currently, only public servants employed under the *Public Administration Act 2004* can be appointed as Authorised Officers. This doesn't include public servants employed under other legislation, such as Victoria Police officers, Protective Service Officers or WorkSafe Inspectors. The Bill will provide flexibility to appoint other classes of persons as Authorised Officers, where the class is prescribed in regulations and the Secretary DHHS considers the individual is suitably qualified and trained for appointment. This will enable police and others, who are already actively supporting the response to COVID-19, to be given additional powers to support effective monitoring, compliance and other public health response activities. For example, this could enable WorkSafe Inspectors to enforce Chief Health Officer directions during workplace inspections, as an additional tool to quickly and effectively respond to COVID-19 risks in the workplace.

The additional flexibility provided for by the Bill would also enable persons not employed in the public service who have specialised expertise, experience or other attributes to be appointed as Authorised Officers to support particular public health response activities. For example, this could enable suitable persons to be appointed to assist with contact tracing with Aboriginal or CALD communities, to ensure this activity is completed in a culturally safe and appropriate way. It could also allow response efforts to be bolstered in regional areas, where there may be a limited number of public servants able to be called upon to perform the certain specialised public health response activities.

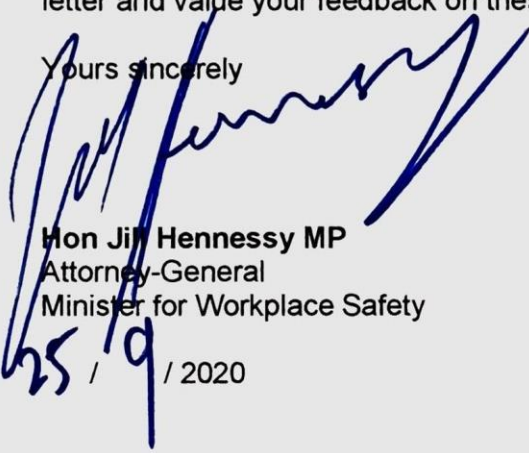
Workplace injury and compensation

Thank you for your support for the continuation of the extended notice period before the termination of weekly payments to long-term injured workers. As noted in your letter, this measure will be extended to 31 December 2020, whereas the other temporary justice measures will be extended until 26 April 2021. By extending this measure until the end of 2021, this will see some eligible workers continue to receive weekly payments up to September 2021. As such, while the extended notice period will cease at the end of the year, the impact of this measure and the benefits to long-term injured workers will extend well beyond this.

Finally, I would like to take this opportunity to thank you and your members for the feedback you have previously provided on the operation of, and continuing need for, the temporary measures supporting the justice system's response to the COVID-19 pandemic. I look forward to continuing to collaborate with the Law Institute of Victoria in considering which of these temporary measures may be appropriate as permanent changes to the law, to support the effective and efficient administration of justice in Victoria.

Thank you for your continued engagement on COVID-19 related matters, I appreciate your letter and value your feedback on these matters.

Yours sincerely



Hon Jill Hennessy MP
Attorney-General
Minister for Workplace Safety

25 / 9 / 2020