

17 September 2020

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

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

Dear Attorney,

COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Bill 2020

The LIV is generally supportive of the COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Bill 2020 ('**Omnibus Bill**'), which amends the *COVID-19 Omnibus (Emergency Measures) Act 2020* ('**Omnibus Act**') and other Acts to extend the operation of certain temporary modifications to the laws in Victoria enacted for the purpose of responding to the COVID-19 pandemic, and to provide for new temporary modifications to the laws of Victoria for the purpose of responding to, and relating to, the COVID-19 pandemic.

As you are aware the LIV has been advocating for the need for certainty around the current Omnibus Act and the likely need for its extension. In addition, the LIV acknowledges and supports the suspension of procedural rules and laws to provide courts and other justice system entities (including tribunals, prisons and youth justice facilities) the flexibility to temporarily modify practice to minimise transmission risk of COVID-19 in the community and to prioritise essential matters.

That said, we do however wish to raise some concerns in relation to the proposed amendments to the temporary changes to the *Public Health and Wellbeing Act 2008* as outlined in the Omnibus Bill.

Given the limited time frame upon which to provide feedback, we have been unable to seek extensive views from the broader membership, but provide the following general comments below:

Division 2 – Emergency Powers Measures

The LIV is concerned about the extended powers to detain under Division 2 of the Omnibus Bill. The new section provides extended powers to 'authorised officers' and allows the Secretary to designate an authorised officer.¹

The extended powers provide a wide scope for detention based upon the belief of the authorised officer. Under the new section 200A(1), a person who has been given a direction that the authorised officer considers to be 'reasonably necessary to protect public health';² and the designated authorised officer reasonably believes that the person is a 'high risk person' who 'is likely to refuse or fail to comply with the direction'³ would be subject to detention. Moreover, the expansion of 'authorised officer' to include persons in which the Secretary by instrument may appoint where the Secretary considers it appropriate based on their skills, attributes, experience or otherwise or in a prescribed class of person;⁴ could extend the powers to public officers that are unable to adequately assess the likelihood of refusal or failure to comply with the directions. These would include as discussed below, persons with mental impairments. Yet for the purposes of detention,⁵ the 'period' is that which the authorised officer considers is reasonably necessary to eliminate a serious risk to public

¹ *COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Bill 2020* ('Omnibus Bill'), s 250.

² *Public Health and Wellbeing Act (Vic)* s200.

³ Omnibus Bill, ss 200 (A) (2), 200 (3)(ii).

⁴ *Ibid*, s 250.

⁵ *Public Health and Wellbeing Act 2008 (Vic)*, s 200(1)(a).

health.⁶ The powers, read together with the existing COVID (Emergency Measures) Act 2020,⁷ afford overly broad powers to authorised officers.

The LIV anticipates that it would likely operate disproportionately, for example, for those who have mental impairments. The LIV is concerned that, under section 200A (3), an authorised officer may hold a reasonable belief that a person who is mentally impaired 'is likely to refuse or fail to comply' due to their incapacity. Detention of persons with mental impairments would ordinarily come under the protection and authority of the *Mental Health Act 2014* (Vic), which preserves a person's right against arbitrary detention. It affords protections to a person's rights, most notably the right to appeal, for review and to be provided with written information about these rights.⁸

The LIV further recommends that *High Risk Persons* detained under new section 200A of the *Public Health and Wellbeing Act 2008* (Vic), are detained for no longer than necessary to eliminate a serious risk to public health, and that the decision to detain an individual is regularly reviewed and detention is not done in a manner that contravenes the Charter of Human Rights and Responsibilities.

Due to the exclusion of the operation of any Act contrary to the Bill (save for the *Charter*, the COVID-19 Omnibus (Emergency Measures) Act 2020 or the Constitution Act), the rights afforded under the *Mental Health Act 2014* (Vic) would not be guaranteed. Further, persons with mental impairments detained under the Bill would have no right of appeal or the right to be detained in a hospital. The LIV queries whether the facility for detention would provide the person with psychiatric care whilst detained and is concerned about the adequacy of the mental health response following the isolation period. At the end of the isolation period, there ought to be referrals to mental health services, housing support and drug and alcohol rehabilitation. In contrast to a designated authorised officer, a mental health service provider must have regard to the *Mental Health Principles* under the Act – notably that persons receiving mental health services should have their medical and other health needs, including any drug and alcohol problems, recognised and responded to.⁹ Our members report that most persons with mental illness are often homeless and experience drug issues (this dual diagnosis is most prevalent). This places them at an inherent vulnerability in regards to these expanded powers.

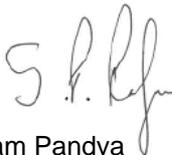
The LIV submits that it is vital that authorised officers enforcing the directions under the Public Health and Wellbeing Act 2008 (Vic) are adequately trained in their area of enforcement and take consideration of an individual's circumstances. This may include training or consideration of family violence status, mental illness, disability, homelessness, and for Torres Strait Islander or Aboriginal individuals and culturally or linguistically diverse communities.

Workplace Injury Rehabilitation and Compensation Act 2013

The LIV welcomes the proposed amendments to the *Workplace Injury Rehabilitation and Compensation Act 2013* contained in the Bill which extend the entitlement to weekly payments by up to an additional six months for long-term injured workers who are unable to return to work or find employment due to the impacts of COVID-19. However, the LIV submits that the extension should go beyond 31 December 2020 and align with the extended date contained in other provisions of the Omnibus Bill, namely 26 April 2021. The LIV is concerned that there is likely to be significant uncertainty regarding employment and many workers are likely to experience financial hardship right throughout 2021.

As always, please feel free to contact us if you wish to discuss these matters further.

Yours sincerely



Sam Pandya
President



Adam Awty
Chief Executive

⁶ Ibid, s 200A (3).

⁷ Omnibus Bill, s 200 (1).

⁸ *Mental Health Act 2014* (Vic), ss 12-13.

⁹ Ibid, s 11(1)(f).