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Memorandum of Recommendation

To: Chiropractic Defense Council (CDC)
From: Allan Bullock Solicitors & Advocates
Date: 28 November 2021
Re: Workers in a healthcare setting (COVID-19 Vaccination Requirements) Direction effective 7:30pm AEST 10 November 2021 (the **Direction**)

Preliminary

1. We confirm our instructions to review the Direction together with the applicable law relating to it and make recommendations to the CDC for its members subject to the Direction.

Summary of the Direction

2. The Direction is imposed on “worker[s] in healthcare”, “employer[s]” and “responsible person[s]”. For some CDC members subject to the Direction, the “employer” and “responsible person” may be the same person.
3. Part 2 and Part 3 of the Direction are inconsistent with other legislation in force in Queensland.
4. A person to whom a public health direction applies commits an offence if the person fails, without reasonable excuse, to comply with the direction by s.362D of the Public Health Act 2005 (Qld) (the **Act**).

Summary of the Law

5. As a matter of law, it is our opinion that the entire Direction is beyond power and invalid because the Chief Health Officer did not have reasonable grounds upon which to believe it was necessary to give the Direction pursuant to s.362B of the Act to assist in containing or responding to the spread of COVID-19 within the community.

6. Our opinion notwithstanding, the Direction is valid until declared to be invalid by a court of competent jurisdiction. This means authorised persons will treat the Direction as valid, enforce it and potentially charge persons failing to comply with direction under s.362D of the Act.
7. If the law is applied, it is our opinion that persons failing to comply with the Direction will have a reasonable excuse by reason of the Direction being beyond power and invalid. A reasonable excuse will include any excuse which will be accepted by a reasonable person as sufficient excuse to justify non-compliance: Callanan v B [2004] QCA 478 at [27].

Recommendations

8. Should a CDC member not intend to voluntarily comply with the Direction, we make the following recommendations.
9. Preparatory steps for “worker[s] in healthcare”, “employer[s]” and “responsible person[s]” should include:
 - a. An attempt to comply with Part 2 and 3 of the Direction.
 - b. If Part 4 of the Direction applies in the circumstances, paragraph 23(a)-(b) should be complied with in all cases.
 - c. If Part 4 of the Direction applies and paragraph 23(c)-(d) cannot be complied with, for whatever reason, alternatives such as masks and rapid antigen testing should be implemented in lieu.
10. Should a CDC member (who is an “employer” or “responsible person” within the meaning of the Direction) have an authorised person attend their premises, they should:
 - a. Ask the authorised person to produce their identification (if not visible): ss.380, 381 of the Act and note their details;
 - b. Withhold giving consent for the authorised person to enter the premises if the authorised person has not presented a warrant: s.385 of the Act;
 - c. Be courteous and co-operative by providing their name and address as required and say nothing more: ss.416, 417 of the Act;
11. If the authorised person has a warrant, allow their entry and do not obstruct: s.425 of the Act.
12. Should a CDC member charged under s.362 of the Act for failing to comply with the Direction, our firm and Counsel retained are well placed to act for the member.