

Inquiry into the Justice Legislation (COVID-19 Emergency Response — Permanency) Amendment Bill 2021

Submission to Queensland Parliament State
Development and Regional Industries Committee

24 September 2021

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input into the Queensland Parliament State Development and Regional Industries Committee ('the Committee') inquiry into the Justice Legislation (COVID-19 Emergency Response - Permanency) Amendment Bill 2021 ('the Bill').
2. In this submission the ALA will address our concern for the need for legislative protection of the data collected through the "Check In Qld" QR code contact-tracing app ('the app'), to ensure that all personal data collected through the app is properly, safely and securely used for the advertised purpose – and nothing else.
3. The ALA raised these concerns with the Economics and Governance Committee ('EGC') inquiry into the Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021. The EGC did not make a direct comment about these particular issues, although it did note the advice from Queensland Health:

The 'Check in Qld' contact tracing app operates within Queensland's existing information privacy law, including the *Human Rights Act* and the *Information Privacy Act 2009*. Police are required to make an application for a search warrant to obtain contact tracing data for law enforcement purposes and can only do so in circumstances authorised by law. The reasons for which police can apply for a search warrant to access contact tracing data has been limited by a binding 'Commissioner's Instruction' to extraordinary circumstances such as the protection of the security of the State or Commonwealth and requires Deputy Commissioner level approval.²

4. The ALA submits that the advice from Queensland Health does not sufficiently address our concerns regarding the use of personal data collected through that app in a manner that was not intended, and that this risks undermining the confidence of members of the community to download and use the app.

² Economics and Governance Committee, Queensland Parliament, *Inquiry into the Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021* (Report No.11, 57th Parliament, August 2021) 24; 3.2.2.2.

QR code contact-tracing apps – the value and the risks

5. QR code contact-tracing apps, such as the “Check In Qld”, app are a crucial part of the strategy to prevent community spread of COVID-19. However, the value of such apps and their effectiveness depends on them being widely used. Widespread adoption of such apps is dependent on members of the community having absolute confidence and trust that, when using these apps, their data will not be misused.
6. The revelation that Western Australian police accessed data gathered using the “SafeWA” app is a serious concern and risks undermining the WA public’s trust in their state’s contact-tracing regime. In addition, the news that police in Victoria have also attempted to access data gathered by the “Service Victoria” QR app is also of concern,³ and risks undermining the confidence of Victorians to download and use the app.
7. The ALA submits that confidence in the QR code system will be continually weakened unless access for police acting under a court warrant is removed, so that no agency other than the relevant Health Department could use the data.

Protecting data collected by QR code contact-tracing apps

8. The ALA welcomes the Western Australian Government’s passing of legislation to prevent police accessing data from the “SafeWA” app to gather intelligence, even for serious criminal investigations.⁴
9. The ALA submits that the Bill under consideration by the Committee should include a similar provision to prevent police from accessing data from the “Check In Qld” app. The ALA further submits that there should be heavy penalties and sanctions for the leadership of the police, law enforcement and security agencies when they facilitate or turn a blind eye to the unlawful gathering of data, such as COVID-tracing app data.

³ Michael Fowler, ‘Police union, opposition and lawyers demand protection of QR data’, *The Age* (online, 22 June 2021) <<https://www.theage.com.au/politics/victoria/police-union-opposition-and-lawyers-demand-protection-of-qr-data-20210622-p5836h.html>>

⁴ Kenith Png, ‘Police would not agree to stop accessing COVID SafeWA app data, Premier Mark McGowan says’, *ABC News* (online, 16 June 2021) <<https://www.abc.net.au/news/2021-06-16/police-refused-to-stop-accessing-safewa-app-data-premier-says/100218764>>.

10. The ALA also submits that the *Evidence Act 1977* (Qld) should also be amended to provide that any evidence obtained by illegal accessing of personal data, such as COVID-tracing profiles, is not admissible.

Conclusion

11. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the inquiry of the Justice Legislation (COVID-19 Emergency Response - Permanency) Amendment Bill 2021 being conducted by the State Development and Regional Industries Committee. The ALA is available to provide further assistance to the Committee on the issues raised in this submission, should the Committee consider that to be useful.



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