

27 March 2023

Committee Secretary  
Senate Education and Employment Committees  
PO Box 6100  
Parliament House  
Canberra ACT 2600

VIA EMAIL: [eec.sen@aph.gov.au](mailto:eec.sen@aph.gov.au)

**RE: COVID-19 Vaccination Status (Prevention of Discrimination) Bill 2022 and the Fair Work Amendment (Prohibiting COVID-19 Vaccine Discrimination) Bill 2023**

Dear Sir/Madam,

We welcome the opportunity to provide input into the *COVID-19 Vaccination Status (Prevention of Discrimination) Bill 2022* and the *Fair Work Amendment (Prohibiting COVID-19 Vaccine Discrimination) Bill 2023*.

Ashley, Francina, Leonard & Associates (AFL Solicitors) welcomes the introduction of these Bills.

We congratulate the Senators responsible for these Bills in providing Australians with anti-discrimination legislation concerning COVID-19 vaccination status.

AFL Solicitors is in a unique position to provide commentary on the proposed Bills being the first law firm to advocate and provide an objective counter-narrative to the biased reporting and community messaging.

Indeed, many did not want to hear the objective messages, and many may not find this submission appealing, but hear it they must as we were amongst the very few in Australia providing Australian citizens with legal assistance often on a pro bono basis.

This submission is one based on real experiences, (unfiltered, edited or influenced) by external parties, and we ask that this submission be entered into the record without omissions or

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**Ashley, Francina, Leonard & Associates**

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redactions.

We note that this submission relies on the interactions our firm has had with the Australian community, that is from all States and Territories around Australia. Our submission is not couched in terms of legal doctrines and principles, rather reports and cases we have assisted with in circumstances where other larger firms around Australia have feared to address.

### **Documents Relied upon in Support**

In our submission, we rely on the following documents, which provided notice to the Government dating back to 2014 concerning bringing proportionality and balance to Government decision-making processes and the requirement for Bills such as these being proposed to protect Australian citizens from discrimination.

1. Letter to The Hon. Brad Hazzard re: Informed Consent – Vaccine Rollouts – State Order dated 7 July 2021 (Appendix A - **attached**)
2. Submission: Parliamentary Joint Committee on Corporations and Financial Services re: Whistleblower protections in the corporate, public and not-for-profit sectors dated February 2017 (Appendix B - **attached**)
3. International Handbook of Whistleblower Research 2014 (Appendix C - **attached**)

We submit that there is a failure of existing laws that should have protected Australian citizens' freedom of medical informed consent, freedom of privacy for their vaccination status and discrimination from choosing not to be vaccinated for COVID-19. The failure of these laws shows that specific laws (as contained in these Bills) are urgently required to protect people's consent and freedom from coercion for medical procedures.

There is no doubt there is a gap in Australia's discrimination and industrial relations laws that requires urgent remediation. One way this can be achieved is by implementing laws that reduce the capacity of institutions and private entities from engaging in wholesale discrimination of 'whole classes' of persons. For example, many people have essentially had a disability imputed upon them because they have not followed coercive Federal and State Government directives and policy advice, resulting in many private organisations imparting these government directives upon employees and patrons.

In addition, we submit that Australia must be protected from the World Health Organisation's ("**WHO**") blanket pandemic directives. We note that according to the WHO:

*"Illness due to COVID-19 infection is generally mild, especially for children and young adults."<sup>1</sup>*

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<sup>1</sup> See Appendix A at [51], p.8.

These WHO Directives that our Federal and State Governments followed did not factor in the Australian landscape that is vastly Outback, consisting of a region of deserts and semi-arid land. Australia is known globally for its wide-open spaces, and cultural sensitivities that were not considered during the lockdowns and vaccination mandates rolled out across the country.

As you will note from the documents, our letter to Brad Hazard provide a number of issues such as warning about:

1. Seide Effects – Dangers of vaccines
2. Alternative treatments ignored
3. Statistics
4. Invitations for objective and transparent scientific debate
5. State of the law

In terms of the book chapter and Senate submission, these are added to demonstrate that Australia has engaged in business with multinational pharmaceutical companies that have received criminal and civil penalties for global frauds and false claims relating to a plethora of conduct that may be tied back to the potential violations of the Nuremberg Code and other international treaties and instruments of which Australia is a signatory.

We provide the following commentary for the Committee’s consideration.

## **Working Definition of Disability**

### **What is disability as defined in the *Disability Discrimination Act 1992*?**

The *Disability Discrimination Act 1992* (“DDA”) defines disability broadly as:

- *total or partial loss of the person's bodily or mental functions; or*
- *total or partial loss of a part of the body; or*
- *the presence in the body of organisms causing disease or illness; or*
- *the presence in the body of organisms capable of causing disease or illness; or*
- *the malfunction, malformation or disfigurement of a part of the person's body; or*
- *a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or*
- *a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgement or that results in disturbed behaviour;*

*and includes a disability that:*

- *presently exists; or*
- *previously existed but no longer exists; or*
- *may exist in the future (including because of a genetic predisposition to that disability); or*
- ***is imputed to a person*** (refer to ‘*Impugned disability*’ as discussed on p.4).

*To avoid doubt, a disability that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability.*

The focus of the DDA is to ensure that employees with disabilities are able to access and participate in their employment on the same basis as their peers, with reasonable adjustments provided to enable this, as needed.

### **Impugned disability**

In usual circumstances, a diagnosis of disability must be made by a relevant, qualified medical professional.

Where the formal diagnosis process is impeded due to financial, geographical or other disadvantages, employers must have reasonable grounds and documented evidence (multiple sources of data) to impute disability.

Employers cannot impute disability when a relevant, qualified professional has assessed an employee as not meeting diagnostic criteria. In this sense, employers have been imputing employees with disabilities as a result of not consenting or refusing to accept the coercive nature of Federal, State and employer directives when it comes to COVID-19 vaccines.

By way of an example, we refer to a public school system - the Nationally Consistent Collection of Data on School Students with Disability (“**NCCD**”), which defines an ‘imputed’ disability as something that someone believes another person has.<sup>2</sup> We note that to impute a disability in this context, the school team under the NCCD model must have reasonable grounds to make such a judgement.<sup>3</sup>

We submit that it is simply unjust, unreasonable, and in our opinion, unlawful to impute, infer or label the unvaccinated as having a disability in circumstances where they are not infected.

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<sup>2</sup> Department of Education and Training, ‘*Nationally Consistent Collection of Data on School Students with Disability 2018 Manual*’, (2018) State of Victoria, p.14 (Determining imputed disability) <<https://www.nccd.edu.au/tools/imputing-disability-nccd>>.

<sup>3</sup> Ibid.

The latest research suggests that natural immunity is just as superior as the vaccine.<sup>4</sup> Further, Pfizer has conceded that transmission, hospitalisations and death are not stopped if one takes the COVID-19 vaccine.<sup>5</sup>

We submit that the fact that an employee does not have a COVID-19 vaccine should not warrant discrimination against whole classes of workers and indeed represents a carte blanche, one size fits all approach to managing workplaces without engaging in meaningful consultations with experts, employees and their doctors.

Indeed, a stark example may be comparing the current discrimination faced by employees to the biblical days when people were admonished and shunned publicly as 'leppers'. Although one may see this as a leap, the comparison is relevant in this sense because, unlike the 'leppers' of that era, people who do not have Covid or COVID-19 vaccine cannot be classed as having a disability or an imputed disability.

We submit that unvaccinated Australians, due to their choice not to be vaccinated against COVID-19, have an 'imputed disability' placed on them by Government policies and workplace vaccination requirements. We refer the Committee's attention to page 5 - Appendix A, which summarises the evidence that COVID-19 mortality has a steep age gradient and that for most people under 65, the COVID-19 virus is generally mild and treatable without vaccination and almost zero risk for children.

Under these conditions, it is reasonable to conclude that employers are engaging in wholesale discrimination of unvaccinated workers all over Australia.

***\*\*We submit that these Bills be passed as soon as possible to put an end to labelling unvaccinated Australians as having an Impugned disability\*\****

### **Experienced Perspectives**

Our unique position comes from our experience in assisting and representing Australian citizens who have been discriminated against, ostracised and in many cases, terminated from their employment for not consenting to receive a provisionally approved experimental mRNA

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<sup>4</sup> Jolyon Attwooll, 'Past COVID infection protects against severe disease: Study' (2023) <<https://www1.racgp.org.au/newsgp/clinical/past-covid-infection-protects-against-severe-disease>>; Shenai MB, Rahme R, Noorchashm H., 'Equivalency of Protection from Natural Immunity in COVID-19 Recovered Versus Fully Vaccinated Persons: A Systematic Review and Pooled Analysis', *Cureus*. (2021) (10):e19102. doi: 10.7759/cureus.19102. PMID: 34868754; PMCID: PMC8627252. <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8627252/>>.

<sup>5</sup> Pfizer did not know whether Covid vaccine stopped transmission before rollout, executive admits <<https://www.news.com.au/technology/science/human-body/pfizer-did-not-know-whether-covid-vaccine-stopped-transmission-before-rollout-executive-admits/news-story/f307f28f794e173ac017a62784fec414>>.

vaccination for COVID-19. Some of whom had a valid medical contraindication certificate.

Notably, AFL Solicitors represented the Kassam Plaintiffs (the first test case) in the NSW Supreme Court that challenged the NSW State Government COVID-19 vaccination requirements that our clients were impacted by.<sup>6</sup>

Our firm continues to advocate and represent many Australians in the court process with no seeming end to the discrimination our clients are subjected to for an injection that demonstrates significant adverse events ranging from death, serious injury and mild injuries, with some not experiencing any adverse effects at all.

Principle solicitor (“**Director**”), Tony Nikolic has been instrumental in speaking out both locally and internationally, raising awareness of the severity that the vaccine mandates are having on Australian citizens, including submitting forensic pathologist reports from Coroner’s office relating to death caused by the Pfizer vaccine.

From the outset, it should be noted that Greg Hunt (*former Federal Health Minister as he was then*) stated this was the world’s largest clinical trial.

In **July 2021**, we wrote to The Hon. Brad Hazzard, MP, (including all Members of Parliament - State and Federal), representing Airport workers at Kingsford Smith Airport (Sydney) because a number of them (*including pregnant and employees on a single-wage*) had to go on stress or sick leave due to mental health-related issues after receiving ultimatums to get vaccinated or lose their positions.

We were instructed by those workers that they were not allowed on Commonwealth airport property as a result of State Orders. These Orders were imposed without serious questions being made as to the safety and efficacy of the mRNA COVID-19 vaccines, nor was the survivability of the virus known to be in the order 99.5% for most of the population with children being almost **NO CHANCE** (unless immune compromised) of dying from covid. In summary, if a vaccine was to be administered, it should **ONLY** be given to the immunocompromised and at-risk population.

Our staff were inundated with calls from workers in the airline industry, emergency services, teachers, local councils, Federal police, government solicitors, construction, and small and large businesses (to name a few only) because they did not know where to turn, as their elected representatives were not taking notice of their concerns nor were they undertaking their duties pursuant to their oaths of office to represent their constituents in parliament.

Unfortunately, our representations on behalf of the affected airline staff did not appear to be taken seriously by the NSW Government and Federal Government (*including the now Prime*

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<sup>6</sup> *Kassam v Henry* [2021] NSWSC 1320.

*Minister Anthony Albanese*), and we have yet to receive a response almost two years later. The contempt towards the Australian population by being denied a **VOICE** from elected representatives imparted a strong level of animosity and distrust towards public officials. Our offices received many concerns from the public that Australia's institutions had been captured, unelected bureaucrats overseeing the responses, and emails between Australia's leading universities and Anthony Fauci relating to the purported 'natural origins' to cover up the alleged gain of function research being conducted in bio laboratories in Australia and allegations of corruption with conflicts of interest being suppressed.

We do not propose to engage in these allegations in this submission, but the Parliament should take note on the basis that public confidence has been diminished in our most hallowed and respected institutions. This country needs an open, independent and thorough investigation of the processes that led to the decisions surrounding Covid and the response to same. Our firm is uniquely positioned, and we offer our services to bring confidence and transparency to this internationally significant problem.

Our expertise and international reach provide our firm with unique capabilities that other firms have ignored throughout the pandemic.

### **The Beginnings**

Since the beginning of the lockdowns and vaccination mandates, we have been on the front line, in the trenches advocating for thousands of Australians who were suffering in silence, locked out of their workplaces, scrutinised, ostracised, belittled, bullied and threatened with termination from their employment based on their COVID-19 vaccination status.

We submit that the Government policy on mandating COVID-19 vaccination which private companies have followed, has led to hostile work environments and negative career impacts on Australian citizens, which created an unreasonable fear regarding the COVID-19 disease.

We note that citizens' civil rights of bodily autonomy, right to work and earn a living,<sup>7</sup> right to

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<sup>7</sup> <https://www.dailymail.co.uk/news/article-10872895/2GBs-Ben-Fordham-exposes-Aussies-unable-work-Covid-vaccine-mandates-NSW.html> (Broke and suicidal: The desperate Aussies STILL unable to work due to draconian vaccine mandates that are destroying their lives - 'we didn't want to have the Covid jab... so we are out of a job').

medical treatment,<sup>8</sup> right to access veterinary services<sup>9</sup>, and right to buy basic food supplies<sup>10</sup> were stripped away because of government policies placed on Australians by State Governments during the COVID-19 outbreak.

Health Bureaucrats criticised and condemned unvaccinated Australians as if they were on trial. Known antivirals and other medications were restricted and, in some cases, banned in favour of leaving the vaccine as the only purported treatment available. Such actions denied Australian citizens access to potentially lifesaving treatments and imperilled the lives of many Australians who but for the prevention of access, may have survived.

For example, at a press conference around July 2021, NSW Health Minister Brad Hazzard (“**Hazzard**”) stated:

*“We had a question... about some people not wanting to take vaccines. Well, my message to them is, you’re being extremely selfish.”<sup>11</sup>*

Further stating:

*“If you think you cannot have a vaccine just because you don’t want to have a vaccine, well, you should think about what you’re doing to your family and to the community.”<sup>12</sup>*

Later that year, during another press conference, Hazzard stated to the unvaccinated population:

*“I want to say this. We are still hearing that people are declining to get vaccinated ... we know vaccinations and boosters will keep you far safer .... stop listening to social media and make sure you are not the one lying in the ICU on a ventilator because you may be the one who dies.”<sup>13</sup>*

And at a press conference on **14 December 2021**, Brad Hazzard urged unvaccinated people to stop being “*selfish*” and get the jab. Then turning to the vaccinated population, he said: “*For*

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<sup>8</sup> <https://www.news.com.au/lifestyle/health/health-problems/no-jab-no-heart-mother-denied-transplant-due-to-vaccination-status/news-story/5580aca526744d15fe1a25e595ef7d76>; (A mother has been denied the opportunity to receive a heart transplant because she is not vaccinated for Covid-19, despite having a medical exemption.)

<sup>9</sup> We are aware that some people have been refused entry to Veterinary clinics due to their COVID-19 vaccination status – leaving their pets without medical treatment.

<sup>10</sup> <https://www.dailymail.co.uk/news/article-9850375/Gosford-NSW-Security-guard-refuses-let-single-mum-two-young-kids-Woolworths.html> (Single mum with two young kids refused entry into a Woolworths store to buy food supplies because of State Government lockdown rules).

<sup>11</sup> <https://caldronpool.com/medical-doctor-responds-to-health-minister-calling-the-unvaccinated-extremely-selfish/>.

<sup>12</sup> <https://caldronpool.com/medical-doctor-responds-to-health-minister-calling-the-unvaccinated-extremely-selfish/>.

<sup>13</sup> <https://www.skynews.com.au/australia-news/coronavirus/nsw-health-minister-brad-hazzard-tells-the-unvaccinated-to-switch-off-your-social-media-and-switch-on-reality/news-story/8f0f19aa332e925f166bd267b4059d38>.



heaven's sake, go and get your booster."<sup>14</sup> It is implicit in this statement that the jobs promoted did not work as intended because people were now having to contend with 'booster' shots, prompting many in the community to ask: "Why would I get a third shot of something that did not work two times previously"? Logical analysis or just common sense, either case suggests there was a disproportionate response to employees who were now being subjected to further shots in order to maintain employment.

These statements made by the NSW Health Minister appear to personally attack Australians based on their COVID-19 vaccination status, potentially inciting community hatred towards a 'class of people' which can lead to division in families and communities.<sup>15</sup> This is clearly unacceptable and should be investigated along with any other person or entity as it falls squarely within the realm of coercive and controlling conduct for an ulterior purpose.

In our opinion, statements like the ones made by Hazzard demonstrate contempt towards Australian citizens and, if anything, did more harm than good because they divided a nation between 'us' and 'them'. In effect, Commonwealth and State/Territory governments engaged in a public advertising campaign using taxpayer-funded resources to divide a nation. The statements of Brad Hazzard and other Parliamentarians, together with health bureaucrats and so-called experts turned neighbour against neighbour, family members against each other and employer against employees.

The concept of state-run media propaganda (advertising) and socially constructing the 'evil unvaccinated other' introduced elements of deceit and duress hinging on overreaching ulterior forms of constraint or coercion in order to fulfil predetermined vaccination quotas. Indeed, this was and falls squarely within the Nuremberg Code, a script many nations followed post World War II to prosecute individuals compelling citizens to undergo a medical experiment (*as they said, for the "greater good of humanity"*), which also promoted the enactment of s 51(xxiii A) of the Australian Constitution.<sup>16</sup>

The rationale behind the government's policy on COVID-19 vaccination was not transparent and was not communicated clearly to the public. Nor did it seriously consider human rights and the impact on Australian citizens' financial and mental health as we have seen suicides and poor health outcomes as a result of not accessing medical services due to the needless lockdowns surpassing the death toll from Covid. At this point, we should note, that former Prime Minister Scott Morrison indicated that most people did **NOT** die from Covid, but rather a complicating

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<sup>14</sup> <https://www.abc.net.au/news/2021-12-15/nsw-covid-restrictions-ease-for-vaccinated-and-unvaccinated/100685704>.

<sup>15</sup> Many members of the community that we have spoken to have told us they have been ostracised by family and friends based on their vaccination status.

<sup>16</sup> The Nuremberg Code 1947 [The Nuremberg Code \(cirp.org\)](https://www.cirp.org/nuremberg-code/).

factor associated with underlying pre-existing conditions affected by Covid. Ben Fordham, radio station host of Sydney show 2GB stated the following:

*“There were 2,639 Covid-related deaths nationally between March 2020 and January 31 of this year. The virus was listed as the underlying cause of death for the vast majority of deaths, or 96.8 per cent of cases, according to Australian Bureau of Statistics data.*

*However, some 91.4 per cent had other conditions also listed on their death certificate - **three other health issues on average.***

*Those underlying issues ranged from chronic cardiac conditions (the underlying issue for 35.8 per cent of deaths) to diabetes (20.6 per cent) and cancer (14.1 per cent), according to the ABS data.*

*The median age of those who died with coronavirus was 81 for men and 86 for women.*

*Meanwhile, there were 32,000 deaths from heart disease in Australia in that period, with Covid deaths making up only one per cent of all fatalities nationwide. Another 100,000 died from cancer during those 22 months”.<sup>17</sup>*

Although, one may not be aware of these figures due to the unrelenting media pressure spurring on by public officials, so-called experts and bureaucrats targeting the ‘*unvaccinated*’, this data was provided in my letter to Brad Hazzard, and Anthony Albanese et al., on **7 July 2021**, (11 months earlier) - (See **attached** Appendix A). This was in addition to the warnings about serious adverse effects and potential deaths that could have been avoided by offering known antivirals and treatments that were available at reduced costs to the Australian taxpayer. No puns intended, but our letter to Parliamentarians was well ‘*ahead of the curve*’.

This demonstration of unrelenting bullying by government officials and health bureaucrats towards Australians has affected not only the unvaccinated population but also the credibility of Australia’s institutions who acted as gatekeepers for what may amount to be Australia’s biggest criminal and civil action.

Still, it is affecting those who have chosen not to get a COVID-19 vaccination booster in circumstances where it was known early on that there was no justification for the actions taken by:

1. Government

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<sup>17</sup> The Daily Mail, By Eliza Mcphee for Daily Mail Australia and Australian Associated Press, published: 16:02 AEDT, 19 May 2022 Former Prime Minister Scott Morrison <<https://www.dailymail.co.uk/news/article-10831605/Scott-Morrison-exposes-astonishing-data-highlighting-whats-REALLY-causing-Covid-deaths-Australia.html>>.

2. Institutions – Regulatory, administrative and executive
3. Experts
4. Religious institutions
5. Media

All of whom engaged in a campaign to target the ‘*unvaccinated*’ treating them like lepers, denying or restricting access to:

1. Employment
2. Healthcare
3. University students were banned from continuing education unless they were vaccinated.
4. Government buildings
5. Private functions (weddings and funerals)
6. Visiting sick and dying loved ones, to name a few.

The level of monomaniacal groupthink pressuring society can only be compared to the conduct which was addressed in Nuremberg 1.0.

***\*\*We submit that these Bills be passed as soon as possible to put an end to the degradation of the Australian people\*\****

## **COVID-19 Vaccination Status (Prevention of Discrimination) Bill 2022**

We are concerned that the Bill appears to exclude Commonwealth, State and Territory employees, including all frontline health, emergency services and care workers.

We recommend that legislation provisions be drafted to protect these workers from COVID-19 vaccination status discrimination.

We submit the following commentary concerning this Bill for your consideration.

### **Critical skills shortages**

The fallout from the Federal Government vaccination rollout and subsequent State and Territory Government vaccination policies in Australia is beyond comprehension.

We concur with Senator Hanson when referring to an exodus of skill shortages in critical sectors

such as health, education, retail, police and emergency services.<sup>18</sup>

According to Australia's Future Health Workforce report, there will be a deficit of 123,000 nurses and 5,000 doctors by 2030, which does not include the recent pandemic and its impact on the healthcare workforce.<sup>19</sup>

We submit that these public health mandatory COVID-19 vaccination policies could significantly impact healthcare worker shortages in the years to come if the Legislature does not take action now.

The patient-to-nurse ratios need to be addressed in order to ensure optimal health outcomes can be maintained in the community. The shortages of health professionals in our health system are placing a strain on our nurses, doctors and administrative staff who according to research are at breaking point.<sup>20</sup> The idea of bringing more students to fill the gaps of experienced nursing staff is tantamount to institutionalised negligence and may lead to the deaths of Australian citizens.

### Early career professionals

A significant factor that requires consideration is our early career professionals in critical sectors who, under blanket government policies are required to be vaccinated against COVID-19. These young adults have a low risk of severe COVID-19 yet are at HIGH risk of developing myocarditis or pericarditis according to a recent report from the Australian Technical Advisory Group on Immunisation (ATAGI).<sup>21</sup> It is uncontroversial now as it was in 2021, that the estimated 32 pages of side effects attached to many of the COVID-19 injections present significant risks to the community, particularly if employers place those employees at risk by demanding, one, two or more shots before returning to work.

This report by ATAGI is concerning particularly in terms of the public health sector, considering that Australia's health workforce is predominantly female and aged 20-34 years old.<sup>22</sup>

The COVID-19 pandemic has demonstrated the extreme needs of the public health workforce.

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<sup>18</sup> Commonwealth, *Parliamentary Debates*, Senate, 29 November 2022, 2465 (Pauline Hanson, Senator) ('Second Reading Speech').

<sup>19</sup> <https://www.allocatesoftware.com.au/what-are-the-younger-healthcare-professionals-concerns-and-how-to-meet-their-needs/>.

<sup>20</sup> Royal Australian College of General Practitioners, 'General Practice Health of the Nation 2022' <<https://www.racgp.org.au/getmedia/80c8bdc9-8886-4055-8a8d-ea793b088e5a/Health-of-the-Nation.pdf.aspx>>; Vivek H. Murthy, 'Confronting Health Worker Burnout and Well-Being,' *N Engl J Med* 2022; 387:577-579 DOI: 10.1056/NEJMp2207252 <<https://www.nejm.org/doi/full/10.1056/NEJMp2207252>>.

<sup>21</sup> [https://www.health.gov.au/news/atagi-2023-booster-advice?utm\\_source=substack&utm\\_medium=email#:~:text=Overview,aged%2065%20years%20and%20over.](https://www.health.gov.au/news/atagi-2023-booster-advice?utm_source=substack&utm_medium=email#:~:text=Overview,aged%2065%20years%20and%20over.)

<sup>22</sup> <https://www.aihw.gov.au/reports/workforce/health-workforce.>

Studies have shown that the public health sector has struggled to incorporate young professionals into the public health workforce.<sup>23</sup>

We submit that now is the time to discuss building capacity and infrastructure in our healthcare systems to provide pathways for young professionals to be involved by removing redundant COVID-19 vaccination mandates and the discrimination from these policies.

We submit that it is vital that the Government at all levels supports our next-generation healthcare and emergency service workers (police, paramedics, fire rescue) by not exposing them to far greater risks through COVID-19 vaccination mandates.

***\*\*Without these Bills being passed, Australia will continue to suffer from skill shortages in public health and other critical sectors if our young workers are not protected against COVID-19 vaccination status discrimination\*\****

### **Police force personnel**

Our firm has advocated for police officers who have been dismissed from the Police Force because of their COVID-19 vaccination status.

In New South Wales, the Police Commissioner has the power to remove a police officer from the police force under section 181D of the *Police Act 1990*, which provides:

- (1) The Commissioner may, by order in writing, remove a police officer from the NSW Police Force ***if the Commissioner does not have confidence in the police officer's suitability to continue as a police officer***, having regard to the police officer's competence, integrity, performance or conduct. (***Emphasis ours***)

One of our clients, a former Police Officer having served 10 years in the NSW police force with an untarnished record, was terminated under section 181D because of their vaccination status. Despite the fact that our client had a valid medical contraindication certificate.

In an interview published in the Sydney Morning Herald (**7 September 2021**) it was noted by President Tony King of the Police Association of NSW that medical contraindications and other valid reasons would be taken into consideration by the NSW Police force:

*"The ... chain of command will take both medical contraindications and other valid*

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<sup>23</sup> Wong, B.L.H., Siepmann, I., Chen, T.T. et al. Rebuilding to shape a better future: the role of young professionals in the public health workforce. *Hum Resour Health* 19, 82 (2021) Available at <<https://human-resources-health.biomedcentral.com/articles/10.1186/s12960-021-00627-7>>.

*reasons into consideration.”<sup>24</sup>*

However, our client’s circumstances and medical contraindication certificate were not accepted by the NSW Police Commissioner.

This Police officer had already been subjected to bullying by colleagues due to a disability that had occurred while they were on duty.

In our opinion, the added trauma from dismissal under this section, which is generally reserved for corruption or other serious offences, is appalling and falls within the higher end of discriminatory conduct. Indeed, the findings related to ‘integrity and corruption’ not only expose the NSW Police Force to accusations of having no loyalty towards their members but also prevent this police officer, *(along with many more police officers we know of with impeccable service records)* to experience continued and prolonged discrimination because they cannot find work in the security industry or other related field due to the misleading attribution of ‘integrity’ tarnishing the remainder of their working lives.

We wrote to the NSW Police Commissioner to review the decision to terminate our client for integrity grounds under s 181D, requesting the termination reasons be reclassified. The Commissioner refused to reclassify the dismissal reasons.

Subsequently, the impact of the Commissioner’s decision has left our client unemployable such that they could not get a security license due to the termination classification causing significant financial hardship to them and their family. Despite the NSW and Australian taxpayers funding their training through the police academy and paying their wages for a significant period of time, they are now cleaning toilets and homes just to make ends meet.

This is just one example of how our frontline workers in the Police Force are now being treated because of their COVID-19 vaccination status. It is incomprehensible to think that Australia is now being compared to the era of Trofim Lysenko (Stalinist USSR), where the institutions of power coerce citizens to accept a position or lose their livelihoods.

We note that vaccine discrimination unfolds on a national scale, with hundreds of Police Officers, paramedics, and fire rescue personnel being stood down without pay and terminated for not having a COVID-19 vaccination.<sup>25</sup> At one point Australia’s frontline health and emergency services were heroes, and 12 months later those who refused the provisionally approved (not approved) vaccine were fired, deregistered and ostracised due to Federal and State mandates/directives and policies driven by what former Health Care Minister Greg Hunt

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<sup>24</sup> <https://www.smh.com.au/national/nsw/nsw-police-to-mandate-vaccination-for-all-employees-20210907-p58pjh.html>.

<sup>25</sup> <https://www.9news.com.au/national/coronavirus-victoria-police-and-psos-stood-down-over-decision-not-to-get-covid-19-vaccine-in-line-with-mandate-for-authorized-workers/2a5f710f-af8b-4bdd-9da0-0bca56e1e877>.

described as the World's largest clinical trial.<sup>26</sup>

Again, we state, that conduct of this nature falls squarely within the Nuremberg Code and must be addressed.

***\*\*This Bill should include special provisions for Police, paramedics and fire rescue personnel so they are protected against COVID-19 vaccination status discrimination\*\****

## Health Professionals

We have represented in the NSW Supreme Court and the Industrial Relations Commission (“IRC”) health professionals who were dismissed from their employment because of their COVID-19 vaccination status. These professionals were treated like heroes at the start of the pandemic but were later ostracised, bullied and subsequently terminated.

We have spoken to many of these health professionals who have shared their personal stories regarding being subjected to bullying and openly belittled at team meetings and in front of colleagues because they were concerned about taking the vaccine.

We share with you some of the many stories from nurses that have been victimised for not receiving a COVID-19 vaccination as follows:

*During a team meeting, nurses that had not had the COVID-19 vaccination were asked to put their hands up and were then subjected to belittling comments.*

*Another Nurse shared her story of being subjected to bullying at daily team meetings, labelled as an ‘anti-vaxxer’, and constantly harassed as to why they had not had the vaccination. We understand this nurse had a medical contraindication certificate.*

We have received reports that some of the positions that our clients were terminated from remain vacant thereby placing further strains on medical resources and response times for Ambulances. We are aware that these government-manufactured skill shortages now impact some rural communities in NSW because of the State Government vaccination policy.

***\*\*This Bill should include healthcare professionals so they are protected against COVID-19 vaccination status discrimination\*\****

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<sup>26</sup> Hon Greg Hunt (Former Health Minister) <https://www.youtube.com/watch?v=ITndr9O4hbA>. Accessed 27 March 2023.

## Emergency Service Personnel/Volunteers

We submit that emergency service **volunteers** are not able to perform their volunteering roles because of their COVID-19 vaccination status.

One of our employees, a former Deputy Unit Controller in a rural NSW State Emergency Service Unit, is unable to volunteer because of their COVID-19 vaccination status.

Other clients, we have represented and in conversation at events have drawn these issues to our attention, where they have been turned away from helping during disasters.

These government policies at a practical level have impacted negatively on community needs, particularly with the recent State flooding disasters that occurred in QLD, NSW and Victoria.

We note that unvaccinated experienced, loyal, fit, and healthy volunteer emergency workers were forced out of their jobs in late 2021 due to COVID-19 vaccination requirements. Yet these agencies complain about being critically understaffed and overstretched during flooding events.

Instead of inviting their unvaccinated workers back to help out during these disasters, they leave vulnerable communities to fend for themselves.<sup>27</sup>

Unfortunately, these ludicrous vaccination policies do not just affect unvaccinated emergency workers. In October 2022, vaccinated emergency service volunteers were prevented from helping people in their community during the life-threatening floods in Victoria because they had not received a COVID-19 booster.<sup>28</sup>

## The Northern NSW Floods and discrimination during a State Emergency

In March of 2022, northern NSW was pummelled with rains causing significant losses to property, livestock and human lives. In the immediate aftermath, members of the community rallied and came to the aid of the northern rivers' communities of Coraki, Lismore, Woodbourne and Broad water (to name a few).

Our Director, Mr Tony Nikolic is a witness to these events, having travelled to the affected disaster areas, staying 10 days to assist in the relief and recovery efforts. He took video footage and photographs of the disaster recovery efforts in Coraki and surrounding areas alongside other community members and citizens from around NSW who provided urgent support to those

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<sup>27</sup> <https://www.spectator.com.au/2022/03/mullumbimby-saves-itself-while-ses-continue-with-vaccine-mandates/>.

<sup>28</sup> <https://www.dailymail.co.uk/news/article-11326877/Covid-SES-volunteers-turned-away-helping-floods-havent-booster-shot.html> (Brave volunteers are 'BANNED' from helping out in flood-ravaged communities - all because they haven't had a THIRD Covid jab).



affected.

During the course of the final days of the recovery, (*Governor General Hurley, as he was then*) attended the scout/community hall in Coraki where our Mr Nikolic was present with Graham Hood (Qantas Pilot) who resigned over the vaccine mandates, John Larter, (NSW Paramedic of 25 plus years who was fired for not taking the COVID-19 vaccine) and Roland Chrystal (former NSW Highway Patrol Officer of 30 plus years who resigned due to the Commissioner's threats to sack police) and other members of the Australian community consisting of (*but not limited to*):

1. Nurses
2. Tradesmen
3. Business people
4. Truck drivers and logistics
5. University students
6. Fire rescue, and
7. Australian defence force personnel (serving and retired)
8. Construction workers
9. High School children
10. Tourists

For the Committee's attention, we provide a series of photographs on pages 17-22 taken from the NSW floods and a commentary on the issues that volunteers and the communities faced during those challenging days.

In **photograph 1** below, we see Japanese tourists providing food for volunteers in the town of Coraki. At this time, there were very few Government resources and it was the community rendering assistance.



In **photograph 2** below, we have volunteers driving around the community of Coraki delivering cleaning supplies, food, water and gardening tools.



In **photograph 3** below, we can see furniture from homes stuck in trees as water recedes. The course of the early days, we launched small boats and ferried residents to their properties up river so they could assess their homes. This was done because there no emergency services or government resources to assist the vulnerable community at these crucial times.



In **photograph 4** below, is a home in the town of Woodbourne being cleaned by Roland Chrystal (for NSW Police Highway Patrol). On the right side of the second level of this home, you will notice an air-conditioning unit and more importantly a black line at the front of the home. That was the watermark at its highest level. Again, it was the emergency services workers who were fired for not having a vaccine dose who assisted.



In **photograph 5** below, former Governor General Hurley visits the Coraki scout hall where he discusses the state of affairs in Coraki. Although this was in the latter days of the recovery efforts, his attendance was welcomed as it provided an opportunity for Graham Hood, John Larter and our Mr Nikolic to discuss the urgent need for more resources from Government rather than 'Hoody's heroes' and the community providing required resources. Graham Hood provided Gov

Gen Hurley with critical information about the resources (or lack thereof) on the ground in the affected areas, noting the importance of allowing unvaccinated back to work.



In **photograph 6** we see volunteers from all over Australia relaxing in the Coraki firehouse. As you may notice the food and resources in the background were the result of the Australian community providing donations. Each night the community of volunteers would gather in the Coraki firehouse for food and debrief before making their way to bed.



In **photograph 7**, we see the remnants of homes devastated by the floods. Volunteers from all over Australia worked together with the community in the heat, mud and difficult conditions to provide urgent aid to flood affected Citizens.



In **photograph 8** below, we see volunteers working with the Australian Defence Force 9RAR personnel loading water for storage.



The significance of these images relates to the further discrimination experienced by volunteers and former emergency service workers who arrived in the flood zones before many government services arrived to render aid and assist with the clean-up and recovery efforts.

We note that after the waters had subsided some seven days later, State and Federal emergency services began entering the towns to take over from the Australian community members who stepped in to take control of the disaster situation. Indeed, John Larter (former paramedic) was rendering first aid assistance such as changing wound dressings to elderly people in their homes and if it was urgent referred them to call 000 if required; Graham Hood was organising resources Australia wide and supporting those emotionally who had lost their belongings and required support; Roland Chrystal provided assistance and cleaning of homes for vulnerable persons whilst AFL Solicitors set up a central contact, logistics and tracing network to ensure resources were coordinated for repairs and referrals to Government networks.

Although these volunteers gave up their time, families and jobs to help the needy, when the State and Federal government agency personnel arrived, they ordered all 'unvaccinated' people to leave all government buildings including the firehouse, which was home to the recovery efforts well before any emergency services arrived. For context, the Coraki firehouse was used to allow volunteers to shower and gather food and coordinate supplies to the affected community members when no other emergency were available.

If there is one thing to be said about the NSW floods and the community of volunteers from all over Australia, it was clear the Australian spirit did not discriminate between the 'vaccinated and unvaccinated'.

***\*\*This Bill should include Emergency Service personnel (both paid and voluntary roles) so they are protected against COVID-19 vaccination status discrimination\*\****

## **Other matters for consideration**

### **Vaccine mandate impacts on lower income earners**

Our firm has advocated pro bono to many Australians suffering financial hardship due to COVID-19 vaccination discrimination.

We submit that vaccine mandates disproportionately affect lower-income earners who are more susceptible to financial hardship and discrimination.<sup>29</sup>

We note that the full economic impact on individuals has yet to be quantified.

***\*\*This Bill should be passed, so that lower-income earners are protected against COVID-19 vaccination status discrimination\*\****

### **Mental Health Impacts**

According to a report by the Australian Institute of Health and Welfare, 'sudden loss of employment and social interaction have impacted the mental health of many Australians.'<sup>30</sup>

According to State and Territory Government Orders, unvaccinated Australian were segregated as a separate class of the population while the restrictions on vaccinated people were lifted.

The unvaccinated population faced unprecedented discrimination, such as not being able to buy non-essential items like shoes and stationery and attend personal services such as a hairdresser.<sup>31</sup>

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<sup>29</sup> Leask J, Seale H, Williams JH, Kaufman J, Wiley K, Mahimbo A, et al. *Policy considerations for mandatory COVID-19 vaccination from the Collaboration on Social Science and Immunisation*, 2021, Medical Journal of Australia, vol. 215, iss. 11, pp. 499-503.

<sup>30</sup> Australian Institute of Health and Welfare, *Mental health impact of COVID-19*, 2022, Australian Government.

<sup>31</sup> NSW threatens 'jail time' for unvaccinated people entering businesses without passport: <<https://www.news.com.au/finance/business/retail/nsw-threatens-jail-time-for-unvaccinated-people-entering-businesses-without-passport/news-story/a4268bb8da7854bcac84e70330ede412>>.

We submit that these Orders were disproportionate to the risks of transmitting the virus, considering that reports have found that fully vaccinated individuals can transmit infection in household settings, including to fully vaccinated contacts.<sup>32</sup>

We submit that vaccine mandates and the discrimination that people have faced due to choosing not to have a COVID-19 vaccination has negatively impacted their mental health.

We recommend that future public health prerequisites must appropriately consider and weigh human rights in proportion to the burden of disease.

***\*\*This Bill should be passed, so that Australians are protected against COVID-19 vaccination status discrimination\*\****

## ***Fair Work Amendment (Prohibiting COVID-19 Vaccine Discrimination) Bill 2023***

### **Inherent requirements**

We support the proposed amendment that adds COVID-19 vaccination status as an attribute protected from discrimination.

We note the explanatory memorandum that states:

*“This amendment does not change the effect of paragraph 153(2)(a), which provides that a term does not discriminate against an employee if the reason for the discrimination is the inherent requirements of the particular position held by the employee.”<sup>33</sup>*

We are concerned that if employers deem the COVID-19 vaccination as an ‘*inherent requirement*’, then not hiring someone because they are not ‘vaccinated’ would not legally be considered discrimination. Furthermore, deeming Covid-19 vaccines as an inherent requirement risks further medical interventions becoming inherent requirements in the future.

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<sup>32</sup> Anika Singanayagam et al., ‘Community transmission and viral load kinetics of the SARS-CoV-2 delta (B.1.617.2) variant in vaccinated and unvaccinated individuals in the UK: a prospective, longitudinal, cohort study,’ (2021 Lancet Infect Dis) Available at <[https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(21\)00648-4/fulltext](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(21)00648-4/fulltext)>;

<https://www.theguardian.com/world/2021/oct/28/covid-vaccinated-likely-unjabbed-infect-cohabiters-study-suggests>;

Commonwealth, *Parliamentary Debates*, Senate, 8 February 2023, 218 (Matthew Canavan, Senator) (‘Second Reading Speech’).

Dominic Perrottet: Vaccines do not stop Covid-19 transmission

<<https://www.news.com.au/lifestyle/health/health-problems/dominic-perrottet-vaccines-do-not-stop-covid19-transmission/news-story/1433cb985d99628c324b1dc6952241b4>>; <<https://www.2gb.com/vaccines-do-not-stop-transmission-dominic-perrottet/>>.

<sup>33</sup> Explanatory Memorandum, Fair Work Amendment (Prohibiting COVID-19 Vaccine Discrimination) Bill 2023 (Cth).



Our office has received hundreds of calls and emails concerning employees who have been terminated due to employers terminating them on ‘capacity’ and ‘conduct’ grounds that the COVID-19 vaccination was an ‘inherent requirement’ of their role.

### **Capacity**

Many of our client matters suggest that employers have only conducted minimal consultation with their employees prior to the introduction of their COVID-19 vaccine policies. Whilst some employers gave notice to individual employees, the consultation process appeared disingenuous and could be likened to a tick-in-the-box exercise. For example, the day the mandatory COVID-19 vaccination policy took effect, unvaccinated employees were immediately terminated and many more to this day are on force leave or compelled to use their sick and long service leave.

Despite the harshness of these policy decisions in light of current broader guidelines regarding COVID-19 vaccination in the workplace, if employers utilise the ‘inherent requirements’ exemption, they could successfully argue they had a valid reason to dismiss employees based on their capacity, as they no longer met the inherent requirements of the job, which included being vaccinated by a certain reasonable date. Having a vaccination does not and cannot translate into a person’s capacity to undertake their work, as we have demonstrated in our example of emergency services workers above.

We note that some companies have put in place mandatory COVID-19 vaccination policies as a blanket policy for all employees regardless of what category<sup>34</sup> they would fit into for example, the mandatory vaccination policy includes employees that are working from home, on maternity leave, sick leave, workers compensation and long service leave.

We note that many unfair dismissal cases pursuant to s 394 of the *Fair Work Act 2009* (“**Act**”) concerning COVID-19 unvaccinated employees have been unsuccessful.

The Fair Work Commission’s (“**the Commission**”) finding is generally that a company’s vaccination policy is a lawful and reasonable direction. And refusing to comply is a valid basis for termination despite the dismissal still being unfair.<sup>35</sup>

Similarly, in *Aucamp v Association for Christian Senior Citizens Homes Inc.* [2021] FWC 6669. The Commission whilst acknowledging the Applicant’s various concerns in relation to COVID-19 vaccination, held that they were essentially irrelevant as the Employer had to comply with the

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<sup>34</sup> ‘Category’ refers to the Fair Work Ombudsman 4 broad tiers when assessing whether directing an employee to be vaccinated against COVID-19 is reasonable, available at <<https://coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/covid-19-vaccinations-and-the-workplace/covid-19-vaccinations-workplace-rights-and-obligations>>.

<sup>35</sup> *Mrs Robyn Pskiet v Maicap Unit Trust T/A Nocelle Foods* [2022] FWC 1534; *Mr Bradley John Dean v Regional Express Holdings Ltd* [2022] FWC 1448.

Directions by law. In addition, concerning the notice period, the Commission noted that the Respondent did not have the capacity to provide any further notice because of the swift introduction of the Directions.

***\*\*We submit that ‘inherent requirements’ are clearly defined and noted as a high threshold requirement in the Act to ensure no ambiguity causes mischief in the Fair Work Commission\*\****

## **Conduct**

We note that an employee is required, as an implicit term of their employment contract, to follow all lawful and reasonable directions of their employer. Whether a vaccine mandate is, a lawful and reasonable directive was considered by the Commission in their recent decision of *CFMEU v Mt Arthur Coal* [2021] FWCFB 6059. The Commission found that an employer’s failure to follow consultation requirements under the Work Health and Safety Act made a directive “unreasonable” but not “unlawful”. The Commission indicated that the directive could be made reasonable with further consultation.

Our concern is that for organisations that are not particularly large or have sophisticated HR processes/personnel, their COVID-19 vaccination policy consultation process prior to issuing a direction to employees will not be held to a high standard in the Commission.

We submit that young apprentice mechanics have been dismissed from their employment for not receiving a COVID-19 vaccination which has damaged their prospective career pathway. These young workers who have been found to have a high risk of adverse reactions to the COVID-19 vaccination<sup>36</sup> are being unfairly discriminated against by private companies.

For example, if a young worker was dismissed for their conduct - as opposed to their capacity - in failing to follow a direction that was found to be technically ‘unreasonable’ due to inadequate consultation, this would arguably be unfair. However, it is likely that the employer would seek to justify the worker’s dismissal because of their capacity (i.e., inherent requirement), rather than conduct, in which case they currently would not have a good prospect of success in an unfair dismissal claim.

***\*\*This Bill should be passed, so that Australian workers are protected against COVID-19 vaccination status discrimination\*\****

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<sup>36</sup> <https://www.aihw.gov.au/reports/workforce/health-workforce>.

## Pre-employment discrimination

People are going to job interviews and are being asked to produce proof of receiving a COVID-19 vaccination and whether they are up-to-date with their booster shots.

We highlight one of the many stories people have shared with us as follows:

A prospective employer representative cancelled a scheduled job interview upon finding out the interviewee's COVID-19 vaccination status stating words to the effect:

*"This is sad for you - good luck finding a job."*<sup>37</sup>

Australia has a high youth unemployment rate of 7.9%.<sup>38</sup> This bill is needed to ensure that people who could otherwise become employed are not discriminated against because of their COVID-19 vaccination status.

## Teaching Sector

In the teaching sector, many teachers contacting our office have expressed a view that they appear to be receiving less pay than their vaccinated colleagues. This is another example of duress, coercion and pecuniary penalisation for deciding not to consent to vaccines.

The experiences of teachers reflect and mirror those of our frontline emergency staff and we do not wish to repeat the merits of those issues already made with respect to other emergency service and frontline workers.

## Conclusion

We thank the Senate Education and Employment Committee for the opportunity to provide input into the *COVID-19 Vaccination Status (Prevention of Discrimination) Bill 2022* and the *Fair Work Amendment (Prohibiting COVID-19 Vaccine Discrimination) Bill 2023*.

In summary, AFL Solicitors urges the Committee to recommend that these Bills be passed as soon as possible to protect Australians against COVID-19 vaccination status discrimination.

We submit that:

1. The *COVID-19 Vaccination Status (Prevention of Discrimination) Bill 2022* be passed as a whole.
  - a. We recommend that legislation provisions be drafted to protect Commonwealth,

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<sup>37</sup> This situation occurred in December 2022.

<sup>38</sup> <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release#unemployment>.

State and Territory employees, including all frontline health and care workers from COVID-19 vaccination status discrimination.

2. The Fair Work Amendment (Prohibiting COVID-19 Vaccine Discrimination) Bill 2023 is passed as a whole with the following amendment:
  - a. The term ‘inherent requirements’ are clearly defined and noted as a high threshold requirement in the Act to ensure no ambiguity causes mischief in the Fair Work Commission.
3. Future public health prerequisites must appropriately consider and weigh human rights in proportion to the burden of disease.

We apologise for the rushed submissions, and should the Committee require any further assistance, AFL Solicitors will be pleased to extend any assistance it requires and although this submission was rushed, we are willing and able to assist the Senate with further information if required.

Yours faithfully,



**Ashley, Francina, Leonard & Associates**

Tony Nikolic

Director