



18 September 2020

Ms Nadya Haddad,
Deputy Director, Investigations
Professional Standards Department
Law Society of NSW
170 Phillip Street,
SYDNEY NSW 2000

BY EMAIL ONLY

psd.complaints@lawsociety.com.au

Dear Nadya,

RE: YOUR REFERENCE PSD2020_50554

I refer to your letter dated 1 September 2020.

This is a complete answer to your letter dated 1 September 2020 using corresponding numbering:

1. (a) The Facebook comment informs individuals of their lawful right to elect to have fines dealt with in the Court system. This is a factual matter. It says nothing about "*potentially overloading the court system*". Any potential overloading of the court system is caused directly by the Victorian Government implementing directions that are unlawful and beyond power. The directions to persons to wear a mask is ultra vires and I intend to prove that in due course in a Court of competent jurisdiction. In particular, Section 199 of the Act¹ gives the Chief Health Officer, Mr Brett Sutton, the powers to exercise any of the public health risk powers and emergency powers².

¹ Section 199(1) of the *Public Health and Wellbeing Act 2008* (VIC) ("Act").

² Section 199(2)(a) of the Act.

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The public health risk powers are set out in section 190 of the Act and include the power to direct any other person to take any other action that the authorised officer considers is necessary to eliminate or reduce the risk to public health³.

The emergency powers are contained in section 200 of the Act and include giving any other direction that the authorised officer considers is reasonably necessary to protect public health⁴.

On or around 23 February 2020, the then Australian Chief Medical Officer, Professor Brendan Murphy, said there is no need for face masks and for people to go about their normal business. Professor Murphy was quoted as saying:

"There is no risk to people walking around the streets, walking in the shopping centres..."

"I'm saying to people in Australia: don't wear masks, go about your normal business."

Annexed and marked "A" is a copy of an article from the Sydney Morning Herald confirming these statements.

There is no medical evidence whatsoever to support the proposition that wearing a face mask eliminates or reduces the risk to public health. The direction to wear a mask is therefore ultra vires as it does not satisfy the threshold tests *"to eliminate or reduce the risk to public health"* and *"to protect public health"*. The facts do not support the implementation and ongoing basis for the mask direction.

In addition, in recent days it has come to light that the Victorian curfew was not supported or based on the medical advice or opinion of the Chief Health Officer. Mr Sutton admitted that he did not advise Mr Daniel Andrews that a curfew was required. Mr Andrews then pointed the finger at the Victorian Police, who equally rejected Mr Andrews' finger pointing. Mr Andrews then admitted that it was his call to introduce and implement the curfew.

This means that the curfew is not supported by section 199 of the Act⁵, since the Chief Health Officer does not believe that the curfew is necessary for the purpose of eliminating or reducing the serious risk to public health.

Therefore, the curfew is not a valid direction for the purpose of either sections 190 or 200 of the Act.

³ Section 190(1)(j) of the Act.

⁴ Section 200(1)(d) of the Act.

⁵ Section 199(1)(b) of the Act.

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The curfew direction is ultra vires. Mr Andrews never had the power to make such a direction. This is a breach of Mr Andrews' statutory duties and statutory powers. It is a misfeasance in public office. It is an abuse of power.

As a result, any challenge to the validity of the Victorian curfew has reasonable prospects of success.

Challenging the balance of the directions

There are a number of headline threshold issues which are subject to challenge. Firstly, whether as of 2 August 2020 and each day thereafter, there exists a "*serious risk to public health*"? If the answer to that question is "no", then the state of emergency is invalid and none of the directions are lawful.

The directions can only remain in place for so long as there exists a "*serious risk to public health*".

Section 5 of the Act requires that decisions as to the most effective use of resources to promote and protect public health and wellbeing and the most effective and efficient public health and wellbeing interventions should be based on evidence available in the circumstances that is relevant and reliable⁶. The modelling and data that the Victorian government is presently relying upon is questionable and subject to challenge by independent medical experts. Annexed and marked "B" is an open letter from a number of senior medical practitioners stating that there are alternatives to dealing with COVID-19.

Section 9 of the Act requires that decisions made and actions taken in the administration of the Act should be proportionate to the public health risk sought to be prevented, minimised or controlled and should not be made or taken in an arbitrary manner. In light of recent admissions by Mr Sutton concerning the false classifications of persons who may have died from COVID-19 when the facts show that only 9% of persons have died solely from COVID-19⁷ with no comorbidities and that less than 1% of persons who contract COVID-19 actually die⁸, the facts call into question whether the directions are proportionate to the public health risk and or made or taken in an arbitrary manner. Annexed and marked "C" is the Australian Government Department

⁶ Section 5 of the Act.

⁷ Australian Government Department of Health: Communicable Diseases Intelligence 2020 Volume 44: Covid-19 Australia: Epidemiology Report 22 page 14 under the heading 'Comorbidities'.

⁸ Ibid report.

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of Health: Communicable Diseases Intelligence 2020 Volume 44: Covid-19 Australia: Epidemiology Report 22 in support of these facts.

In addition to this, the directions also breach a number of legislated human rights including freedom of movement⁹, freedom of expression¹⁰, peaceful assembly and freedom of association¹¹.

The mask direction is a breach of the legislated human right relating to the protection from torture and cruel, inhuman or degrading treatment¹², in that individual persons are being subjected to medical or scientific experimentation or treatment without his or her full, free and informed consent. It also breaches the human right relating to humane treatment when deprived of liberty¹³, in that individual persons are not being treated with humanity and with respect for the inherent dignity of the human person. It also breaches the freedom of expression human right¹⁴ insofar as it does not allow an individual to hold an opinion as to the medical effectiveness of mask wearing without interference by the Victorian Police and the Victorian Government.

There are also valid questions as to whether the directions breach a number of provisions of the Commonwealth Constitution, including sections 7 and 24 with respect to representative and responsible government, section 92 with respect to freedom of movement and trade and commerce and section 117 with respect to Victorians being subjected to any disability or discrimination which would not be equally applicable to Victorians if they were a resident of another State.

For these reasons, it is my view that any challenge to the validity of the directions, including the mask direction, would have reasonable prospects of success. It follows that anyone who contests the fines in a Court of competent jurisdiction will have a proper basis to do so.

The Facebook posts therefore upholds the administration of justice in that it informs individuals of their lawful rights to contest a fine that is unlawfully made and is invalid.

(b) I am allowed to advertise for the purpose of attempting to hire employees for and on behalf of G&B Lawyers. There is nothing unlawful in this.

⁹ Section 12 of the *Charter of Human Rights and Responsibilities Act 2006* (VIC) ("Charter").

¹⁰ Section 15 of the Charter.

¹¹ Section 16 of the Charter.

¹² Section 10 of the Charter.

¹³ Section 22 of the Charter.

¹⁴ Section 15 of the Charter.

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(c) Following on from my submissions at (a) above, none of the directions and orders that are being implemented across Australia are lawful. They are all invalid and unconstitutional for the same reasons stated on page 4 of this submission.

I have instructions to act for a client to challenge the validity of the *Public Health (COVID-19 Border Control) Order 2020* (NSW). The matter relates to a charge against my client issued by the NSW Police and is first listed on 19 October 2020. I have briefed Counsel in this matter.

It follows that the GoFundMe fundraiser (which has since been taken down by GoFundMe without my consent) was in the public interest to assist individuals to challenge the validity of the unlawful directions and orders issued and implemented by bureaucrats of the States. The funds raised are being utilised in the matter referred to above.

Again, there is nothing unlawful with this and it upholds the administration of justice.

For these reasons, item 1 of your complaint must be thrown out.

2. You do not refer to any specific law or laws. None of the various orders and directions issued and implemented by bureaucrats of the States are "laws".

Therefore, item 2 of your complaint must be thrown out.

3. Similarly, you do not refer to any specific law or laws. None of the various orders and directions issued and implemented by bureaucrats of the States are "laws".

I also rely on the information provided in response to item 1(a) in this submission.

None of the Facebook posts that I have made are misleading and or deceptive.

In relation to the direction to wear a face mask, even the Attorney General of Victoria, Ms Jill Hennessy MP supports my position. Here is a link to a video of Ms Hennessy where she states that Victorian individual's human rights under the *Charter of Human Rights and Responsibilities Act 2006* (VIC) ("**Charter**") have not been suspended, removed or taken away from them and that they are entitled to assert their rights under the Charter and challenge the validity of any fines in a Court of competent jurisdiction.

See here <https://www.youtube.com/watch?v=r6d7OTOy3CI>

Ms Hennessy also notes that individuals have the right to challenge the use of State power pursuant to the ordinary principles and the lawful process of judicial review.

As noted above in response to item 1(c), I actually have instructions on foot to challenge the validity of the *Public Health (COVID-19 Border Control) Order 2020* (NSW).

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In addition, I act for a client in relation to a general protection's application in the Fair Work Commission. We are challenging a direction from the employer (the ABC) to the employee (my client) to wear a face mask.

It follows that everything that I have said is supported by actual facts and evidence. I have live matters on foot where I will challenge the validity of the directions, including the mask direction.

It follows that item 3 of your complaint must be thrown out.

4. In relation to communications with Ms Sharna Clemmett and the other person by the name of Mr Nathan Buckley, I deny that any of those communications were threatening, abusive and or discourteous. Such communications were made in my personal capacity and not in the course of legal practice.

In relation to Ms Clemmett, I reserve my rights to commence defamation proceedings against her. I also note that I have lodged a complaint with the Office of Legal Services Commissioner against her with respect to posts made about me on the Lawyer Mums Australia Facebook Group of which she was an administrator and facilitator of the slanderous and defamatory statements made about me.

It appears that Ms Clemmett has provided you with screenshots of my messenger messages to her. You have failed to provide copies of the responses from Ms Clemmett to me. I call on you to request from Ms Clemmett all of Ms Clemmett's responses to me so that I can properly answer any further allegations relating to such communications. In any case, none of the communications made by me to Ms Clemmett were threatening, abusive and or discourteous. You will fail to establish that they were.

As for the other Mr Buckley, you have the entirety of the communications that I have had with him. There is nothing threatening, abusive and or discourteous in that email. You will fail to establish that they were.

For these reasons, item 4 of your complaint must be thrown out.

5. (a) For the reasons stated above, you will fail to establish that I am not a fit and proper person to engage in legal practice.

(b) I deny making the alleged LinkedIn comment on 3 August 2020. My LinkedIn account appears to have been hacked by an unknown person and my LinkedIn profile was subsequently taken down by LinkedIn shortly after this alleged post.

The comment made on The Conscious Truth Network – Group was made by me personally in my personal capacity. Not under the G&B Lawyers Facebook name. It was not made in the course of legal practice.

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Letter to the Law Society of NSW
18 September 2020

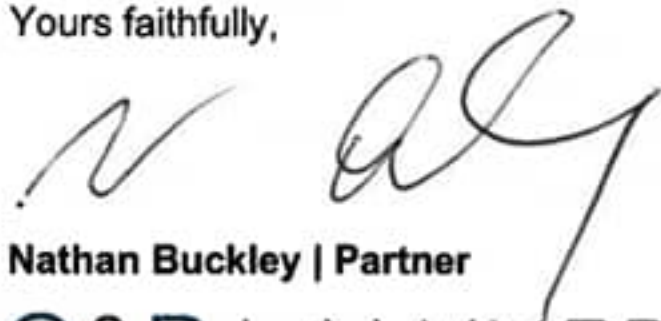
Accordingly, you have no jurisdiction in relation to my personal Facebook account and any comments made from it. It is not unlawful to use any of the language used in that post.

For these reasons, item 5 of your complaint must be thrown out.

I trust these submissions answer the entirety of your letter dated 1 September 2020.

I now ask that you provide a proper and full answer to my letter dated 8 September 2020.

Yours faithfully,



Nathan Buckley | Partner

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Encl

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