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Independent Panel
COVID-19 Response Inquiry
Department of Prime Minister and Cabinet
Australian Government

Sent by webform: <https://www.pmc.gov.au/covid-19-response-inquiry/consultation>

Dear Independent Panel

COVID-19 Response Inquiry

Thank you for this opportunity to make submissions on this inquiry.

This submission:

- outlines the work done by the Commission during the pandemic;
- considers the Commonwealth could have had a greater role in governance and leadership during the pandemic;
- advocates for the implementation of a national human rights framework to safeguard human rights at times of emergency;
- recommends response measures build in oversight and review mechanisms when applied at an individual level;
- highlights the importance of nationally addressing racism and vilification.

The Commission's role during the pandemic

The Queensland Human Rights Commission (the Commission) is a statutory body established under the Queensland *Anti-Discrimination Act 1991* (AD Act). The Commission's functions include receiving complaints for dispute resolution under the AD Act and the *Human Rights Act 2019* (HR Act), promoting an understanding and public discussion of human rights in Queensland, and to provide information and education about human rights.

The substantive provisions of the HR Act commenced on 1 January 2020. The Queensland Government declared a public health emergency on 29 January 2020 which continued until 1 November 2022.

The Commission has received more than 1500 complaints recorded as being related to COVID-19, and continue to receive such complaints. During 2021-22, 29% of the 6409 enquiries made to the Commission were COVID-19 related, and 36% of the 1870 complaints received were COVID-19 related. The majority of complaints related to border closures, hotel quarantine, and mandatory mask and vaccination requirements. Rights raised in relation to these complaints included recognition and equality before the law, the right not to be subject to

medical treatment without consent, privacy and reputation, humane treatment when deprived of liberty, and freedom of movement.

The Commission also:

- provided a human rights perspective to parliamentary committees considering bills and inquiries related to COVID-19;
- met with the Chief Health Officer to discuss human rights issues arising from public health directions, and advocated for justification material to be published with public health directions;
- engaged with communities to understand people's experiences of restrictions, and provided feedback to Departments and agencies about their approaches and policies;
- intervened in legal proceedings challenging vaccination mandates to provide the court with independent expertise on human rights (these legal proceedings are still on foot); and
- developed material for the public about COVID-19 and human rights, including a guide for businesses and services navigating mask requirements.

One of the Commission's priorities throughout the pandemic was the replacement of temporary amendments with bespoke legislation that would allow governments to respond effectively to COVID-19 risks while ensuring transparency, accountability, and compatibility with human rights. That was achieved through the passing of the *Public Health and Other Legislation (COVID-19 Management) Amendment Act 2022*, which commenced on 1 November 2022.

Governance during the pandemic

Much of the COVID-19 response was driven by State and Territory governments.

It appears that the response may have benefited from increased intervention and leadership from the Commonwealth government where it has power to do so. Notably, section 51(ix) of the Constitution empowers the Commonwealth Parliament to make laws with respect to 'quarantine'. A national approach to quarantine may have alleviated some of the issues faced by people seeking to travel to and through Australia and having to contend with different, and at times fast changing, quarantine requirements in each jurisdiction.

In the Commission's view, Queensland's HR Act proved to be an important safeguard of the rights of people in Queensland during the pandemic. The HR Act requires introduced legislation to be accompanied by a statement of compatibility and for regulations to be accompanied by a human rights certificate.¹ Government must therefore consider the impacts of new laws and regulations on human rights and must set out justification for any limitations on human rights.

Government and public entities also have obligations under the HR Act to act and make decisions compatibly with human rights, and to give proper consideration to human rights when making decisions.² This obligation extends from high level Ministerial decisions to day to day actions taken by front line services.

Where a person believes this obligation has been breached, they may make a complaint to the Commission for dispute resolution. This process is intended to provide a way of resolving

¹ *Human Rights Act 2019* (Qld) Part 3 Division 1.

² *Human Rights Act 2019* (Qld) s 58.

complaints that is informal, quick and efficient. For complaints relating to COVID-19, this produced positive outcomes particularly during the early stages of implementation of a policy, such as unsuitable quarantine conditions. The Commission's complaints process provided external oversight for the application of policy to individual circumstances, leading to fairer outcomes and systemic improvements, which might not have otherwise been available.

The Commission's submission to the Senate Select Committee on COVID-19 was and continues to be that governance during the pandemic would have been enhanced by a national human rights framework.³ For example, the restrictions placed on remote Indigenous communities under the *Biosecurity Act 2015* (Cth) may have benefited from a human rights assessment and a pathway for people to raise concerns where blanket application of the policy resulted in a disproportionate limitation of their human rights.

Key health response measures

Queensland public health directions imposed restrictions on people for the purpose of protecting the community. In some cases, the benefits of those restrictions were outweighed by the impacts on the individual. The individual could request an exemption from the direction, or for an adjustment to the application of the direction, but the request was not always granted. The HR Act provided a process by which these decisions could be externally examined for human rights compatibility by an independent body. Without the HR Act, the individual may have had no other options for challenging the decision.

Key health response measures will often be rapidly implemented and have broad application. They will not be able to cater for every individual circumstance or eventuality. The Commission submits that any key health response measure must allow for flexibility for individual circumstances, and that decisions that significantly limit human rights are subject to external review or oversight to avoid unintended, disproportionate outcomes.

Community supports

The Commission, which also deals with complaints under the AD Act, received enquiries and complaints from people of Chinese and Asian descent who experienced racial vilification and discriminatory treatment when trying to obtain goods and services during the pandemic. We also heard about increased vilification of Asian students from a vocational education provider.

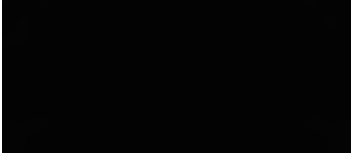
A national strategy and campaign to foster inclusion of all the diverse groups who constitute the Australian community (a component of which would cover racism and vilification) would assist to avoid spikes in such behaviour during times of crisis.

³ Queensland Human Rights Commission, Submission to Senate Select Committee on COVID-19 (28 May 2020).

Mechanisms to better target future responses to the needs of particular populations

A human rights approach to a pandemic response would necessarily involve the identification, consultation, and consideration of communities more vulnerable to a public health emergency and the measures taken to respond to it. This again demonstrates the need for a human rights framework at a national level.

Yours sincerely



Scott McDougall
Queensland Human Rights Commissioner