



Independent Review of the COVID Policy Response

Submission (29 July 2022)

I am making this submission in my role as the Human Rights Commissioner with the Australian Human Rights Commission. The National Children's Commissioner is also making a submission. In this submission I will seek to highlight the impact of Australia's policy response to the COVID-19 pandemic from a human rights perspective. The submission will also make several suggestions as to how Australia can identify necessary lessons to ensure human rights are prioritised and protected in responding to any future health crisis.

1. What impact did the pandemic have on you and your community?

While acknowledging that Australia has, in many respects, dealt with the COVID-19 pandemic comparatively well from a public health perspective, there is no doubt that there have been wide-ranging and long-lasting social and community impacts. Some of the broader impacts include an increase in mental health issues, disruption in children's schooling, an increase in domestic and family violence, social isolation, family separation, job insecurity, and the impact on businesses. The impact of restrictions on individuals, families and communities has been substantial.

The pandemic and pandemic response have also led to significant limitations on people's rights and freedoms. While governments are able to legitimately restrict many human rights in response to a public health emergency, these restrictions always need to be justified, non-discriminatory and proportionate. There has been considerable debate over the extent and duration of restrictions, and the balance to be struck between our individual human rights and responsibilities to the broader community.

2. What worked well in governments' policy responses to reduce the impact of the pandemic on you and your community?

It is acknowledged that from the perspective of health and economic outcomes, governments' policy responses reduced the immediate impact of the pandemic in Australia. Australia's overall COVID-19 mortality rate is relatively low from a global perspective, and our economic performance has been relatively strong.

One example of measures that reduced the economic impact of the pandemic is the JobKeeper and JobSeeker payments. The [ANU Centre for Social Research and Methods concluded](#) that in June 2020 there were 1.1 million Australians living in poverty, compared with an estimated 3.8 million had the payments not been in place. These payments also highlighted questions about the adequacy of pre-pandemic welfare payments, and the transformative impact of the increased payments in lifting people out of poverty.

Another aspect of the pandemic response that has allowed for increased flexibility and accessibility is the expanded capacity to work and learn from home, and an increase in essential services being made available online. While I acknowledge the negative and inequitable impacts that working and learning from home requirements can have, there have also been some positive benefits emerging from the greater flexibility required from schools and workplaces during this period.

3. What didn't work well in governments' policy responses to reduce the impact of the pandemic on you and your community?

While there were positive aspects from a public health and economic perspective, Australians have also had to live with some of the most restrictive pandemic response measures in the world. From a human rights perspective, governments' policy responses have been imposed at a significant cost, and have had a substantial and long-lasting impact.

Prior to the onset of the COVID- 19 pandemic, Australia had in place a national plan to manage an influenza pandemic, titled '[Australian Health Management Plan for Pandemic Influenza](#)'. This plan makes no substantial mention of human rights (beyond a single reference to individual liberty as being part of 'an ethical framework to guide health sector responses'), and does not expressly consider how potential response measures affect human rights. Similarly, the [Australian Health Sector Emergency Response Plan for Novel Coronavirus \(COVID-19\)](#) prepared by the Department of Health in 2020 refers to 'individual liberty' as being one of the values that 'will be taken into account when planning and implementing actions under this plan' but contains no further references to human rights and no guidance as to how they should actually be taken into account.

The failure to embed human rights considerations into pandemic planning has resulted in policy responses that have given inadequate consideration to human rights, and that have been criticised as potential breaches of international human

rights standards – without a full justification from a human rights perspective. Some examples include international and interstate border closures; extended periods of lockdowns, curfews and other restrictions on movement; hotel quarantine; vaccine mandates; and disparities in the severity of restrictions and responses in different localities. These are only some of the human rights impacts that have been raised by Australians with me, and with the Commission. The impact that pandemic response measures have had on the human rights of Australians is wide-ranging and should, in my view, be the subject of a separate review, building on existing work.

Arguably, the clearest example of a response measure that potentially breached Australia's international human rights obligations was the closing of international borders, including for Australian citizens. This left many Australians stranded overseas and prevented Australians from leaving the country without an exemption. While I acknowledge the effectiveness of the international border closures from a public health perspective, I am also acutely aware of the personal impact of these restrictions on individuals and families.

Perhaps the most serious example was the [announcement by the Australian Government on 1 May 2021](#) of a ban on all flights from India, with the emergency determination meaning that any person caught entering Australia from India faced five years imprisonment and/ or a \$66,000 fine. This effectively left 9000 Australian citizens stranded in India, with some reporting that they felt abandoned by their country. This is the first time in history that Australia has taken the extraordinary step of potentially criminalising its own citizens for returning home.

There is a serious question as to whether this breached Australia's obligations under Article 12(4) of the *International Covenant on Civil and Political Rights*. Article 12(4) states that '[no one shall be arbitrarily deprived of the right to enter his own country](#)'. In [General Comment No. 27 \(Freedom of Movement\)](#) the UN Human Rights Committee states 'that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable'. While the Australian Government stated that the decision was based upon the need to protect 'the integrity of the Australian public health and quarantine systems', the reasonableness and proportionality of this measure raises serious human rights concerns.

4. What should be done now to better prepare for the next health crisis?

It is vital to ensure that all aspects of Australia's pandemic response are reviewed to allow us to be better prepared for the next health crisis. In particular, governments' must focus on ensuring that future emergency planning incorporates human rights considerations as a priority. By incorporating human rights into pre-pandemic planning, an appropriate balance can be struck between protecting public health and safeguarding other human rights. A future plan should also clearly explain how particular policies interact with existing human rights protections within Australia, and international human right instruments.

5. What other issues would you like to raise with the Panel?

There are two other key issues that I would like to raise with the Panel.

The first is to acknowledge that the COVID-19 pandemic is ongoing, and that pandemic restrictions are still in place to varying degrees across Australia. While I have submitted that a review of Australia's pandemic response is essential and that future emergency planning needs to incorporate human rights considerations, human rights also need to be prioritised right now as governments' continue to adjust their pandemic response measures in response to changing circumstances. It is critical that any ongoing or new restrictions are justified, non-discriminatory and proportionate. Restrictions need to be targeted to risk, and regularly reviewed as the assessment of the public health risk changes.

The second is to recommend that all Australian governments should review their use of emergency powers, and the safeguards that underpin those frameworks. It is concerning that in some jurisdictions state of emergency declarations – which are extraordinary measures intended for short-term use in a crisis situation – have been in place for well over two years. While a state of emergency declaration may be necessary as part of an immediate pandemic response, it inevitably transfers significant power to the Executive branch of government, reduces parliamentary oversight and scrutiny, and has a potentially significant impact on human rights. The normalisation of these declarations is concerning and should be reviewed.

Conclusion

While there are aspects of Australia's pandemic response that worked effectively, Australians have had to live with some of the most restrictive response measures in the world and the impact on individual human rights has been substantial. Even in the middle of an emergency, human rights matter. It is essential that Australia's pandemic response is fully and formally reviewed in terms of its impact on human

rights, and that future emergency planning incorporates human rights considerations as a priority.