

14 March 2022

## Time for pandemic-specific legislation, says Human Rights Commissioner

The Queensland Human Rights Commissioner has again called on the State Government to introduce comprehensive pandemic legislation to parliament instead of again extending the current emergency provisions of the *Public Health Act 2005*.

Appearing before a parliamentary committee today, the Commissioner said he is concerned there may not be sufficient justification for continuing the limitations on human rights under the current framework.

“Throughout the pandemic we have generally supported the Government’s approach – particularly given their obligation under the Human Rights Act to protect the right to life,” says Commissioner Scott McDougall.

“It has not been my role to provide a running public commentary on whether those measures have been reasonable or justifiable, but it seems clear that they have allowed time for a large proportion of Queenslanders to be vaccinated, which in turn has minimised the effects of the pandemic for both our population and our health system.”

The Commissioner says that without access to the relevant evidence and expertise upon which the Government has based their COVID-19 restrictions, he has been very careful throughout the pandemic not to undermine public health responses.

“However, it’s now time to replace these temporary emergency measures with fit-for-purpose pandemic legislation which is transparent, accountable, and more compatible with human rights,” Mr McDougall told the committee.

“Victoria already has already legislated such a framework with several human rights protections built in.”

The Commissioner also used his appearance before the committee this week to reiterate that the Government must urgently clarify, through legislation, how the state’s Human Rights Act applies to the Chief Health Officer’s powers to make public health directions.

“There is currently some uncertainty about how the Act applies to the directions of the CHO, and therefore how the compatibility with human rights is assessed,” says Mr McDougall.

The lack of consultation and resulting confusion in the application of some public health directions was also highlighted.

“Not all directions need prior consultation, but the introduction of some measures would have greatly benefited from an expedited consultation process with affected stakeholders,” says the Commissioner.

The Commissioner says that mask mandates are an example of one measure which could have greatly benefited from better consultation with community.

“Businesses and services – small businesses in particular – which were already under pressure from the constantly changing situation and what it meant for day to day operations, felt forced to police public health directions, and at the same time were not necessarily clear on what those directions required or allowed for.

“The stress and confusion created for businesses and members of the public potentially could have been avoided if there was consultation by the Minister that extended beyond just taking the advice of the CHO and resulted in some form of workable exemption arrangement that enabled people to voluntarily identify that they qualified for a mask exemption.”

The Commission says it has been inundated with enquiries and complaints about the application of mask mandates – even producing a guide for businesses about them, in the absence of government advice. Almost 900 COVID-related complaints have been made to the Commission since the pandemic began, and the Commissioner says a ‘significant number’ of those relate to mask requirements.

The Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022 is currently before the Queensland Parliament’s Community Support and Services Committee for inquiry. The Commission’s submission to the inquiry states it does not support the extension of the current provisions, and that they should be replaced by specific pandemic legislation to amend some of these issues.

The Commission is also recommending that any future pandemic legislation should include:

- independent oversight and review of decisions made under public health directions, in particular review of decisions to detain people in quarantine;
- additional safeguards and supports built in to minimise limitations on human rights, prevent potential misuse of power and mitigate the risk of entrenching inequality;
- humane quarantine conditions, including daily access to fresh air, should quarantine still be a necessary measure; and
- firm time limits.

The Commission’s submission is available to read at <https://www.qhrc.qld.gov.au/resources/submissions>. The committee is due to report back to parliament by 25 March 2022.

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