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# Introduction

1. Thank you for the opportunity to make a submission to this important inquiry. Australians have been subjected to extraordinary restrictions, the like of which have not been seen for generations. It is critically important that the community has the opportunity to report on the impact of these changes, particularly to assess unintended consequences, and to inform future government decisions. We are grateful for the opportunity to share our observations at the Queensland level about the impact of the Australian Government’s response to this crisis.
2. The Queensland Human Rights Commission (the Commission) has functions under the *Anti-Discrimination Act 1991* (Qld) and the *Human Rights Act 2019* (Qld) to promote an understanding and discussion of human rights in Queensland, and to provide information and education about human rights.
3. In fulfilling these functions, the Commission has closely monitored the impact on the Queensland community — both positive and negative — of government responses to the COVID-19 pandemic.
4. The Commission wishes to bring to the attention of the Committee some critical human rights issues arising from the Australian Government’s response. These include the:
* benefit of human rights legislation in government responses to pandemics such as COVID-19;
* impact of the Commonwealth *Biosecurity Act 2015* restrictions;
* need to protect members of the community from public abuse, particularly because of their race, through a positive national campaign; and
* need to consider a nationally consistent, ethical framework for allocating resources (should the scarcity of critical care seen elsewhere occur in Australia).

# Human rights legislation

1. On 1 January 2020, the *Human Rights Act 2019* (Qld)came into full effect, and established a new framework of human rights protections for people in Queensland. Based on similar legislation in the ACT and Victoria, the Queensland Act created new obligations that:
* **Parliament** must consider human rights when proposing and scrutinising new laws.
* **Courts and tribunals,** so far as is possible to do so, must interpret legislation in a way that is compatible with human rights.
* **Public entities** — such as state government departments, local councils, state schools, the police and non-government organisations and businesses performing a public function — must act compatibly with human rights.
1. The Queensland *Human Rights Act* has proved to be an important safeguard for assessing the unprecedented restrictions introduced in response to COVID-19. Firstly, by requiring that all primary legislation introduced in response to the pandemic is accompanied by a compatibility statement. These compatibility statements provide transparency about the human rights of people in Queensland impacted by the changes, and how the government considers them the least restrictive way of achieving the important purpose of protecting lives. This analysis allows key stakeholders, such as the Commission and the broader community, the opportunity to consider these justifications and monitor whether the factors that justify them still arise.
2. Secondly, one of the Queensland Government’s responses has been the creation of new powers for ministers to change legislation via regulation.[[1]](#footnote-1) One critical safeguard for this extraordinary new power is that the *Human Rights Act* requires subordinate legislation to be accompanied by certificates explaining the relevant minister’s view on human rights compatibility.[[2]](#footnote-2) This creates a level of accountability and confirms that the government has considered human rights and justified any limitation when exercising such unprecedented powers.
3. Even after these significant legislative changes were made, the obligations to act and make decisions which are compatible with rights remain. These obligations apply to Queensland Government departments and agencies, local councils, and organisations providing services to the public on behalf of the state government. To fulfil these obligations, such entities must give proper consideration to human rights in decision making.[[3]](#footnote-3)
4. For example, when the Chief Health Officer has considered an exemption from the restrictions for an individual, she is required to consider if any limitation on rights is proportionate. Further, a social housing provider who was required to change the rules for who can visit rooming accommodation during COVID-19 reported to us that they found the proportionality test in the Act to be a valuable framework to help them appropriately balance resident rights with health and safety risks. We also acknowledge the work of Queensland Corrective Services in providing greater access to videoconferencing in prison to facilitate family visitation as a way of lessening limitations on rights relevant to regular contact with family.
5. Public entities are held accountable for their decisions through court and tribunal proceedings. In relation to decisions made in response to COVID-19, the *Human Rights Act* has been considered in recent court and tribunal matters in relation to guardianship, sentencing, mental health, bail, local government elections, and residential tenancy matters.
6. The Commission deals with human rights complaints against public entities for alleged contraventions of the Act, and has received complaints about how individual public entities have responded to the crisis. The Commission works with public entities to resolve complaints through conciliation, which may result in systemic state-wide policy change.
7. While parliamentary scrutiny measures exist at the Commonwealth level to consider human rights, we suggest that this crisis demonstrates the importance of a more comprehensive system. A national human rights act would protect the rights of all Australians, particularly when they are most at risk such as during a crisis like this pandemic.

# Biosecurity Act

1. The Commission has concerns about the duration of the Commonwealth Government’s blanket restrictions placed on remote Indigenous communities under the *Biosecurity Act 2015* (Cth). The relevant determination, made in March, placed significant restrictions on multiple rights including freedom of movement in and out of certain remote communities in Queensland.[[4]](#footnote-4)
2. We appreciate that the Australian Government imposed these restrictions to protect vulnerable communities, particularly Aboriginal and Torres Strait Islander peoples, and consulted, albeit urgently, with local communities and community controlled health services on these restrictions.
3. As a result of the restrictions and the hard work and discipline of many people living and working in the designated areas, there have been no positive COVID-19 cases in any of Queensland’s discrete Indigenous communities. This is a very commendable outcome, particularly when we look at the devastation this virus is causing in First Nations populations internationally.
4. However, the lack of consistency between the restrictions imposed by the Commonwealth on designated Indigenous communities and those imposed by the state on the rest of Queensland, caused significant frustration in some communities, including Palm Island and Yarrabah.
5. For example, the Queensland Chief Health Officer lifted restrictions imposed on Aboriginal and Torres Strait Islander communities in other parts of the state such as North Stradbroke Island on 16 May 2020.[[5]](#footnote-5) Throughout May, the Queensland Government also loosened restrictions across Queensland, including by allowing residents to travel greater distances. In contrast, restrictions under the Commonwealth *Biosecurity Act* remained static - thereby preventing residents of designated Indigenous communities from travelling as far as others in Queensland and requiring many to quarantine for 14 days.
6. The Commission is also aware of other community concerns arising from these restrictions including:
* Inflexible restrictions on the ability of people to quarantine within a designated area.
* Lack of mental health and cultural supports for those subject to quarantine.
* Traditional fishing, hunting and food gathering areas being outside the designated areas preventing traditional practices. (This did not appear to be a deliberate measure to address risk of infection, but an unintended consequence of designated areas being based on the boundaries of local government areas).
* Frustrations that non-Indigenous people, presumably undertaking certain functions deemed ‘essential activity’ under the determination, are able to visit and leave these communities without quarantining.
* Lack of access to essential goods such as groceries and clothing due to travel restrictions and the increased price of such goods inside of some designated areas.
1. The Commission believes alternative protections which reflect and understand the unique needs of different communities are better developed under more flexible state-based public health directives. This would require the Queensland Government to work closely with our Aboriginal Community Controlled Health Services and Local Disaster Management Committees, to ensure that the voices of Indigenous Queenslanders are heard and valued as part of informed decision making about pandemic protections.
2. If such Commonwealth-based restrictions under the *Biosecurity Act* are considered in future, we note that the price of goods in these designated Indigenous communities was a particular issue of concern. We note that a specific determination was made to protect against ‘price gouging’ of health supplies.[[6]](#footnote-6) We suggest that in future consideration be given to applying such protections to essential food and clothing also, particularly in areas designated for specific restrictions.

# Racial vilification

1. As the body responsible for handling complaints of racial vilification in Queensland, the Commission is concerned about the reported increase in anti-Chinese and anti-Asian sentiment in some sections of the community during the pandemic. We have received enquiries and complaints from people of Chinese and Asian descent who have experienced racial vilification and discriminatory treatment when trying to obtain goods and services. For example, there were allegations of being told things such as, ‘you brought in coronavirus’, and you should ‘go back to where you came from’, and being refused service on the basis of their race. We have also heard from a vocational education provider who are hearing first hand from their Asian students that they are experiencing increased vilification in the community.
2. The Commission is working with complainants to resolve these complaints, but a common difficulty in vilification matters is identifying respondents when comments are expressed by strangers in public places.
3. We are also concerned that the number of complaints we have received is not representative of the full scale of the problem. It is believed that there are several factors which may dissuade victims of this behavior to make formal complaints, including confusion about the process or the correct body to complain to, a reluctance to engage in a conciliation with perpetrators (or a belief this would have few positive outcomes), or the difficulty in naming or locating a respondent.
4. The Commission suggests that a preventative mechanism to address this behavior is more positive messaging at the national level. This could include the Federal Government funding a national campaign promoting the benefits of Australia’s rich multicultural community. National leadership and consistent messaging, particularly from the Australian Government, would send an important message that the community disagrees with racist conduct. Such a campaign could clarify how and who to report such incidents to, as well as emphasise the critical role bystanders play in calling out racism the moment it happens, empowering and supporting victims, and restating community expectations about behaviour. The Commission has produced resources to promote positive messaging about racial diversity and the important role bystanders can play in stamping out racism, and would welcome the opportunity to participate in a national campaign.
5. The establishment by Australia’s law enforcement agencies of a national data base for hate-motivated crimes would also be a positive response to the current situation. This would provide an evidence base to inform strategies to address hate crime. As Chin Tan, the Federal Race Discrimination Commissioner, has noted, complaints received by anti-discrimination bodies do not tell the full story of what is happening in the community, nor do they illustrate the sustained spike in racism that has been widely observed. Publishing statistics from law enforcement agencies would be likely to show a more accurate picture, and would encourage the adoption of a uniform, national system for defining, classifying, and recording hate-motivated crimes, and training for all police forces within Australia to use the system.
6. As Mr Tan has observed,

A comprehensive collection and evaluation of data should be a cornerstone of a national anti-racism strategy, as it would tell us how we are doing at combating racism. It would tell us where hotspots are and where we need to focus our attention. It would provide a true indication of trends that need addressing, such as the spike in racism prompted by COVID-19. And, most importantly, it would mean anyone who experiences or witnesses racism could have confidence their story would support efforts to stamp out racism altogether.[[7]](#footnote-7)

# Nationally consistent framework for Health

1. For some nations, their response to the COVID-19 pandemic has shown that health resources are insufficient to deal with the crisis, particularly in the emergency care setting.
2. The Commission acknowledges that health practitioners seek to apply a sophisticated set of ethical frameworks in decision-making in critical care and other health settings. Significant work has already been done by the Australian, state, and territory governments and professional bodies in this area. The Commission has welcomed in particular the opportunity to work with Queensland Health officials on developing a robust framework in Queensland to guide how health practitioners can approach these complex issues, should scarcity of health resources become an issue.[[8]](#footnote-8)
3. The Commission continues to work with the Queensland government to ensure that human rights are considered in decision-making throughout the health system, particularly regarding critical care. This ensures that such systems do not apply or entrench unconscious bias against certain groups, such as people with disability and older Australians, and provides a transparent set of human rights-compatible considerations for health professionals faced with scarce critical care resources. This includes preventing overreliance on potentially discriminatory tools such as the clinical frailty scale and diagrams that have the potential to promote bias.
4. While we support the Queensland Government’s efforts in this area, we suggest a nationally-consistent framework, such as that in the United Kingdom, would be a further positive step.[[9]](#footnote-9) At this time when Australia has been so successful in ‘flattening the curve’, we require capacity across the health sector and broader community to develop such guidance. It would provide some certainty for health professionals and the community about how critical decisions will be made, in the event of dealing with a scarcity of emergency care facilities, as has been faced by other countries.

# Conclusion

1. Thank you for the opportunity to make a submission to this important Inquiry, which provides an important mechanism to learn from the government response to this pandemic. It is unpredictable when we may find ourselves again having to consider extraordinary restrictions on our liberty and other rights, whether in response to a second COVID-19 wave or a future new pandemic. The learning from this pandemic will help Australia to be best placed to act effectively and appropriately the next time we face such a crisis.
2. The Queensland *Human Rights Act 2019* has proved an important tool to guide policy-making, inform critical decisions, and assess the impact of restrictions on individuals. The Commission suggests this demonstrates the need equivalent national legislation to protect the rights of all Australians.
3. We suggest the Committee consider recommendations about:
4. Recognising the benefit of human rights legislation to guide government responses to pandemics such as COVID-19;
5. Supporting a positive national campaign to protect various groups of the Australian community who experience more frequent racial hatred, abuse and vilification, and to enhance the ability of the community to remain cohesive during and after critical events that can give rise to racial vilification; and
6. Supporting the endorsement of a nationally consistent, ethical framework for allocating scarce emergency care medical resources (should the scarcity of critical care resources seen elsewhere in the world occur in Australia).

1. *COVID-19 Emergency Response Act 2020* (Qld). [↑](#footnote-ref-1)
2. *Human Rights Act 2019* (Qld) s 41. [↑](#footnote-ref-2)
3. *Human Rights Act 2019* (Qld) s 58 [↑](#footnote-ref-3)
4. *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Determination 2020* [↑](#footnote-ref-4)
5. *Restricted Access to Designated Areas Direction (No.3)* made under the *Public Health Act 2005* (Qld) [↑](#footnote-ref-5)
6. *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Essential Goods) Determination 2020* [↑](#footnote-ref-6)
7. ABC News, ‘COVID-19 has prompted a spike in racist attacks. We need to start tracking them better’, *ABC News Analysis,* 9 May 2020 (Chin Tan) <<https://www.abc.net.au/news/2020-05-09/coronavirus-covid-19-racist-attacks-data-collection-strategy/12229162?nw=0>> [↑](#footnote-ref-7)
8. Queensland Health, *Queensland ethical framework to guide clinical decision making in the COVID-19 pandemic* (2020) <<https://www.health.qld.gov.au/__data/assets/pdf_file/0025/955303/covid-19-ethical-framework.pdf>> [↑](#footnote-ref-8)
9. National Institute for Health and Care Excellence (UK), *COVID-19 rapid guideline: critical care in adults* (2020) <<https://www.nice.org.uk/guidance/ng159/chapter/4-Clinical-decision-making>> [↑](#footnote-ref-9)