



Australian
Human Rights
Commission

Human Rights Commissioner
Lorraine Finlay

10 January 2024

Committee Secretary
Senate Legal and Constitutional Affairs Committee

By email: legcon.sen@aph.gov.au

COVID-19 Royal Commission Terms of Reference Inquiry

The Australian Human Rights Commission (Commission) thanks the Senate Standing Committee on Legal and Constitutional Affairs for the opportunity to provide a submission to this COVID-19 Royal Commission inquiry.

A Royal Commission is the best option to undertake a comprehensive examination of the overall COVID-19 pandemic response in Australia with the aim of improving Australia's preparedness for future pandemics. I support the proposal for such an inquiry.

It is recognised that there have already been a range of inquiries that have looked at different aspects of the pandemic response. This includes the [Commonwealth Government COVID-19 Response Inquiry](#) that is currently underway and is due to deliver a Final Report by the end of September 2024. While the Commission has welcomed these inquiries, and engaged with many of them,¹ they are not sufficient substitutes for a properly constituted Royal Commission.

The COVID-19 pandemic has been described as 'the most significant global crisis that we have faced in decades'.² A Royal Commission is recognised as being 'the highest form of inquiry on matters of public importance'³ and, as such, is the appropriate form of inquiry given the critical importance of reviewing the pandemic response in order to improve Australia's future emergency preparedness. The powers of a Royal Commission to request documents, summons witnesses, take evidence under oath, and hold public hearings are essential to ensure that the pandemic response can be reviewed in a comprehensive way.

There are a number of key considerations that should be included in the terms of reference for a COVID-19 Royal Commission if it is to effectively examine Australia's overall pandemic response.

The first is to ensure that human rights are a central focus of the terms of reference.

The full human cost of the pandemic was substantial and cannot be measured by considering only the direct health and economic impacts. Australians lived with some of the most restrictive pandemic response measures in the world, and measures such as international and interstate border closures, hotel quarantine, extended periods of lockdown, school closures, curfews and other restrictions on movement and association,

Australian Human Rights Commission
Human Rights Commissioner
Lorraine Finlay

vaccine mandates, mask mandates, and playground closures all had significant impacts on individuals, families and communities.

While it is recognised that governments are able to legitimately restrict many human rights in response to a public health emergency, 'these restrictions must meet the requirements of legality, necessity and proportionality, and be non-discriminatory'.⁴ An express requirement to consider human rights impacts contained within the terms of reference would ensure that a Royal Commission was able to fully examine these issues.

The second key consideration is to ensure that actions (and interactions) across all levels of government throughout Australia are within the scope of a Royal Commission. It is simply not possible to assess the impact of the pandemic response comprehensively if a Royal Commission is only able to look at what was done by the Federal Government. The Australian pandemic response was driven by complex interactions between Commonwealth, State and Territory governments, all of which had overlapping responsibilities. The role played by National Cabinet also needs to be part of any review. Examining the actions of any one level of government in isolation can only ever reveal part of this picture.

Australia is a federation, and our review of the pandemic should reflect this. For this reason, a Royal Commission should be established jointly by federal and state governments so that it truly has the capacity to undertake a comprehensive examination of the overall pandemic response in Australia. The terms of reference need to ensure that the Royal Commission is able to cross jurisdictional lines. We need every part of our federation working together to ensure Australia is as prepared as possible for future pandemics or other emergencies.

It is also critical to ensure that public consultations and open public hearings are a key element of a Royal Commission. The impacts of the pandemic response measures were not experienced uniformly across Australia. There were significant differences in the severity of restrictions and responses in different areas, and it was often already marginalised and disadvantaged communities who were required to bear a disproportionate burden. It has also been widely recognised that the COVID-19 pandemic created specific risks and concerns with respect to different sections of the Australian community, including (but not limited to) children, culturally and linguistically diverse (CALD) communities, older Australians, Indigenous Australians, people with disabilities, and people in detention. To ensure that these human impacts are fully understood, it will be critical for a Royal Commission to give all of these voices an opportunity to be heard.

A jointly established Royal Commission is the best way to ensure that Australia's pandemic response is comprehensively examined, with the aim of improving Australia's preparedness for future emergencies.

Australian Human Rights Commission
Human Rights Commissioner
Lorraine Finlay

I would welcome the opportunity to expand on any of the above recommendations, or to provide any further assistance to the Committee.

Yours sincerely

Lorraine Finlay
Human Rights Commissioner

¹ See, for example, COVID-19 Response Inquiry Submission (Submission by Human Rights Commissioner, 15 December 2023); Inquiry into the Department of Foreign Affairs and Trade's crisis management arrangements (Submission to the Joint Committee of Public Accounts and Audit, 4 November 2022); Independent Review of the COVID Policy Response Submission (Submission by Human Rights Commissioner, 29 July 2022); Independent Review of the COVID Policy Response Submission (Submission by Children's Commissioner, 29 July 2022); Review of the National Emergency Declaration Act 2020 (Cth) (Submission to the Senate Legal and Constitutional Affairs Legislation Committee, 24 March 2021); Senate Select Committee on COVID-19 (Public Hearing, 22 September 2020); Inquiry into the Implications of the COVID-19 pandemic for Australia's foreign affairs, defence and trade (Joint Standing Committee on Foreign Affairs, Defence and Trade, 30 June 2020).

² Prime Minister & Minister for Health and Aged Care, *Improving future preparedness: Inquiry into the response to the COVID-19 pandemic* (Media Release, 21 September 2023).

³ See <<https://www.royalcommission.gov.au/about-royal-commissions>>.

⁴ Office of the United Nations High Commissioner for Human Rights, *Emergency Measures and COVID-19: Guidance* (27 April 2020).