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Attn: Committee Secretary , Sophie Dunstone

Inquiry into appropriate terms of reference for a COVID-19 Royal Commission

Noting that a fully empowered Royal Commission with appropriate terms of reference is necessary to learn from the unprecedented government response to COVID-19: The appropriate terms of reference for a COVID-19 Royal Commission that would allow all affected stakeholders to be heard.

Civil Liberties Australia congratulates the Committee for inviting community input into framing the Terms of Reference (ToRs). This is a valuable and welcome initiative.

CLA believes that, because there was indeed an “unprecedented government response” to COVID 19, the ToRs for a Royal Commission need to be more wide-ranging than usual, and to some extent more open-ended. We propose that the ToRs include, at least, to ***Examine, Report on and Provide recommendations for future improved response to COVID-19 and any potentially widely impactful public emergency***, along these lines:

(a) all aspects of the response to COVID-19 that could be regarded as "unprecedented". These would include:

- why and how, legally or illegally, states "closed" to other states, forbidding free travel and exchange of people, goods and services, including restrictions on citizens of the states and of other states which varied widely for no apparent good reason;
- where, when and how restrictions were applied to citizens and businesses in an arbitrary and illogical manner;
(<https://www.theguardian.com/law/2020/apr/03/man-eating-kebab-on-bench-among-50-people-fined-in-nsw-and-victoria-for-violating-coronavirus-laws>)
- why there was curtailment of a citizen's right to leave Australia, and to enter Australia, if the citizen was not suffering a health issue or was legally restricted; and
- lack of, or insufficient, regard for impact on isolated and vulnerable people (aged, disabled) and their relatives, and on the relatives and close friends of the sick, imminently dying and recently deceased.

(b) underlying Acts of Parliaments and/or Regulations titled "Emergency" or of like kind/name (eg, 'Health Provisions in an Outbreak', 'Public Misbehaviour Laws', etc) that

impacted on the powers that governments believed they possessed to act in a reactionary and arbitrary manner during COVID. This would include:

- providing examples of times such beliefs, and subsequent actions, by states were deleterious to the human rights and civil liberties of citizens; and
- providing recommendations for all those Acts/Regulations which should be re-examined and re-written at the federal and state level.

(c) the absence of mechanisms by which citizens could lodge appeals against arbitrary government decisions and behaviour, and the absence of a Human Rights Act or similar (with its basis being a "No Rights Without Remedy" principle) to provide the ethical infrastructure for government decisions, with the outcome of quicker, simpler, easier, and as inexpensive as possible remedies for individual human rights and civil liberties breaches.

This examination should include:

- the need to provide police, emergency workers and defence people with clear and rigorous guidance as to application of laws/regulations in emergency situations, and that they should operate to mandatory directions that enforce educational warning as a prime and preferred resort and a fine, arrest or imprisonment as last resorts.
- how to ensure the core principle of this strategic and operational guidance is minimal interference with people's freedom of movement, association and speech, in line with traditional Australian belief and practice as to rights and liberties...as summarised in the words and notion of a "fair go".

(d) the need for a federal and state, comprehensive and uniform, nationwide strategy for "emergency" and like situations which is clearly explained to communities in advance, regularly, through educational mechanisms and multiple media outlets, continuously.

(e) the need for a nationwide social impact survey to evaluate long term effects of the "unprecedented government response" to COVID-19 and a series of programs to mitigate harmful effects.

(f) the need to review any new (and pre-existing) legislation nationwide stemming from the COVID-19 Royal Commission, along with national social impact surveys, every five years.

Yours truly

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NOTE: "States" includes the jurisdictions of "Territories" for all the above comments.