



Inquiry into the Queensland Government's health response to COVID-19

Submission to
Queensland Parliament
Health, Communities, Disability Services and
Domestic and Family Violence Prevention Committee

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Table of contents

| | |
|---|----|
| Summary | 2 |
| The <i>Human Rights Act</i> as safeguard | 3 |
| Queensland Human Rights Commission COVID-19 response | 4 |
| Commission functions | 4 |
| Restrictions register..... | 4 |
| Systemic responses to human rights issues..... | 4 |
| Community education on human rights | 5 |
| COVID-19 enquiry and complaint data | 5 |
| Closed environments | 6 |
| Prisons and youth detention - overview..... | 7 |
| Prisons..... | 8 |
| Youth detention..... | 10 |
| Systemic oversight..... | 10 |
| Mandatory hotel quarantine..... | 11 |
| At risk communities..... | 12 |
| Triage framework for frontline health workers | 13 |
| People with disability | 13 |
| Culturally and linguistically diverse (CALD) communities..... | 16 |
| Aboriginal peoples and Torres Strait Islander peoples | 17 |
| Regional and remote communities | 18 |
| Cost of food and other groceries..... | 19 |
| Boarding schools | 19 |
| Young people in out-of-home care | 20 |
| People experiencing housing instability and homelessness..... | 21 |
| Emergency response | 22 |
| Public health directions..... | 22 |
| Enforcement and community policing..... | 24 |
| Parliamentary process..... | 25 |
| Recommendations | 26 |

Summary

1. The Queensland Human Rights Commission (the Commission) welcomes this Inquiry, which provides an opportunity to reflect on the government's response to the COVID-19 pandemic and develop an understanding of how the response may be further improved in the event of another health emergency.
2. The Queensland Government must be commended on implementing robust measures to protect the most fundamental of human rights, the right to life. The strict lockdown measures have 'flattened the curve' (the number of new virus cases from one day to the next) and minimised the fatalities that might otherwise have occurred, as evidenced by the devastating situation in many countries overseas, and more recently by the increase in cases in Victoria.
3. In summary, the Commission submits that:
 - The *Human Rights Act 2019* has proven to be an important safeguard of the rights of people in Queensland.
 - Further attention should be given to the impact of COVID-19 and restrictions on particular at risk communities, and the need for consultation and clear communication recognised.
 - Restrictions put in place to stop the spread of COVID-19 must be subject to scrutiny, have exceptions and appeal processes, and be properly monitored on an ongoing basis to ensure they remain reasonable, necessary, and proportionate to the health risk.
 - The foregoing of usual parliamentary scrutiny and stakeholder input (as happened during the COVID response), at times without due consideration of the genuine urgency of the issues, affects transparency and undermines community confidence in the parliamentary process, particularly important in Queensland's unicameral system.
 - The COVID-19 pandemic has highlighted the need for independent oversight of closed environments.
 - The powers vested under Chapter 8, Part 7A of the *Public Health Act* should be limited to only apply during a declared public health emergency.

A more fulsome list of recommendations is provided at the conclusion of this document under the title *Recommendations*.

The *Human Rights Act* as safeguard

4. The Queensland *Human Rights Act 2019* (the HRA) has proven to be an important framework for assessing the impact on human rights of the significant restrictions introduced in response to COVID-19.
5. Firstly, the HRA requires that all primary legislation, including that introduced in response to the pandemic, is accompanied by a compatibility statement. These compatibility statements provide transparency about the impact on human rights of people in Queensland, and why the government considers that the legislation is the least restrictive way of achieving the important purpose of protecting lives. This analysis provides key stakeholders, such as the Commission and the broader community, with the opportunity to consider these justifications and monitor whether the factors that justify them remain.
6. Secondly, one of the Queensland Government's responses was to create new powers for ministers to change legislation via regulation.¹ A critical safeguard for this extraordinary new power is that the HRA requires subordinate legislation to be accompanied by a certificate explaining the relevant minister's view on human rights compatibility.² This creates a level of accountability and confirms that the government has considered human rights and justified any limitations when exercising such powers.
7. Even after these significant legislative changes, the obligation to act and make decisions which are compatible with rights remains. 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 For example, when the Chief Health Officer considers an exemption from restrictions imposed on an individual, she is required to consider if any limitation on rights is proportionate.
8. Finally, the Commission's complaints process under the HRA has resolved human rights complaints arising under COVID-19 restrictions in a timely manner. This new complaints process could not have had a more stringent test in its first year of operation than in the context of public entities responding to a pandemic. Yet it has proved a highly effective way of resolving complaints that may not have otherwise come to the attention of

¹ *COVID-19 Emergency Response Act 2020*.

² *Human Rights Act 2019* s 41.

³ *Human Rights Act 2019* s 58.

the agency (see example below under heading *Covid-19 enquiry and complaint data*).

Queensland Human Rights Commission COVID-19 response

Commission functions

9. The Commission has functions under the *Anti-Discrimination Act 1991* and the *Human Rights Act 2019* to promote an understanding and discussion of human rights in Queensland, and to provide information and education about human rights. In response to the COVID-19 pandemic, the Commission, has been:
 - monitoring and recording human rights restrictions;
 - engaging with the community to identify and respond systemically to human rights issues;
 - publishing information for the community on human rights;
 - responding to enquiries regarding COVID-19; and
 - conciliating complaints regarding COVID-19.

Restrictions register

10. The Commission has been monitoring significant human rights restrictions imposed in response to the pandemic, with a view to ensuring that they remain the least restrictive way of achieving the purpose of safeguarding the lives of people in Queensland. The Commission is also monitoring restrictions to ensure that they do not have a disproportionate impact on vulnerable members of the community, and that restrictions on fundamental rights – such as the right to liberty and right to freedom of movement – are removed when no longer required to protect public health.
11. While current restrictions would appear to be imposing justifiable limitations on rights in order to achieve the legitimate goal of public safety it is vital that they do not stay in place for longer than necessary, or limit rights to a greater extent than necessary. The Commission has initiated a register of restrictions imposed as part of the COVID-19 response, and will be monitoring the length and severity of restrictions.

Systemic responses to human rights issues

12. Early on, the Commission identified the communities and sectors which would be particularly affected by COVID-19 and the human rights issues that might arise. The Commission then consulted broadly to inform our understanding and form an effective response and communication

strategy. This included approaching relevant departments to seek clarification, bringing issues to their attention, and making recommendations for improvement. Much of this work undertaken by the Commission is outlined in this submission below.

Community education on human rights

13. The Commission's COVID-19 and Human Rights web page⁴ has accessible and up-to-date information for the community about relevant human rights issues arising during the COVID-19 pandemic. In addition, three new fact sheets were developed by the Commission:

- Protecting human rights in locked environments during COVID-19: fact sheet;
- COVID-19 and bail: fact sheet; and
- Laws and policies which limit human rights: fact sheet.

COVID-19 enquiry and complaint data

14. At the time of writing, the Commission has received just over 190 enquiries and 30 complaints⁵ relating to COVID-19. The most common enquiries and complaints involve concerns about:

- lack of fresh air and exercise in mandatory hotel quarantine;
- access to education for children with disability;
- inability of Aboriginal people and Torres Strait Islander people to return to their communities;
- vilification and discrimination against people of 'Asian' appearance;
- prison issues, including isolation, lack of personal protective equipment (PPE), and access to family and lawyers;
- tenancy issues, including discrimination against people who are temporary residents of Australia;
- lack of meaningful contact for parents and relatives of children in out-of-home care; and
- employment issues, including alleged unfair treatment of older workers.

⁴ Queensland Human Rights Commission, *COVID-19 and human rights* (Web page, 1 May 2020) ,<<https://www.qhrc.qld.gov.au/your-rights/covid-19-and-human-rights>>.

⁵ A person may phone or email the Commission to enquire about an issue. Formal complaints must be made in writing.

15. The following case study demonstrates the effectiveness of the Commission's complaint process in safeguarding human rights and offering the opportunity for early resolution of complaints:

Case study – Child with a disability and her family granted exemption from hotel quarantine

A family of five adults and a three-year-old child were placed in mandatory quarantine after returning from overseas. Although they were Queensland residents, they had spent ten months in New Zealand. The three-year-old child has autism spectrum disorder, and while she was in quarantine it became clear that the environment was completely unsuitable for her needs and she became distressed.

The three-year-old child experienced severe food aversions and her diet could not be catered for in quarantine. The mother relied on family to help care for the child, but was kept separate from other family members. The situation worsened when the mother was accidentally locked out of the room for half an hour, and the child became even more distressed.

Following early intervention discussions between a Commission conciliator and Queensland Health, the family was fast-tracked for an exemption to the requirement to quarantine in a hotel, and were able to return home for quarantining a day after lodging their complaint with the Commission.

Closed environments

16. A closed environment is one from which people are not free to leave, such as prisons, youth detention, mental health wards, aged care facilities, or residential care homes for people with disability. Residents and staff of closed environments are at a greater risk of infection than the general population due to shared facilities, difficulties in implementing social distancing and isolation, the potential for workers to bring infection in from the community, and the often compromised health conditions of residents. As far as the Commission is aware, due to the restrictions put in place, no cases of COVID-19 emerged in closed environments.
17. The Queensland Government must be commended for the immense success achieved by protecting and preserving the lives of people in closed environments. The Commission however considers that to ensure compatibility with human rights, closed environments will need to be continuously monitored and adapt to the changing situation. As community infection rates decline, lockdown measures must continue to be reasonable, necessary, and proportionate to the health risk.

18. Many closed environments have been subject to lockdowns of varying degrees during the pandemic, resulting in bans or limits on visits from family, friends, advocates and others. Denying people in closed environments access to family visits can result in significant mental health concerns for them. Visitors also provide informal oversight, and a way to complain and seek review, which is particularly important in the absence of formal oversight mechanisms, such as the Community Visitor Program or an independent prison inspector. Other conditions in closed environments that have given rise to human rights concerns are:
- insufficient implementation of risk mitigation strategies (such as social distancing and worker screening);
 - the need for improved health literacy;
 - unmet needs of individuals at greater risk (such as people with disability);
 - lack of meaningful family and community contact; and
 - lack of daily access to open air and exercise.

These restrictions, possibly individually, but certainly taken together, engage the right to humane treatment while deprived of liberty⁶ and the ongoing compatibility with human rights must be considered.

19. Transparency and consistency in implementing restrictions is a significant issue in closed environments. This is discussed in more detail in relation to specific closed environments below.

Prisons and youth detention - overview

20. The Commission acknowledges the considerable efforts of Queensland Corrective Services (QCS) and the Department of Youth Justice (DYJ) in responding to COVID-19. Places of detention around the world have suffered severe outbreaks, and it is a credit to QCS and DYJ that this has not occurred in Queensland.
21. After personal visits were ceased, these agencies took steps for prisoners to maintain contact with family through 'virtual personal visits' via video, and in the case of QCS, a modified form of email. QCS also circulated information widely to prisoners, visitors, reporting offenders, and

⁶ *Human Rights Act 2019* s 30.

stakeholders via the QCS website, and the Commission welcomes QCS publicly discussing human rights and COVID-19 during the pandemic.⁷

22. The QCS *Recovery Commencement Plan* was made publicly available and provides critical information about when and why restrictions were imposed or removed, and assists planning and understanding.⁸ This also clarified potential confusion caused by a Direction of the Chief Health Officer prohibiting personal visits to prisons, while all other measures were imposed under emergency declarations by the QCS Commissioner.⁹
23. Nonetheless, there were aspects of the QCS and DYJ health response that the Commission suggests could have been achieved with less restrictions on rights.

Prisons

24. While it may have been necessary for QCS to quarantine all new detainees for 14 days, there appeared to be some confusion as to whether this period would restart if a detainee left their cell. The Commission notes information on the QCS website, updated 12 June, which clarifies that 'isolated prisoners are not required to restart the 14-day isolation period if they are required to leave their cell during the isolation period'.¹⁰
25. All prisoners, including those in quarantine, should be given time for fresh air and meaningful human contact each day. International human rights standards, reflected in Queensland legislation, require prisoners to be given a minimum daily time of one hour out of their cell to access fresh air and exercise.¹¹
26. The Commission received reports that during the early days of the pandemic some lawyers experienced what they considered to be unreasonable delays in speaking to clients via videoconference. This is

⁷ See, for example, the post during Law Week: 'COVID-19 -versus- Human Rights' *Queensland Corrective Services* (Web Page, 20 May 2020) <<https://corrections.qld.gov.au/covid-19-versus-human-rights/>>.

⁸ Queensland Corrective Services, 'Recovery Commencement Plan', *COVID-19 (Coronavirus): Information for stakeholders* (Web Page, 3 July 2020), <<https://corrections.qld.gov.au/covid-19-coronavirus-information-for-stakeholders/>>.

⁹ See the Chief Health Officer's *Corrective Services Facilities Direction (No. 2)* made under the *Public Health Act 2005* and various *COVID-19 Emergency Declaration Directions* made under the *Corrective Services Act 2006*. It may aid understanding in future if such measures are contained in a single legislative instrument.

¹⁰ Queensland Corrective Services, 'How will an isolated prisoner be managed?', *COVID-19 (Coronavirus): Information for stakeholders* (Web Page, 12 June 2020), <<https://corrections.qld.gov.au/covid-19-coronavirus-information-for-stakeholders/>>.

¹¹ *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules), GA Res 70/175, UN Doc A/RES/70/175 (17 December 2015) Rule 44. See also *Human Rights Act 2019* s 30 (Humane treatment when deprived of liberty) and *Corrective Services Regulation 2017* s 4 (Separate confinement).

inconsistent with the right of an accused to communicate with their lawyer, and is protected under section 32 of the HRA.

27. While the Commission acknowledges QCS's efforts to resolve these issues, they stand as valuable lessons in the event of another emergency requiring such restrictions. In the light of recent experience, the Commission suggests greater clarity is provided in policies and procedures about how time out of cell is to be treated during health quarantines. This may be necessary in the continued response to COVID-19, or to manage the risk of other communicable diseases, during which time priority must be given to developing means to provide time of out of cells without the risk of infecting others.
28. The Commission acknowledges QCS's efforts to improve communications through use of more comprehensive email communication, wireless phone headpieces, and greater capacity for prisoners to leave their cells but remain safely quarantined. The Commission understands QCS intends to maintain these as communication options post-COVID, which is welcome, provided they remain an alternative rather than a substitute for face-to-face visits.
29. As mentioned above, the Chief Health Officer's *Corrective Services Facilities Direction* first issued on 23 March 2020, and now in its second iteration, bans all personal visits to prisons without exemption. Blanket bans are less likely to be compatible with human rights, in view of the lack of discretion to allow exemption even in exceptional circumstances, especially when visits to other closed environments continue to be permitted.
30. Finally, the Commission notes that the duration of emergency declarations made under the *Corrective Services Act 2006*, have been extended by regulation¹² from three days to 90 days, expiring on 31 December 2020. The Commission appreciates that the existing three-day time period created logistical difficulties, but notes that ninety days is a significant period and is not addressed in detail in the accompanying Human Rights Certificate.¹³ That Certificate also refers to 'safeguards', such as the orders being reviewed monthly and declarations being published online. However, these safeguards were not included in the regulation (or primary legislation) and so are not binding on QCS. The Commission suggests that to be described as 'safeguards' there must be a legal obligation placed on the Commissioner. The ability to alter a statutory timeframe by regulation would usually be an unreasonable exercise of executive power.

¹² *Corrective Services (COVID-19 Emergency Response) Regulation 2020* s 5.

¹³ Human Rights Certificate, *Corrective Services (COVID-19 Emergency Response) Regulation 2020*.

If the Government is to exercise such power at this time, it should ensure that it also applies legally enforceable protections to safeguard its use.

Youth detention

31. Unlike QCS, the DYJ has not released information about how it plans to ease restrictions as the risks associated with COVID-19 are reduced. The Commission suggests that this information be released as a priority, and should restrictions again be necessary, such a public plan be developed. It provides certainty for detainees, family, lawyers and other stakeholders about how risks will be managed and restrictions relaxed to ensure least restrictive practice.
32. The QCS plan includes a re-commencement of face-to-face visits from 10 July 2020, but no such commitment appears to have been made for the recommencement of personal visits in youth detention centres. The Commission notes that the youth detention centre in the Australian Capital Territory is already accepting visitors while observing social distancing measures, while those in NSW and Victoria remain closed to visitors. Arguably, the infection rates in Queensland are comparable to those of the ACT, raising the question as to whether restrictions on visits need to remain in place at this time. Limitations on family contact in a youth justice context is particularly concerning to the Commission because of the vulnerability of this cohort, with around two-thirds of detainees being of Aboriginal or Torres Strait Islander descent and a large number from traumatic backgrounds.¹⁴ Time away from family and kin may undermine the rehabilitative goals of youth justice, including maintaining community and family connection to support reintegration into the community. This restriction limits several human rights, particularly the cultural right of Aboriginal peoples and Torres Strait Islander peoples¹⁵ and the protection of families and children.¹⁶

Systemic oversight

33. At the systemic level, the Commission suggests that the pandemic has demonstrated why an independent, proactive (rather than complaints-based) inspector of correctional services is critical for Queensland, as recommended by several recent reviews¹⁷ and required under the *Optional Protocol to the Convention against Torture*. The Commission is

¹⁴ Department of Youth Justice, 'Youth Justice Pocket Stats 2018-19', *Resources* (Web page, 15 May 2020) <<https://www.youthjustice.qld.gov.au/resources>>.

¹⁵ *Human Rights Act 2019* s 28.

¹⁶ *Human Rights Act 2019* s 26.

¹⁷ Queensland Crime and Corruption Commission, *Taskforce Flaxton: An examination of corruption risks and corruption in Queensland Prisons* (Report, December 2018) 49. See also Walter Sofronoff QC, *Queensland Parole System Review: Final Report* (Queensland Government, 2016), 248.

only able to assess the human rights aspects of issues that came to our attention such as through complaints and enquiries, and during the time that the most restrictive measures were in place accredited visitors were prevented from entering prisons and youth detention centres without permission.

34. Several international bodies have stated that continued, independent monitoring of prisoners during the pandemic is vital. For example, the World Health Organisation has said:

The COVID-19 outbreak must not be used as a justification for objecting to external inspection of prisons and other places of detention by independent international or national bodies whose mandate is to prevent torture and other cruel, inhuman or degrading treatment or punishment...Even in the circumstances of the COVID-19 outbreak, bodies of inspection in the above sense should have access to all people deprived of their liberty in prisons and other places of detention.¹⁸

35. The COVID-19 crisis has reinforced that to ensure community confidence, integrity, and credibility in the oversight of places of detention, the government should prioritise the establishment of an independent inspector. As recommended by the *Sofronoff Review*,¹⁹ this position could be extended to oversight of youth detention, perhaps on a transitional basis as has occurred with the recently established ACT Inspector of Correctional Services.

Mandatory hotel quarantine

36. Mandatory hotel quarantining of people arriving from overseas since 28 March 2020 may have significantly contributed to the success of 'flattening the curve' in Queensland. However, in view of the fact that mandatory quarantining is likely to continue for some time, and people quarantined will be required to pay from 1 July 2020, the conditions under which quarantine occurs needs to be reconsidered in order to ensure that human rights are respected.
37. The Commission's main concern is the lack of access to fresh air and exercise. Many people quarantining in hotels report being confined to rooms with no opening windows or balconies, and that time allowed out of

¹⁸ World Health Organisation, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance* (WHO, 15 March 2020) 5. See also UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic* (adopted on 25th March 2020), and Inter-Agency Standing Committee (OHCHR and WHO), *COVID-19: Focus on Persons Deprived of their Liberty* (Report, March 2020).

¹⁹ Walter Sofronoff QC, *Queensland Parole System Review: Final Report* (Queensland Government, 2016). Recommendation No. 88, 248.

the room is at the discretion of the supervising police unit. This is unacceptable given that international human rights standards entitle prisoners to a minimum of one-hour fresh air and exercise per day. The Commission understands that there are police resourcing issues and health risks in facilitating room breaks. Therefore, appropriate accommodation should be provided that allows safe access to fresh air and exercise, taking the particular needs of each person under quarantine into account.

38. For people in mandatory hotel quarantine, the quality and consistency of information provided has fallen short of what is needed. As far as the Commission is aware, the material provided does not include plain English guidance on the application of the relevant public health direction, the meaning of and process of applying for an exemption, or where to go for queries and complaints. There is inconsistency between the official information provided by the Queensland Government and other sources such as Public Health, Red Cross, the Community Recovery Hotline, Queensland Police Service, and hotel management, who all have a role to play in meeting the needs and wellbeing of people in quarantine
39. Clear lines of authority and transparent decision-making would improve the human rights situation of people in hotel quarantine. The Commission's experience with complaints received is that it was difficult for a person in mandatory hotel quarantine to identify who was responsible for an act or decision, the process to make an internal complaint, and how decision-making discretion would be applied and communicated.
40. The government should grasp the opportunity to obtain feedback from relevant stakeholders, especially people who have gone through hotel quarantine, so that conditions, information, and processes can be improved.

At risk communities

41. Protection of human worth and dignity requires focus on the specific needs of people most at risk of human rights violations. The communities identified below are both more at risk if infected by COVID-19, and more vulnerable to discrimination and other negative outcomes as a result of general restrictions put in place for the safety of the whole community. It is essential that government considers impacts on at risk communities when developing responses that restrict human rights.

Triage framework for frontline health workers

42. In a pandemic the usual health resources are unlikely to be sufficient to meet demand, particularly in the emergency care setting. With this in mind, significant work has already been done by Australian, state and territory governments, and professional bodies to prepare for the emergency. The Commission has welcomed, in particular, Queensland Health developing a robust framework in Queensland to guide how health practitioners can approach these complex issues, should scarcity of health resources become an issue.²⁰
43. The Commission continues to provide feedback to Queensland Health to ensure that human rights are considered in decision-making throughout the health system, especially with regard to critical care. Such systems should not apply or entrench unconscious bias against certain groups, such as people with disability and older Australians, and must provide a transparent set of human rights-compatible considerations to support health professionals faced with scarce critical care resources. This includes preventing overreliance on potentially discriminatory tools, such as the clinical frailty scale and accompanying diagrams that have the potential to promote bias. Successful development of a strong framework for COVID-19 response can provide the foundation for fairer health decisions more broadly, and improve the culture in delivering health services to groups who have traditionally been vulnerable to discrimination, such as older people, people with disability, and Aboriginal peoples and Torres Strait Islander peoples.

People with disability

44. Various organisations have made statements²¹ that people with disability felt left behind in the early days of the pandemic. While specific attention was properly given by the Queensland government to aged care, hospitals, remote communities, and corrective services, limited guidance

²⁰ Queensland Health, *Queensland ethical framework to guide clinical decision making in the COVID-19 pandemic* (28 April 2020)

<https://www.health.qld.gov.au/__data/assets/pdf_file/0025/955303/covid-19-ethical-framework.pdf>.

²¹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'COVID-19 Statement of concern', *Statement of concern - The response to the COVID-19 pandemic for people with disability* (Web Page, 26 March 2020)

<<https://disability.royalcommission.gov.au/publications/statement-concern-response-covid-19-pandemic-people-disability/>>; Inclusion Australia, 'An open letter to the national cabinet: Immediate Actions Required for Australians with Disability in Response to Coronavirus (COVID19)' *News* (Web Page, 3 April 2020) <<https://www.inclusionaustralia.org.au/an-open-letter-to-the-national-cabinet-immediate-actions-required-for-australians-with-disability-in-response-to-coronavirus-covid19/>>; Centre of Research Excellence in Disability and Health, 'An important message about people with disability and the COVID-19 response' (Web Page, 15 March 2020) <<https://credh.org.au/news-events-archived/covid-19-and-people-with-disabilities/>>

or reassurance was given to people with disability, their families and carers. The *National Management and Operation Plan for People with Disability* was released on 17 April 2020, however, the complementary Queensland plan is still to be released following final approval.²² The *Queensland Disability Strategy – in response to the COVID-19 pandemic* referred to in the Department of Communities, Disability Services and Seniors briefing to this inquiry²³ could not be located online.

45. Some excellent resources have been developed for people with disability. The Commission notes the links from the Queensland Government's page on COVID-19 for people with disability²⁴ to resources by the Queenslanders with Disability Network, including the Queensland Government funded 'Person-Centred Emergency Preparedness (PCEP) Planning for COVID-19' tool, and easy English resources developed by Access Easy English. However, there still is, in the Commission's view, a lack of clear government communication reinforcing the rights of people with disability during the COVID-19 pandemic and the steps they can take to protect those rights. For example, the continued right to receive essential services, to direct those services within the limits of those restrictions, and who to contact should services be unilaterally withdrawn.
46. Also, there appears to have been limited recognition of the fact that general restrictions might be inappropriate, or might disproportionately impact people with disability. The distress suffered by people with some disabilities if confined at home, the greater importance of social contact, activities and outings, and confusion as to the definition of 'essential services' under public health directions are just some examples. Reductions in services should only occur after considering the impact on the health and safety of the individual, and the substitution of alternative in-home services. Careful consideration of these issues, supported by clear and early messaging to people with disability and their supports, and effective avenues for complaint, would have eased anxiety and avoided potentially harmful reductions in services to this cohort.
47. Consideration must also be given to alternative protective measures which reduce the risk of infection in a less restrictive way, such as infection control training for all disability service and accommodation providers, and

²² Department of the Premier and Cabinet, *Briefing paper - Departmental brief*, (15 June 2020) 10, available from Inquiry's Publications page <<https://www.parliament.qld.gov.au/work-of-committees/committees/HCDSDVPC/inquiries/current-inquiries/COVID-19>>

²³ *Ibid.*

²⁴ Queensland Government, 'Information for people with disability', *COVID-19 (coronavirus)* (Web Page, 29 April 2020) <<https://www.qld.gov.au/disability/adults/covid-19-coronavirus>>.

guidelines for the screening and testing of people with disability and their carers.

48. There have been some positive outcomes, for example:

- A hotline for people with disability has been set up to report shortfalls in services.²⁵
- The National Disability Insurance Agency (NDIA) has proactively contacted thousands of high-risk NDIS participants to check on their wellbeing and services. Where there has been a shortfall in services identified, the NDIA, states and territories were to coordinate alternative supports. It will be important to assess the success of this collaboration in filling the gap, and whether similar approaches can be adopted in thin markets and for people with complex needs.²⁶
- The Accommodation Support and Respite Services, the Public Trustee of Queensland, and the Office of the Public Advocate and the Queensland Human Rights Commission are discussing ways to ensure increased access to contactless banking for people with disability, to reduce reliance on bank books and cash withdrawals which create more risk and are less convenient.

49. Another concern for the Commission is the situation for people with disability in congregate care (such as group homes), another example of a closed environment. Since around 23 March 2020 to date, face-to-face visits by the Community Visitor Program have been suspended. This has left many congregate care facilities with limited formal oversight, and with reductions in visitors and out of home activity, and limited informal oversight. The Commission has been unable to determine whether basic human rights, such as access to health services, fresh air and exercise, infection control measures, and meaningful contact with families is being facilitated. Similar concerns exist for people in private boarding houses, some of which are not visitable sites by the Community Visitor and are not registered service providers within the scope of the NDIS Quality and Safeguards Commission.

²⁵ Department of Social Services, 'Disability Information Helpline' *Information and referrals for people with disability and their supporters about coronavirus (COVID-19)* (Web Page, 10 June 2020) <<https://www.dss.gov.au/disability-and-carers/information-and-referrals-for-people-with-disability-and-their-supporters-about-coronavirus-covid-19>>.

²⁶ Meeting of Commonwealth, State and Territory Disability Ministers, *Communique* (11 May 2020) <https://www.dss.gov.au/sites/default/files/documents/05_2020/dac_communique-disability-ministers-meeting_20200511.pdf>.

50. Finally, any response which impacts on the rights of a particular group should be made in consultation with that group. The *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* made temporary amendments to the *Disability Services Act 2006* to give immunity to service providers who lock gates, doors, or windows to ensure resident compliance with a public health direction, and also to the *Forensic Disability Act 2011* clarifying the powers of the Forensic Disability Service to refuse visitors and suspend leave to the community. The legislation was passed without consultation, with limited explanation of the purpose of the amendments being provided for in the Explanatory Notes, and neither an explanation of the urgency that would have justified dispensing with all forms of scrutiny nor opportunity for feedback. Following the passing of the Bill, the Commission, together with the Public Advocate and Public Guardian, were given the opportunity to consult with relevant department teams in relation to our concerns, and contributed to the development of the locked gates, doors, and windows policy underpinning the *Disability Services Act* amendments. While the Commission appreciates the swift response from department teams, the confusion and concerns could have been avoided, and better outcomes, responsive to needs, achieved by better communication and consultation at the outset.

Culturally and linguistically diverse (CALD) communities

51. Queensland Health's *Policy and Action Plan for CALD Communities* has focused on ensuring there is translated material about COVID-19 made available to culturally and linguistically diverse communities. While initially this was focussed on public health advice, after consulting with the COVID-19 CALD working group, there was a concerted effort to translate the Public Health Directions. This was an important step, because it went some way to ensuring that people with English as a second language became aware of their obligations. Without access to information on the Public Health Directions, there is a risk that CALD communities might disproportionately and unfairly receive infringement notices. The Commission strongly supports efforts to continue to update the translated materials as restrictions change, along with Queensland Health's ongoing engagement with community leaders.
52. The Commission is concerned about the health impact on CALD communities following a reported increase in anti-Asian sentiment in some sections of the community during the pandemic. There is an established

link between experiences of racism and poor health outcomes for marginalized communities.²⁷

53. The Commission has received enquiries and complaints from people of 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. The Commission has also heard from a vocational education provider who is hearing first hand from their Asian students that they are experiencing increased vilification in the community.
54. 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.
55. The Commission is also concerned that the number of complaints received is not representative of the full scale of the problem. A number of factors may dissuade victims from making 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.
56. The Commission suggests that positive messaging at a state and national level may help to address this unacceptable behaviour. This could include the Queensland government funding a campaign promoting the benefits of Australia's rich multicultural community, and a campaign to support people from CALD communities to know and assert their rights. The Commission further recommends that the Queensland Government encourage and support the Federal Government to provide national leadership and consistent anti-racism messaging, along with the establishment of a national database for hate motivated crimes as recommended by the Federal Race Discrimination Commissioner.²⁸

Aboriginal peoples and Torres Strait Islander peoples

57. First Nations people are more vulnerable to COVID-19 infection, due to a higher rate of chronic illness, and the social connectedness of families and

²⁷ For example, a Victorian study found that people who experience racism are 2.5 times more likely to experience poor physical health. See Department of Health and Human Services, *Racism in Victoria and what it means for the health of Victorians* (State Government of Victoria, 2017) <<https://www2.health.vic.gov.au/public-health/population-health-systems/health-status-of-victorians/survey-data-and-reports/racism-in-victoria>>.

²⁸ Chin Tan, 'COVID-19 has prompted a spike in racist attacks. We need to start tracking them better', *ABC News Analysis*, 9 May 2020 <<https://www.abc.net.au/news/2020-05-09/coronavirus-covid-19-racist-attacks-data-collection-strategy/12229162?nw=0>> .

communities that makes physical distancing more difficult. Aboriginal children and Torres Strait Islander children in out-of-home care face the same barriers to family contact as non-Indigenous children, but the situation is further compounded by the potential loss of connection to culture resulting from lack of contact.

58. As noted above, several people of Aboriginal and Torres Strait Islander descent have been in contact with the Commission to raise concerns about restrictions imposed by the federal *Biosecurity Act 2015*. The impact of these restrictions is dealt with in more detail below with respect to the impact on regional and remote communities.

Regional and remote communities

59. Until mid-June, significant restrictions were placed on remote communities across the country by the Australian Government under the *Biosecurity Act*. These restrictions had a significant impact on freedom of movement in and out of such communities.²⁹
60. 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 considering the devastation this virus is causing in First Nations populations internationally.
61. However, the lack of consistency between the restrictions imposed by the Commonwealth on designated Indigenous communities and those imposed by the state government on the rest of Queensland caused significant frustration in some communities, including Palm Island and Yarrabah.
62. By way of example, the Queensland Chief Health Officer lifted restrictions imposed on Aboriginal and Torres Strait Islander communities in other parts of the state on 16 May 2020.³⁰ Throughout May, the Queensland Government also relaxed restrictions across Queensland, and allowed residents to travel greater distances. In contrast, restrictions under the Commonwealth *Biosecurity Act* remained static until 12 June 2020, thereby preventing residents of designated Indigenous communities from travelling as far as other people in Queensland and requiring many to quarantine for 14 days.

²⁹ *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Determination 2020* (Cth).

³⁰ *Restricted Access to Designated Areas Direction (No.3)* made under the *Public Health Act 2005*.

63. Many community concerns were resolved when new Directions were issued by the Queensland Chief Health Officer, replacing the Commonwealth restrictions. These state-based public health directions better reflect and take account of the needs of different communities. The reason for their success may lie in the fact that they were developed by Queensland Health in partnership with the Department of Aboriginal and Torres Strait Islander Partnerships and Aboriginal and Torres Strait Islander Mayors.
64. However, considerable confusion continues about how some elements of the remaining restrictions operate, such as whether a travel pass is necessary for all persons entering designated communities, including residents and family members visiting from the broader travel zones. The Commission has heard from some people in remote communities that the relative freedom of workers deemed to be doing 'essential work' to move freely in and out of designated communities has also caused frustration and undermined community cohesion. The Commission has discussed these issues with Queensland Health with a view to assisting in improving guidance for the community.
65. Overall, the Commission understands that restrictions have been developed in consultation with communities with the important goal of keeping residents safe. The Queensland Government should continue to work closely with Aboriginal and Torres Strait Islander community-controlled health services and local disaster management committees to ensure that the voices of First Nations people are heard and valued as part of informed decision-making about pandemic protections.

Cost of food and other groceries

66. Many members of the community expressed frustration at the cost of these goods in regional and remote areas. This was an issue prior to the COVID-19 pandemic, but the restrictions on movement exacerbated community frustration. The Commission suggests further consultation with Aboriginal and Torres Strait Islander communities to address the underlying drivers of these higher prices.

Boarding schools

67. Boarding school students from regional and remote communities were significantly affected by the COVID-19 restrictions. Although public health directions provided that from 12 June students returning to designated communities did not need to self-isolate, the Commission understands most boarding school students will not return to school until mid-July. The prolonged closure of boarding schools has particularly affected around 400 Aboriginal and Torres Strait Islander students from remote

communities.³¹ Also, many students in remote areas do not have access to technology, such as reliable internet connections, and so their right to education, protected under the HRA, has been significantly disrupted. High transport costs has also made planning difficult for parents. The Commission recommends that future pandemic or other emergency planning specifically considers the impact on boarding school students from remote communities.

Young people in out-of-home care

68. At the date of writing, the Commission understands that no cases of COVID-19 among young people in care have been reported, and no residential care services have been required to close due to health risk.
69. Even before the COVID-19 pandemic, human rights enquiries about the Department of Child Safety constituted a significant proportion of calls to the Commission's enquiry line. During COVID-19 the issues that were raised by callers to the Commission included restrictions on contact visits with family members, and insufficient access to the technology needed to support social connection, as well as remote learning for children and young people in care.
70. Following enquiries and contact from concerned stakeholders, the Commission brought a number of these issues to the attention to the Department of Child Safety, Youth and Women (CSYW). The response indicated that certain actions were taken to address these issues. In particular, the Commission commends efforts: to work in collaboration with Education Queensland to identify and support vulnerable students, provide financial support for purchasing devices and data for children in care, and the extra funding provided to CREATE Foundation to undertake 'check-in' calls with young people. This situation may provide an opportunity to ensure that in future every child has access to the internet and technology they need to conduct their schooling and maintain family and other social contacts. The Commission trusts that with the decrease in COVID-19 restrictions in Queensland, that face-to-face family contact will recommence wherever possible, understanding that video conferencing does not provide the same level of meaningful contact, especially for babies and young children.
71. The pandemic has highlighted the need for transitional support for 17-year-olds exiting the child protection system at a time when finding employment and stable accommodation is even more challenging than usual. The Commission supports the government's initiative to provide

³¹ Antonia O'Flaherty, 'Elite schools in plea to help "forgotten students" kept away due to boarding restrictions' *The Courier Mail*, 13 June 2020.

further funding to carers to support young people to the age of nineteen years regardless of their education status, but urge that this funding also be extended to young people in residential care, or living independently. The Commission is aware of ongoing programs that support young people up to age 25, and suggests that adequate funding of such programs is critical at this time. The consequence of not providing adequate support might be that a number of young people exit the system into homelessness, which is a dangerous prospect in the time of a pandemic.

72. Finally, it is encouraging to note that human rights considerations form a part of the CSYW's *Decision Making Framework during COVID-19*. This is an example of where the *Human Rights Act 2019* framework can aid public servants to make difficult decisions.

People experiencing housing instability and homelessness

73. The Commission commends the government's initiative to tackle housing instability during COVID-19 by implementing emergency protections for tenants, in particular the provisions that make it easier for victims of domestic and family violence to leave the premises if they are in an unsafe situation.³² Consistent with our previous submission to the Renting in Queensland (2019) consultation³³, the Commission would urge that similar protections are enacted permanently.
74. The Queensland Government's efforts during the pandemic to urgently house many people experiencing or at risk of homelessness is commendable.
75. Media reports indicate that levels of homelessness have decreased in Queensland due to the large-scale COVID-19 emergency measures to move people into hotel, motel, and student accommodation.³⁴ This is welcome in the light of homelessness statistics. Homelessness is outpacing population growth, with housing demand outstripping supply. Between 2011 and 2016, Queensland saw a 14% increase in homelessness, with Aboriginal and Torres Strait Islander people grossly overrepresented.³⁵ Now one in 200 people in Queensland is experiencing

³² *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020*, div 7.

³³ Queensland Human Rights Commission, *A Better Renting Future – Consultation Regulatory Impact Statement: Submission to Department of Housing and Public Works* (2019) <https://www.qhrc.qld.gov.au/__data/assets/word_doc/0012/24015/2020.01.03-A-better-renting-future-HPW-consultation-Final-web.docx>.

³⁴ For example, Ben Knight, 'Has the coronavirus pandemic proved that homelessness is solvable?' *ABC News Online*, 8 June 2020 <<https://www.abc.net.au/news/2020-06-08/housing-homeless-in-pandemic-has-worked-lets-make-it-permanent/12330442>>.

³⁵ Homelessness Australia, *Homelessness statistics* (Web page) <<https://www.homelessnessaustralia.org.au/about/homelessness-statistics>>.

homelessness.³⁶ Not only is housing stability an important human rights issue in Queensland as reflected in the right to privacy and home, homelessness prevention measures may also save money. University of Queensland research indicates that there may be savings of more than \$13,000 a year for each homeless person taken off the street, because of fewer health concerns and interactions with the justice system.³⁷

76. Based on public statements by the Queensland Housing Minister,³⁸ the Commission understands that the Queensland Government views the situation occasioned by the pandemic as a unique opportunity to support people into suitable, permanent accommodation. The Commission strongly urges that long-term solutions are identified and implemented to reduce rates of homelessness in the future.

Emergency response

Public health directions

77. A major response to the pandemic has been the use of public health directions made by the Chief Health Officer under section 362B of the *Public Health Act 2005*. The power to make such directions was inserted by the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020*, which was passed without consultation. It appears these amendments to the *Public Health Act* do not expire.
78. Unlike other amendments, powers given under new Chapter 8, Part 7A, including the power to make public health directions, are not expressly linked with the declaration of a public health emergency by the Minister under section 319, although these powers are linked to the purpose of containing or responding to the spread of COVID19.³⁹ While the directions may be necessary to support a legitimate purpose of protecting public health, there must still be limits on this power to be proportionate. The Commission recommends an amendment of the *Public Health Act* to limit

³⁶ Queensland Government, *Homelessness prevention* (Web Page, 10 August 2017) <<https://www.qld.gov.au/housing/emergency-temporary-accommodation/homelessness-prevention>>.

³⁷ Institute for Social Science Research, The University of Queensland, *Brisbane Common Ground Evaluation: Final Report* (ISSR, 2015) <<https://issr.uq.edu.au/brisbane-common-ground-evaluation>>.

³⁸ Ben Knight, 'Has the coronavirus pandemic proved that homelessness is solvable?' *ABC News Online*, 8 June 2020 <<https://www.abc.net.au/news/2020-06-08/housing-homeless-in-pandemic-has-worked-lets-make-it-permanent/12330442>>.

³⁹ Similarly, the Chief Health Officer must revoke a public health Direction as soon as reasonably practicable after she is satisfied the direction is no longer necessary to assist in containing, or to respond to, the spread of COVID-19 within the community: *Public Health Act* s 362E.

the exercise of the powers under Chapter Part 7A to only during a declared public health emergency.

79. A further safeguard would be to publish a statement of the purpose, need, data, and other factors that were considered in making each public health Direction. Such clarity of purpose would assist in implementation and interpretation of the direction, as well as improving understanding and acceptance of the direction by the community in the context of serious limitations on the rights of individuals. The early confusion about restrictions on visitors to aged care and mental health facilities, which saw some facilities banning all visitors (which was beyond the scope and intent of the direction), might have been avoided if this information had been provided. Similarly, some disability services were ceased over misunderstandings about whether disability service providers were an 'essential business, activity or undertaking', pursuant to the then in force *Home Confinement, Movement and Gathering Direction*.
80. While clarity has improved through availability of various guidance material, frequently asked questions, and infographics, the Commission considers that information is still deficient in relation to the:
- review process that can be accessed if a person believes a direction has been inappropriately applied to them;
 - exemption process and factors taken into account when considering an exemption application;
 - entities responsible for implementation of directions and their complaints processes, e.g. how to identify the 'relevant authority' responsible for directing a person into quarantine under the *Self-quarantine for Persons Arriving in Queensland From Overseas Direction (No. 3)*;
 - date on which the direction will be reviewed, i.e. to ensure that restrictions are responsive and proportionate to the circumstances, and do not continue longer than necessary 'to assist in containing, or respond to, the spread of COVID-19 within the community', pursuant to section 362E of the *Public Health Act*.
81. Several public health directions do not allow for exemptions, although a person will not be fined for non-compliance if they have a reasonable excuse. Where there is a blanket restriction on rights it might be more difficult to maintain proportionality with human rights, particularly if there is a disproportionate effect on individuals and communities. At the very least, directions that do not contain exemptions should be accompanied by an explanation of why the exercise of discretion is inappropriate for those circumstances, and how the needs of at risk communities have been considered.

82. Immediate publication of the public health directions on Queensland Health's website, as provided for by section 362C, has greatly enhanced transparency. It would further assist if information about how updated directions have been amended was available. This is now generally provided in the Chief Health Officer *Public Health Directions Update*, an email subscription service, however, this information could also be published with the direction.

Enforcement and community policing

83. The Commission supports the government's application of a hierarchy of enforcement options when non-compliance with quarantine or public health directions are identified. The development of an enforcement matrix by relevant agencies to promote consistency was a positive step, which is likely to have assisted all agencies to discharge their obligation to give proper consideration to human rights.
84. The Queensland Police Service (QPS) is the primary agency responsible for conducting compliance activities and enforcing breaches of health measures. The Commission supports the QPS's stated commitment to principles of compassion, communication and compliance which generally appears to be borne out by the reported numbers of Penalty Infringement Notices (PINs) relating to public health directions, for example approximately 11,000 call outs resulted in just over 2,000 PINs. A balanced approach will likely have enhanced community trust during a critical time when compliance with unprecedented restrictions on personal freedoms was essential to manage the health risk.
85. The Commission also welcomed the implementation of an internal review process of the PINs issued for alleged breaches of public health directions.
86. Nonetheless, the Commission is conscious that community concerns remain about aspects of the enforcement response, such as whether vulnerable members of the community will be able to pay fines, particularly at a time of great economic uncertainty.
87. The Commission suggests that, to further build on community confidence in the QPS' response to COVID-19, that it make publicly available additional data about recipients of public health penalty infringement notices (PINs), including:
- age;
 - gender;
 - country of origin;
 - primary language spoken at home;

- precise locality where PIN issued by suburb or local government area (as has been done in NSW);
- other demographic details, and in particular Aboriginal or Torres Strait Islander identification.⁴⁰

88. In the Commission's view, it is important to evaluate the impact on Aboriginal and Torres Strait Islander and CALD communities of enforcement of the public health directions, and recommend that this data is collected and publicly reported.

Parliamentary process

89. In response to the pandemic, a number of legislative amendments were declared urgent and passed with little or no parliamentary scrutiny.⁴¹ The Commission appreciates that while many situations required urgent action, alternative arrangements could have been made, at least in some cases, for stakeholder consultation and parliamentary scrutiny.

90. As discussed above, the Commission welcomed the opportunity to work with the Department of Communities, Disability Services and Seniors on a policy arising from amendments in the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020*. Nonetheless, the process would have benefited from greater stakeholder involvement. Wherever possible, early stakeholder engagement should be prioritised, even when formal parliamentary scrutiny may not be possible. Such engagement will improve legislation and produce better outcomes for the community. Engagement could include early public release of draft Bills, explanatory notes, and human rights compatibility statements, particularly in circumstances in which the government is seeking to justify the haste in which changes are effected.

91. It is possible for parliamentary scrutiny of human rights to be reported even after legislation has passed. For example, the Australian Parliamentary Joint Committee on Human Rights (PJCHR) generally reports on all legislation introduced, regardless of its progress:

The committee seeks to conclude and report on its examination of bills while they are still before the Parliament, so that its findings may inform the legislative deliberations of the Parliament. The committee's ability to do so is, however, dependent on the legislative program of the government of the day and the timeliness of ministers'

⁴⁰ Noting that the current requirement on QPS officers to obtain information on Aboriginal or Torres Strait Islander identification in certain circumstances as reflected in the *Operational Procedural Manual* at section 1.11.2.

⁴¹ For example *COVID-19 Emergency Response Act 2020*, *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020*, *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020*.

responses to the committee's inquiries. Where a bill is passed before the committee has been able to conclude its examination, the committee nevertheless completes its examination of the legislation and reports its findings to the Parliament.⁴²

92. Despite the urgency dictated by the COVID-19 pandemic, the Commission submits that it is still possible for human rights scrutiny to occur. In its fifth report of 2020, the PJCHR produced a 'Human rights scrutiny report of COVID-19 legislation' which provides an assessment of the human rights compatibility of legislation made in response to the COVID-19 pandemic, including Bills introduced into the Parliament on 23 March 2020 and 8 April 2020. Some of these, such as the Coronavirus Economic Response Package Omnibus Bill 2020, were introduced and passed within one day.
93. Finally, the Commission encourages the government to exercise caution so that the continued, urgent passing of legislation during a crisis such as this does not lead to a more permanent erosion of parliamentary processes. While not apparently a response to the pandemic, on 17 June 2020 significant amendments were made to the Community Services Industry (Portable Long Service Leave) Bill 2019 on the floor of parliament that were unrelated to the primary purpose of the Bill. This included significant changes to the assessment of bail for young people, with the Bill passing on the same day as the amendments were made. It is not clear to the Commission why such comprehensive changes could not have been introduced via a stand-alone Bill, and be subject to normal parliamentary scrutiny processes, including the relevant committee reporting on its assessment of the Bill, particularly as the government had indicated an intention to amend the laws several weeks earlier. This would have included an assessment of its human rights compatibility, after considering stakeholder submissions.

Recommendations

94. This submission has highlighted some of the key positive and negative outcomes from the Queensland Government's health response to COVID-19. Having now 'flattened the curve', the government has the opportunity to apply knowledge gained through this process to plan for future emergencies, whether that is a second COVID-19 wave, a new virus, or other emergency.

⁴² Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Annual Report 2018* (tabled 12 February 2019) Ch 2, 5. <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/Annual_Reports/Annual_Report_2018>.

95. While the Queensland Government had planned for a pandemic (and other disasters), many of the existing documents and processes will not have anticipated all the issues that have emerged from the COVID-19 pandemic. The fact that the actions and decisions made in responding to the pandemic engaged many human rights is a case in point. Emergency and disaster plans acknowledge that significant restrictions may be imposed in response to a pandemic, such as the closure of schools and workplaces, and the cancellation of mass gatherings. Yet, despite the significant human rights limitations arising from such decisions, it appears that none of the key pandemic response plans refer to the *Human Rights Act 2019*.⁴³
96. The Commission suggests the government prioritise the updating of pandemic planning documents and processes, based on the experience of this pandemic, including expressly promoting the need to give proper consideration to human rights in decision-making, as well as acting and making decisions that are compatible with human rights.⁴⁴ The update process should be informed by the issues highlighted in submissions made to this Inquiry, and include further consultation with key stakeholders, such as groups at risk of significant future restrictions and their advocates. This will build upon the work Queensland Health has already done in developing the *Queensland ethical framework to guide clinical decision making in the COVID-19 pandemic*. As this pandemic has demonstrated, many decisions must be made urgently with limited time for consultation, so it is imperative that the impact of restrictions on key groups is well understood in advance.

97. The Commission makes a number of key recommendations as follows:

General recommendations

Recommendation 1: Embed proper consideration of human rights and the obligation to act and make decisions that are compatible with human rights in all planning documents concerning pandemic and other emergencies.

⁴³ Including the Queensland *Whole of Government Pandemic Plan 2020*, *Queensland State Disaster Management Plan*, and *Queensland Health Disaster and Emergency Incident Plan*. The *Queensland Health Pandemic Influenza Plan* does include a discussion on ethical decision-making which cites some civil rights (such as liberty), but is not a comprehensive consideration of the obligations in the *Human Rights Act*.

⁴⁴ *Human Rights Act 2019*, s 58.

Recommendations - Closed environments

Recommendation 2: Clarify decision-making lines of authority, ensure at least minimum standards requiring access to fresh air and exercise, and provide clear and transparent exemption and hardship application processes for those in mandatory quarantine in hotels.

Recommendation 3: Ensure those in closed environments have reasonable access to fresh air and exercise and can engage in meaningful contact with family, others in their community and their lawyers.

Recommendation 4: Release public information about when visits will resume to all closed environments, and in particular youth detention centres.

Recommendation 5: Maintain and improve independent oversight of closed environments, such as by creating an independent inspector of prisons.

Recommendation 6: Impose a legal obligation on the Queensland Corrective Services Commissioner to regularly review emergency declarations made under the *Corrective Services Act 2006* and to publish them online.

Recommendations - At risk communities

Recommendation 7: Ensure triage frameworks for scarce health resources include a discussion of human rights obligations, do not entrench unconscious bias, and are publicly available.

Recommendation 8: Further consider and prepare for the adverse impact on people with a disability should restrictions return, particularly in relation to those who rely on services for care and social contact. Consider infection control training for all disability service and accommodation providers and guidelines for the screening and testing of people with disability and their carers.

Recommendation 9: Continue to work closely with Aboriginal and Torres Strait Islander community-controlled health services and local disaster management committees and where possible provide decision-making autonomy to regional and remote Indigenous communities regarding restrictions. Further consult with Aboriginal and Torres Strait Islander communities to address the underlying drivers of high pricing in remote areas.

Recommendation 10: Ensure access to the technology needed to support social connection as well as remote learning for children and young people in out-of-home care, and students unable to attend boarding school due to the restrictions.

Recommendation 11: Ensure adequate transitional support for young people exiting out-of-home care.

Recommendation 12: Continue efforts to address homelessness during the pandemic while investigating and implementing long-term solutions to address housing instability.

Recommendation 13: Provide permanent legislative protections for people experiencing domestic violence during their residential tenancy.

Recommendations - Emergency response

Recommendation 14: Amend the *Public Health Act* to allow the exercise of powers under Chapter Part 7A only as part of a declared public health emergency.

Recommendation 15: Provide clear, accessible information to the community about review and exemption processes in relation to the Public Health Directions.

Recommendation 16: Publicly release de-identified demographic data about recipients of Public Health Infringement Notices in order to evaluate whether particular communities are being disproportionately impacted by the enforcement of the Public Health Directions.

Recommendations - Parliamentary process

Recommendation 17: Maintain parliamentary scrutiny processes wherever possible along with stakeholder engagement prior to passing legislation and subordinate legislation. Consider whether legislation that has been passed without proper scrutiny should be referred to the relevant committee for retrospective scrutiny.

98. Thank you for the opportunity to provide this submission. The Commission would be pleased to provide any further assistance to the Committee.