

Charter of Rights Campaign
Submission to the Department of Prime Minister and Cabinet
Federal Government COVID-19 inquiry
8 January 2024

Introduction

This submission is from the Charter of Rights campaign coalition, an alliance of 95 organisations across the Australian community. The coalition was founded in 2018 to bring together organisations across the breadth of our community united by a call for a federal Human Rights Charter or Act (Charter). Our coalition includes organisations from across the country with diverse representation, including Aboriginal and Torres Strait Islander people, people with disability, women, children, older persons, LGBTIQ+ people, and people from migrant and multicultural backgrounds. It includes social services peak bodies, faith-based organisations and organisations advocating for refugee rights, as well as institutes, legal advocates, and community organisations focused on human rights and social justice.

We welcome this inquiry into the Australian Government's response to the COVID-19 pandemic. During the pandemic, the lack of human rights analysis from within federal government was laid bare through situations like the initial vaccine rollout, when people who needed vaccination the most faced obstacles, and when Australian citizens and permanent residents were threatened with up to 5 years in prison for returning home from India at the onset of the COVID-19 Delta variant outbreak. These, and many more, examples highlight the need for a Charter to ensure human rights are at the heart of government responses to future pandemics and other crises.

We welcome the opportunity to provide further information for the inquiry's consideration.

COVID-19 and the vaccination rollout

The right to health care is an essential right for everyone in the community, but the effects of that right being poorly implemented are felt more by marginalised communities. During the COVID-19 pandemic, there were delays in distributing vaccines to prevent death and serious illness from a virus that disproportionately affected marginalised parts of the community. The Federal Auditor-General, with respect to the vaccination rollout during 2021, concluded that the "*administration of vaccines to priority populations and the general population has not met targets. The vaccine rollout to residential aged care and residential disability were both slower than planned, and the vaccination rate for Aboriginal and Torres Strait Islander people has remained lower than for the Australian population*".¹

Some remote Aboriginal communities were exposed to COVID-19 before their community had been sufficiently vaccinated.² This was also identified by the Disability Royal Commission with respect to people with disability, writing that "*The Royal Commission remains concerned that people with a disability may still not be sufficiently prioritised for essential services and protection from infection*".

¹ Auditor-General Report No.3 2022–23 Australia's COVID-19 Vaccine Rollout, Australian National Audit Office, page 8

² Anger as slow vaccine rollout leaves Western NSW Aboriginal communities exposed to COVID, The Guardian, 12 August 2021

during the Omicron wave of the COVID-19 pandemic. In the February 2022 Statement of Ongoing Concern, we noted the pandemic continued to expose the underlying inequities, discrimination and exclusion people with disability experience in the delivery of fundamental services and supports".³ This failure is particularly troubling because of the disproportionate impacts COVID-19 had on marginalised parts of the community. For example, the Australian Bureau of Statistics found that, by January 2022, migrants were three times more likely to die from COVID-19 than the population generally. Even worse, people born in the Middle East were ten times more likely to die from COVID-19 than members of the population born in Australia.⁴

Had there been a Charter, the decision making process for the design and implementation of the vaccination rollout would have included human rights standards. When problems arose during the rollout, a Charter could have provided an avenue for people from high-COVID-19 risk communities to enforce their right to health, by ensuring they were prioritised for a vaccine.

COVID-19 and the India travel ban

On 30 April 2021, concerns about the spread of the COVID-19 Delta variant led the Morrison Government to introduce penalties of up to 5 years in prison and \$66,000 fines for anyone coming to Australia from India. This included Australian citizens and permanent residents trying to return home. The ban prevented any Australian citizens and permanent residents to return to Australia from India even though people entering Australia were subject to mandatory quarantine at that time. This ban was condemned by members of the Indian-Australian community,⁵ human rights organisations,⁶ the Australian Human Rights Commission,⁷ and the United Nations Human Rights Committee⁸ as being a disproportionate response that violated the right of people being able to return home. However, a Federal Court challenge by one of the people banned from returning to Australia from India failed⁹ and eventually the ban ended when the Federal Government decided to let it lapse on 15 May.

A Charter would have made a difference by ensuring government decision-makers considered the right of people to be able to return to their home country, freedom of movement, right to life, and right to health. Through a Charter, these rights would have been balanced with one another in a way that was informed by international law, and the result was the least restrictive approach to protecting people's health. A Charter would also have provided stronger grounds for people affected by the decision to take action in response.

³ *Issue Paper - The impact of and responses to the Omicron wave of the COVID-19 pandemic for people with disability*, The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, page 2

⁴ *Migrants have died from COVID-19 at three times the rate of people born in Australia*, SBS News Online, 17 February 2022

⁵ *Australia's India ban criticised as 'racist' rights breach*, BBC News Online, 3 May 2021

⁶ *The Morrison Government should help Australians get home from India*, Human Rights Law Centre media release, 3 May 2021

⁷ *Statement on travel ban and sanctions on Australians travelling from India*, Australian Human Rights Commission, 1 May 2021

⁸ *UN raises serious human rights concerns over Australia's India travel ban*, The Guardian, 5 May 2021

⁹ *Newman v Minister for Health and Aged Care [2021] FCA 517; Federal Court throws out part of challenge to Federal Government's India travel ban*, ABC News Online, 10 May 2021

Human rights standards led to better decisions during the pandemic

Victoria, Queensland and the Australian Capital Territory's Human Rights Charters and Acts, created an important framework to guide government decision-making during the pandemic. Here are two examples:

Queensland – child exempted from hotel quarantine

A family detained in hotel quarantine in Queensland complained to the Queensland Human Rights Commission about the impact of the detention on their child who has autism spectrum disorder. The child experienced serious food aversions which were not accommodated by the hotel quarantine operator. The family was also separated in quarantine so that the child's mother was not able to be supported by the other family members. The hotel quarantine conditions caused the child to experience serious distress. The Commission used the Queensland *Human Rights Act 2019* to engage with Queensland Health and secure the family a fast-tracked exemption to the hotel quarantine requirement one day after the family's complaint was lodged, allowing the family to quarantine at home. Other examples can be found in the COVID-19 section of this report:

<https://charterofrights.org.au/resources/2022/11/28/101-cases-report>

Victoria - pandemic laws

In response to the ongoing COVID-19 pandemic, the Victorian Government introduced legislation into Parliament which, if passed, would have allowed officers, authorised under public health legislation, to detain people based on the officer's belief about what the person might do. At the same time, the Government sought to expand the type of people who could be authorised as officers; under the proposal, a member of the public could have been appointed as an authorised officer and given the power to detain people. The Government specifically flagged the use of the controversial powers against people with mental illness. A range of bodies raised human rights concerns with the legislation. A Victorian Parliamentary committee, which reviews proposed legislation for compatibility with Victoria's *Charter of Human Rights and Responsibilities Act 2006*, also raised human rights questions about the proposal. The Government agreed to amend the legislation and did not proceed with the proposed detention powers. You can watch a video about this at <https://charterofrights.org.au/victorian-charter>

Conclusion

A Charter will embed lasting change. The three Human Rights Charters/Acts operating successfully at the state and territory level (Australian Capital Territory since 2004, Victoria since 2006, and Queensland since 2020) operated to quietly improve people's lives, in small and big ways, during the COVID-19 pandemic. The sooner there is an Australian Charter of Human Rights, the better the management of future pandemics can be for everyone in our community. The Australian Human Rights Commission's position paper *Free and Equal: A Human Rights Act for Australia* provides a strong starting point for what that Charter should look like.

Recommendation: The inquiry recommend the Federal Government implement an Australian Charter of Human Rights.