

Answers to questions on notice

Public Accounts and Estimates Committee's Inquiry into the Victorian Government's Response to the COVID-19 Pandemic.

On Wednesday 26 August 2020, the Victorian Equal Opportunity and Human Rights Commission (**the Commission**) appeared before the Public Accounts and Estimates Committee (**PAEC**) as part of its Inquiry into the Victorian Government's Response to the COVID-19 Pandemic (the Inquiry). During that hearing the Commission took three questions on notice:

1. Do you have any insights from the Commission's flexible work survey about any particular industries in which casual workers and labour hire workers have been more seriously impacted during COVID-19?
2. What kind of oversight mechanism should be in place to scrutinise the extension of states of emergency beyond the current 6 month limit?
3. Has the Commission received any discrimination complaints as a result of the hotel quarantine program?

Our answers to these questions are set out below.

1. Insights from the Commission's flexible work survey

- Do you have any insights from the Commission's flexible work survey about any particular industries in which casual workers and labour hire workers have been more seriously impacted during COVID-19?

The Commission surveyed 1,504 people and interviewed a further 12 people between June and July 2020 to better understand how COVID-19 has transformed, and continues to transform, approaches to flexible work, and the impacts of this transformation. We were particularly interested in the experiences of Victorian workers aged 18 years and older who are parents, carers and/or workers with disability.

The Commission is currently analysing the results of the survey and interviews and, in doing so, is seeking to understand the impact of COVID-19, including on particular industries. Some early observations include:

- one in ten (9%) respondents with school-aged children kept sending them to school, although this was higher (22%) among those working in the accommodation and food services industry
- the most common industries in which respondents were least able to work remotely were education and training (42%), health care and social assistance (30%) retail (26) and accommodation and food services (21%)
- of those receiving Job Keeper or temporarily not working, 61% were in location-specific roles, as were 60% of those who became unemployed due to COVID19 (noting this was just 1% of the sample).

2. Appropriate oversight of states of emergency that extend beyond six months

- What kind of oversight mechanism should be in place to scrutinise the extension of states of emergency beyond the current 6 month limit?

A Ministerial declaration of a state of emergency under the *Public Health and Wellbeing Act 2008 (PHWA)* creates the conditions in which serious limitations of rights can occur; restrictions on movement, limiting gatherings of people including protests and gatherings for religious worship, prohibiting hospital visits and quarantining.

Whilst there can be clear overwhelming public health justifications for declaring a state of emergency, it remains important that the powers provided under the PHWA are necessary, justifiable, proportionate and time bound. This means their exercise must be subject to appropriate scrutiny.

The PHWA in the form originally passed in 2008 created a number of limitations and safeguards on the exercise of powers under a state of emergency. Those limitations and safeguards include:

- **An evidence base:** requirement for the Minister to declare a state of emergency on the advice of the Chief Health Officer on the basis of circumstances “causing a serious risk to public health” (s 198(1)), which includes consideration of the number of persons likely to be affected, the location, immediacy and seriousness of the threat, the nature, scale and effects of the harm, illness or injury that may develop and the availability and effectiveness of any precaution, safeguard, treatment or other measure to eliminate or reduce the risk
- **A time limit:** States of emergency declared for four weeks at a time, with a cap on the total time period at 6 months
- **Geographical limit:** Emergency area either throughout Victoria or in specified parts of the state
- **Scrutiny:** Reporting to parliament on the exercise of those powers as soon as practicable.

The PHWA does not seem to have envisaged a pandemic of the scale and scope of COVID-19. Six months after the first state of emergency was first declared on 16 March 2020, the current rate of community transmission provides clear need for use of emergency powers beyond the six-month period.

Yet to impose emergency powers for **12 months** opens the possibility for a serious limitation on rights for a significantly longer time.

The question is, as the time period is extended, how can we maintain an exercise of emergency powers that is necessary, justifiable, proportionate and properly scrutinised.

In our view, the amendments passed in the *Public Health and Wellbeing Amendment (State of Emergency Extension and Other Matters) Act 2020* provide a justifiable scheme by creating the following limitations and safeguards:

- **Evidence base and geographical limits:** Maintains the requirement for evidence base and geographical limits.
- **Limited extension of time:** The extension of the time limit on states of emergency (a) applies only in relation to the COVID-19 pandemic and (b) is capped at 12 months.
- **Increased transparency:** Minister must report on the reasons for the extension, and the public health risk powers and emergency powers exercised, and include in the report a copy of the advice of the Chief Health Officer in respect of the extension.
- **Increased oversight:** The Minister's report must be provided to the Parliament or MPs within a matter of days.

This increased transparency and oversight provides parliament with material to allow it to appropriately oversee the exercise of powers, either when parliament sits or through committee processes such as the PAEC Inquiry. The Commission does not have a view on the particular form of parliamentary oversight that is preferred, only that it be done through a body that is itself transparent, independent, and appropriately informed by human rights expertise. It should also ensure it hears from those most adversely affected by COVID-19 and the measures taken to address it.

3. Discrimination complaints concerning hotel quarantine

- Has the Commission received any discrimination complaints as a result of the hotel quarantine program?

The Commission has not received any discrimination complaints connected with the hotel quarantine program.

Contact:

Emily Howie

Head of Legal and Dispute Resolution

Emily.howie@veohrc.vic.gov.au

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