

# OVER POLICING; THE NEED FOR EXECUTIVE ACCOUNTABILITY DURING THE COVID-19 CRISIS

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## I INTRODUCTION

Following the Victorian Government's health response to the COVID-19 pandemic, the Public Accounts and Estimates Committee have commenced a public inquiry to consider the effectiveness of the Victorian Government approach.<sup>1</sup> This submission addresses the terms of reference of the inquiry by considering the lack of transparency surrounding Victoria's over policing of vulnerable communities in response to the COVID-19 crisis. This submission considers this lack of transparency around the policing of assembly and movement, in light of executive responsibility as a principle of public law. This submission argues that the Victorian response to the COVID-19 crisis lacks transparency and effective reporting necessary for executive accountability.

## II EXECUTIVE AUTHORITY

Whilst it is important for the Executive Government to be capable of and empowered to respond to a crisis be it war, natural disaster, financial crisis,<sup>2</sup> or indeed a health emergency, a level of accountability is essential to prevent an executive power grab. In ascertaining the scope of power of the executive, the cautionary words of Dixon J come to mind:

History and not only ancient history, shows that in countries where democratic institutions have been unconstitutionally superseded, it has been done not seldom by those holding the executive power. Forms of government may need protection from dangers likely to arise from within the institutions to be protected.<sup>3</sup>

As held in obiter by Barwick CJ, any act or activity of the Commonwealth 'must fall within the confines of some power, legislative or executive, derived from or through *The Constitution Commonwealth of Australia Constitution Act 1900 (Cth) (The Constitution)*'.<sup>4</sup> Beyond the specific and enumerated powers granted to the Commonwealth by *The Constitution*,<sup>5</sup> certain

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<sup>1</sup> Parliament of Victoria, 'Parliamentary inquiry begins into COVID-19 response' (Media Release, 05 May 2020).

<sup>2</sup> *Pape v Federal Commissioner of Taxation* (2009) 238 CLR 1, [233] (French CJ).

<sup>3</sup> *Australian Communist Party v The Commonwealth* (1951) 83 CLR 1, 187 (Dixon J) ('*Australian Communist Party*').

<sup>4</sup> *Victoria v The Commonwealth and Hayden* (1975) 134 CLR, 363 (Barwick CJ) ('*AAP Case*').

<sup>5</sup> *Commonwealth of Australia Constitution Act 1900 (Cth) ('The Constitution')*.

implied powers stem from its existence and its character as a polity.<sup>6</sup> The nationhood power implied within s 51(xxxix)<sup>7</sup> in conjunction with other powers such as s 61 broadens the scope of what may be achieved by the exercise of other specific powers. The idea being that the federal executive has power to ‘engage in enterprises and activities peculiarly adapted to the government of a nation and which cannot otherwise be carried on for the benefit of the nation.’<sup>8</sup>

The executive power of the Commonwealth is divided into two parts; the portion belonging to the Federal Government and the portion relating to matters reserved to the States, though both federal executive power and State executive power are of the same nature and quality.<sup>9</sup>

### 1 *Commonwealth*

The executive power of the Commonwealth is conferred by s 61 of *The Constitution*;<sup>10</sup> ‘the executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.’ When considering the vested power of the Commonwealth, Williams J regarded the ‘purposes of the Commonwealth’ as words of limitation.<sup>11</sup> Therefore, the necessary legislature amendments made to combat the COVID-19 crisis must have their purposes found within the four corners of *The Constitution*.<sup>12</sup>

### 2 *Victoria*

Whilst, under *The Constitution*,<sup>13</sup> federal legislative power is limited to the enumerated heads of power, the residual power is left to the states. State Parliaments exercise plenary legislative power and therefore have the power to legislate on matters of public health and emergencies and can generally confer broad executive powers.<sup>14</sup> These plenary powers are limited

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<sup>6</sup> *Australian Communist Party* (n 3), 187-8 (Dixon J), discussed in *AAP Case* (n 4), 397 (Mason J).

<sup>7</sup> *The Constitution* (n 5) s 51(xxxix).

<sup>8</sup> *AAP Case* (n 4), 397 (Mason J).

<sup>9</sup> John Quick and Robert Randolph Garran, *The Annotated Constitution of the Australian Commonwealth 1901* (LexisNexis, 2014), 701-2, quoted in *Williams v Commonwealth of Australia* [2012] HCA 23, [57] (French CJ).

<sup>10</sup> *The Constitution* (n 5).

<sup>11</sup> *Attorney-General (Vict) v The Commonwealth* (1945) 71 CLR 237, 282 (‘*Pharmaceutical Benefits Case*’).

<sup>12</sup> *Ibid.*

<sup>13</sup> *The Constitution* (n 5).

<sup>14</sup> Stephanie Brenker, ‘An Executive Grab for Power During COVID-19?’, *AUSPUBLAW* (Blog, 13 May 2020) <<https://auspublaw.org/2020/05/an-executive-grab-for-power-during-covid-19/>>.

effectively only by s 109,<sup>15</sup> though in the event of a national emergency such as declared due to COVID-19, the conferral of emergency powers must be temporary.<sup>16</sup>

The State executive consists of the elected Premier (currently Daniel Andrews) as the head of the Victorian Government, along with the State Ministers, who are appointed by the Governor on advice of the Premier.<sup>17</sup> In this way, the Victorian State Ministers are part of the Victorian Government, though they are still members of the federal executive as members of the Queen's Ministers of State for the Commonwealth.<sup>18</sup>

These Ministers extend the arm of the executive through the individual ministerial responsibility of the different government departments that make up the day to day management of State government. The Westminster convention for Ministerial responsibility holds the principle that Ministers take personal responsibility of any maladministration of their departments. Notwithstanding this principle, the intricacies of management and delegation alongside the complexity and size of government departments means that the bar for individual accountability is a high one.

### III CORONAVIRUS CHRONOLOGY

Australia's first confirmed case of novel coronavirus was confirmed by Victoria Health Authorities on the morning of 25 January 2020.<sup>19</sup> Thus began the unprecedented national crisis that is currently unfolding. The virus responsible for this pandemic is called severe acute respiratory syndrome coronavirus 2, or SARS-CoV-2, which causes the disease called COVID-19.<sup>20</sup> Since late January 2020, there have been over 8000 confirmed cases in Australia, of which over 230 have been in Victoria. COVID-19 has been responsible for over 100 deaths nationwide and 20 in Victoria.<sup>21</sup> At 58.9%, the majority of cases originated overseas, followed

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<sup>15</sup> *The Constitution* (n 5) s 109 provides that 'when a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.'

<sup>16</sup> *COVID-19 Omnibus (Emergency Measures) Act 2020* (Vic), s 1, 11 ('*Omnibus Act*'); *Biosecurity Act 2015* (Cth) s 443(4)(b) ('*Biosecurity Act*').

<sup>17</sup> 'The Executive', *Victorian Public Sector Commission* (Web Page, 04 July 2020) 4.1 <<https://vpssc.vic.gov.au/>>.

<sup>18</sup> *The Constitution* (n 5) s 64.

<sup>19</sup> *Biosecurity Act 2015* (n 16).

<sup>20</sup> Alexander E Gorbalenya, et al, 'The species *Severe acute respiratory syndrome-related coronavirus*: classifying 2019-nCoV and naming it SARS-CoV-2' (2020) 5 *Nature Microbiology* 536.

<sup>21</sup> 'Coronavirus (COVID19) current situation and case numbers', *Australian Government Department of Health Coronavirus (COVID-19) health alert* (Web Page, 03 July 2020) <<https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/coronavirus-covid-19-current-situation-and-case-numbers>> ('*Australian COVID-19 Health Alert*'); Victoria State Government, *Surveillance of notifiable conditions; Coronavirus COVID-19 in Victoria* (Interactive daily report, 02 Jul 2020) 2.

by 28.4% locally acquired transmission connected to contact of a confirmed case.<sup>22</sup> This information was correct at 02 July 2020 and whilst the other Australian States are on the decline, Victoria is currently experiencing what could appear to be a second wave of COVID-19.

In order to understand how effective and appropriate Australia's COVID-19 response was, it is necessary to distinguish between the execution and escalation of the of federal legal powers alongside the operation of the Victorian state emergency response plan.

## IV CORONAVIRUS LEGISLATIVE ACTIONS

### 1 Commonwealth

On 21 January 2020, COVID-19 was listed as a Human Disease with pandemic potential to the *Biosecurity (Listed Human Diseases) Determination 2016*,<sup>23</sup> enabling the use of enhanced border security measures under the *Biosecurity Act 2015*.<sup>24</sup> This authority is most likely granted to the Commonwealth under the quarantine head of power in s 51 of the *Commonwealth of Australia Constitution Act 1900* (Cth),<sup>25</sup> though hasn't yet been challenged in the High Court. The *Biosecurity Act 2015* provides power to the Commonwealth to assess and manage the risk of infectious diseases caused by viruses, bacteria, or other contagions from entering Australia and causing harm to agriculture, human health, the environment and the economy.<sup>26</sup>

On 18 March 2020, the Governor-General exercised the power granted him under the *Biosecurity Act 2015*<sup>27</sup> and declared that a human biosecurity emergency existed.<sup>28</sup> This was the first time that these powers had been exercised under the *Biosecurity Act 2015*.<sup>29</sup> The declaration gave the Federal Minister for Health the power to issue any direction to any person and to determine any requirement he is satisfied is necessary<sup>30</sup> in order to prevent or control the emergence, establishment or spread of the virus within Australia, or to another country. Per

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<sup>22</sup> *Australian COVID-19 Health Alert* (n 21).

<sup>23</sup> *Biosecurity (Listed Human Diseases) Determination 2016* (Cth).

<sup>24</sup> *Biosecurity Act* (n 16), discussed in Howard Maclean and Karen Elphick, 'COVID-19 Legislative response – Human Biosecurity Emergency Declaration Explainer', *Australian Parliament House* (Blog, 19 March 2020). <[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/FlagPost/2020/March/COVID-19\\_Biosecurity\\_Emergency\\_Declaration](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2020/March/COVID-19_Biosecurity_Emergency_Declaration)> ('*COVID-19 Legislative response*').

<sup>25</sup> *The Constitution* (n 5) s 51(ix).

<sup>26</sup> Explanatory Statement, *Biosecurity Act 2015* (Cth) and *Biosecurity (Human Health) Regulation 2016* (Cth) 1, 5.

<sup>27</sup> *Biosecurity Act* (n 16) s 475; Explanatory Statement *Biosecurity Act 2015* (Cth).

<sup>28</sup> *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* (Cth).

<sup>29</sup> *Biosecurity Act* (n 16).

<sup>30</sup> *Biosecurity Act* (n 16) s 477-8, discussed in *COVID-19 Legislative response* (n 24).

the statutory limitation,<sup>31</sup> this emergency was put in place from 18 March 2020 for three months, though a human biosecurity emergency period may be extended.<sup>32</sup> Indeed, the Governor-General extended the human biosecurity emergency period for three months from 17 June 2020 to 17 September 2020.<sup>33</sup> The Health Minister must exercise these powers personally; they cannot be delegated,<sup>34</sup> though the scope of these emergency powers are expansive. Provided that the Health Minister is satisfied that an action is necessary to combat COVID-19, or to implement World Health Organisation (WHO) recommendations, then the Minister may make a direction to enact this.<sup>35</sup> Some of the first directions given by the Health Minister included the international cruise ship ban on 18 March 2020<sup>36</sup> and the overseas travel ban on 25 March 2020.<sup>37</sup>

There may be argument that the federal executive was *ultra vires* when enacting the biosecurity measures under the *Biosecurity Act*,<sup>38</sup> by encroaching upon the sphere of State legislative power regarding matters relating to public health.<sup>39</sup> However, the addition of COVID-19 to the Biosecurity Act, along with the subsequent directions are an exercise of the power conferred by s 51(xxxix) alongside s 61. As applied in the *Pharmaceutical Benefits Case*,<sup>40</sup> the Commonwealth could likely make directions in relation to matters affecting public health, notwithstanding the absence of a specific head of power other than s 51(ix)<sup>41</sup> quarantine. However, until the High Court defines the scope of power under s 51(ix),<sup>42</sup> it is unknown if the Commonwealth grab for power under the *Biosecurity Act*<sup>43</sup> is truly successful.

## 2 Victoria

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<sup>31</sup> *Biosecurity Act* (n 16) s 475(4)(b).

<sup>32</sup> *Biosecurity Act* (n 16) s 476.

<sup>33</sup> Prime Minister of Australia Scott Morrison, 'Update on Coronavirus Measures' (Media Statement, 15 May 2020).

<sup>34</sup> *Biosecurity Act* (n 16) s 474.

<sup>35</sup> *COVID-19 Legislative response* (n 24).

<sup>36</sup> *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Determination 2020* (Cth) s 5.

<sup>37</sup> *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020* (Cth) s 5.

<sup>38</sup> *Biosecurity Act* (n 16).

<sup>39</sup> Stephanie Brenker, 'An Executive Grab for Power During COVID-19?', *AUSPUBLAW* (Blog, 13 May 2020) <<https://auspublaw.org/2020/05/an-executive-grab-for-power-during-covid-19/>>.

<sup>40</sup> *Pharmaceutical Benefits Case* (n 11), 257, discussed in *AAP Case* (n 4), 398 (Mason J).

<sup>41</sup> *The Constitution* (n 5) s 51(ix).

<sup>42</sup> *Ibid.*

<sup>43</sup> *Biosecurity Act* (n 16).

On 10 March 2020, the Victorian Government released its *COVID-19 Pandemic Plan for the Victorian Health Sector* which outlined a four-stage plan for managing the pandemic:<sup>44</sup>

Stage 1 – initial containment

Stage 2 – targeted action

Stage 3 – peak action

Stage 4 – stand-down and recovery

This plan, in conjunction with the *Emergency Management Act 2013* (Vic)<sup>45</sup> and the *State Health Emergency Response Plan*<sup>46</sup> guides the Victorian government's management of the COVID-19 pandemic.

On 16 March 2020, Jenny Mikakos, the Minister for Health declared a State of Emergency under the *Public Health and Wellbeing Act 2008* (Vic),<sup>47</sup> based on the advice from the Victorian Chief Health Officer and after consultation with Lisa Neville, the Minister for Police and Emergency Services and the Emergency Management Commissioner. This State of Emergency was subsequently extended under s 198(7)(c)<sup>48</sup> on 12 April 2020, 11 May 2020, 31 May 2020 and 21 June 2022. The current State of Emergency is in effect until 19 July 2020.<sup>49</sup>

On 28 March 2020, regulations were made under the *Public Health and Wellbeing Act 2008*<sup>50</sup> to prescribe certain offenses as infringement offences for which penalties and fines can be issued. After these regulations were made, the Chief Health Officer exercised their executive delegatory rights and appointed the enforcement of these directions to Victoria Police.<sup>51</sup> As a result, the Victoria Police established a coronavirus enforcement squad to enforce the shutdown of non-essential services and self-isolation of travellers.<sup>52</sup>

On 3 April 2020 the Victorian Government reorganised to create a Crisis Council of Cabinet (CCC) as the core decision making body on all COVID-19 related matters.<sup>53</sup> These members

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<sup>44</sup> Minister for Health, *COVID-19 Pandemic Plan for the Victorian Health Sector* (at 10 March 2020) 4.

<sup>45</sup> *Emergency Management Act 2013* (Vic).

<sup>46</sup> State Crisis and Resilience Council (SCRC) *State Health Emergency Response Plan* (at September 2017).

<sup>47</sup> *Public Health and Wellbeing Act 2008* (Vic) s 198(1) ('*Public Health and Wellbeing Act*').

<sup>48</sup> *Public Health and Wellbeing Act* (n 45) s 198(7)(c).

<sup>49</sup> Minister for Health (Vic), *Extension of Declaration of a State of Emergency*, (21 June 2020).

<sup>50</sup> *Public Health and Wellbeing Act* (n 45) s 188(2), 193(1), 203(1).

<sup>51</sup> *Public Health and Wellbeing Act* (n 45) s 192, 202.

<sup>52</sup> Victorian Government, Submission 54 to the Senate Select Committee on COVID-19, *Inquiry into the Australian Government's response to the COVID-19 pandemic* (May 2020) 13 ('*Submission 54*').

<sup>53</sup> *Public Health and Wellbeing Act* (n 45) s 190, 200.

have the responsibility for leading the COVID-19 response across the Victorian government. The Victorian Ministers who have taken on COVID-19 in addition to their usual duties include Daniel Andrews, Jacinta Allan, Jill Hennessy, James Merlino, Jenny Mikakos, Lisa Neville, Martin Pakula and Tim Pallas. This submission focuses primarily on the responsibility of Jill Hennessy as Minister for the Coordination of Justice and Community Safety: COVID-19, Jenny Mikakos as Minister for the Coordination of Health and Human Services: COVID-19 and Lisa Neville as Minister for Police and Emergency Services.

On 23 April 2020, the *COVID-19 Omnibus (Emergency Measures) Act 2020* (Vic)<sup>54</sup> passed both houses of Parliament. The *Omnibus Act*<sup>55</sup> granted further powers to the CCC to temporarily make regulations and modify the application of the law in Victoria for the purposes of responding to the COVID-19 pandemic.<sup>56</sup>

## V CORONAVIRUS LEGISLATION IN ACTION

With this declaration of a State of Emergency in response to the COVID-19 pandemic, Victoria was able to enact a large number of orders, directions and regulations to respond to the public health crisis in an attempt to slow the spread of COVID-19.<sup>57</sup> These directions included restricting activity, the prohibition of mass gatherings, stay at home directions, restrictions on number of guests at weddings and funerals, directions on non-essential businesses, directions on self-isolation and more.<sup>58</sup>

It was the responsibility of the Victorian police, as an extension of the Victorian executive, to enforce these measures and fine anyone infringing them. The State of Emergency enables authorised officers, with the assistance of police, to exercise broad public health risk powers for the purposes of protecting public health.<sup>59</sup> These powers include the ability to close any premises, enter any premises without a warrant, detain any person or group of persons, restrict the movement of any person or persons, prevent entry to any person or group of persons, to require the provision of information and to give any other directions that the authorised officer deems necessary to protect public health.<sup>60</sup> The immense power granted by these laws

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<sup>54</sup> *Omnibus Act* (n 16).

<sup>55</sup> *Ibid*.

<sup>56</sup> *Ibid* s 1.

<sup>57</sup> 'Victorian Legislation – Coronavirus (COVID-19); Orders, Directions, Regulations & Related Resources', *Federal Court of Australia* (Web Page, 03 July 2020) <<https://www.fedcourt.gov.au/covid19/legislation/vic>>.

<sup>58</sup> *Submission 54* (n 52) 40-42.

<sup>59</sup> *Public Health and Wellbeing Act* (n 45) s 190, 200.

<sup>60</sup> *Public Health and Wellbeing Act* (n 45) s 190(1)

effectively grants dictator level power to the Health Minister during a State of Emergency. This State of Emergency can be extended by the Health Minister for so long as it is justified that it is in the interests of public health and is necessary to control the spread of COVID-19. If Victorian Minister for Health Jenny Mikakos, or National Health Minister Greg Hunt were to seize an opportunistic power grab, the wording of these statutes would make it almost impossible to litigate.

## VI POLICING BIAS IN CORONAVIRUS RESPONSE

The Victorian police enforcement of these COVID-19 directions is reported to have unfairly targeted disadvantaged groups within the community. Affluent Victorian suburbs with high infection rates, including Stonnington and Banyule, received relatively low levels of policing and subsequently received lower incidences of fining. Comparatively, suburbs with higher migrant populations such as Greater Dandenong and Yarra which have a high proportion of migrant populations and social housing, were policed heavily, receiving as many as 10 times the number of fines than more affluent areas, despite a fraction of the cases.<sup>61</sup> It is ironic that those areas most responsible for spreading COVID-19 are the least policed. The police appear to be operating on a practiced decision as to where to police and whether to issue a fine and this has been impacting certain racial groups and minorities more. There have been reports that show that there have been high numbers of fines issued in small towns with high Indigenous populations and low levels of COVID-19.<sup>62</sup> This militarisation and police crackdown as a response to the public health issue disproportionately impacts those most vulnerable communities who can least afford fines. This issue is not unique to Victoria, with NSW coming under fire for targeting culturally diverse and low socio-economic groups for the majority of COVID-19 policing.<sup>63</sup> Victoria, however have been less transparent around the issuing of fines, where at least in NSW, breakdowns are provided of the location and reason for the issuing of fines.<sup>64</sup>

On 02 July 2020 the Victorian Government announced targeted restrictions for 10 postcodes experiencing a spike in COVID-19 cases.<sup>65</sup> These post codes have been placed in level 3

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<sup>61</sup> Michael McGowan, Andy Ball and Josh Taylor, 'Covid-19 lockdown: Victoria police data sparks fear disadvantaged unfairly targeted', *The Guardian* (Melbourne, 06 June 2020) ('Covid-19 lockdown: Victoria police data Article').

<sup>62</sup> *Critical Condition; The impact of Covid-19 policies, policing and prisons on First Nations communities* (Report, 2020).

<sup>63</sup> Osman Faruqi, 'Compliance fines under the microscope', *The Saturday Paper* (Sydney, 18 April 2020).

<sup>64</sup> *Covid-19 lockdown: Victoria police data Article* (n 61).

<sup>65</sup> Victoria State Government, 'Coronavirus update for Victoria – 2 July 2020' (Media Release, 02 July 2020).

lockdown, in line with Stage 2 of the *COVID-19 Pandemic Plan for the Victorian Health Sector*.<sup>66</sup> Furthermore, on 04 July 2020, the Victorian Government made the decision to lockdown the public housing towers in Flemington, Kensington and North Melbourne.<sup>67</sup> The lockdowns of public housing is the natural evolution of a lack of government focus on cultural ambassadors during the initial outbreak of the virus. Healthcare workers and social workers, community organizations like the Asylum Seeker Resource Centre begged from the initial outbreak that Victorians with ESL and broader social vulnerabilities be prioritised. These communities experience the necessity of going to work even when sick due to being locked out of Government financial benefits such as job keeper. They live in cramped residences which are often sublet illegally for a secondary income and are the perfect storm for accelerated community transmission, especially with growing reports of airborne transmission.<sup>68</sup>

The decision to have Victorian police, not nurses and translators, first on site to lockdown over 3000 residents in these public housing estates shows the complete lack of humanity in handling this situation. Many of the residents of this community found out about the lockdown by being stopped by police when attempting to leave their homes. Many more found out second hand due to the lack of available information in their language. Whilst support services were on site shortly after and the Andrews Government has addressed these issues in a recent press statement,<sup>69</sup> these subsequent actions do not wipe away the reality of the deteriorating public opinion of COVID-19 policing.

Whilst the powers granted under the *Public Health and Wellbeing Act*<sup>70</sup> enable the Government to make the decision to lock down these communities, when the arm of the executive opts in to enforce the law on some people and not others, can it really be said that the rule of law is an assumption of *The Constitution*?<sup>71</sup> Should these residences have been a privately owned apartment building, would the Victorian Government have acted so decisively?

## VII EXECUTIVE ACCOUNTABILITY

In order to track the racial disproportionality of policing that is occurring, both during covid, and after the return to normalcy, there needs to be full transparency of the Victorian Police's

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<sup>66</sup> Minister for Health, *COVID-19 Pandemic Plan for the Victorian Health Sector* (at 10 March 2020) 4.

<sup>67</sup> Premier of Victoria, 'Statement From The Premier' (Media Release, 04 July 2020).

<sup>68</sup> Hannah Devlin, 'Who underplaying risk of airborne spread of COVID-19, say scientists' *The Guardian* (Melbourne 06 July 2020).

<sup>69</sup> Premier, 'Extra Support for Housing Estates and Hotspot Postcodes' (Media Release, 05 July 2020).

<sup>70</sup> *Public Health and Wellbeing Act* (n 45), 199, 201.

<sup>71</sup> *Australian Communist Party* (n 3), 191 (Dixon J).

response to COVID-19, including the number of stops, fines and move on orders, the geographical data of and the reasons given when fines are issued. This data will allow independent bodies to monitor the bias that appears to be occurring in Victorian policing methods. This submission considers that Jill Hennessy as Minister for the Coordination of Justice and Community Safety: COVID-19, Jenny Mikakos as Minister for the Coordination of Health and Human Services: COVID-19 and Lisa Neville as Minister for Police and Emergency Services must consider the release of de-identified data on all COVID-19 fines so that an independent integrity commission can determine and prevent the future bias in policing COVID-19.

## VIII CONCLUSION

The threat from COVID-19 is not amorphous. There is no doubt that there is a pressing need for decisive Government action in order to tackle this crisis. This submission does not purport to challenge the immense power granted to the Government to act in emergency situations. These laws allow governments to extend broad measures of control, which may be necessary to stop the spread of COVID-19 and yet these laws still need to be balanced with human rights and need to be held accountable by effective and accurate reporting. Problems arise when these powers lack accountability and can run unchecked, potentially causing over-criminalisation and discrimination towards the community's most vulnerable.

Following the Government's health response to the COVID-19 pandemic, this submission to the Public Accounts and Estimates Committee public inquiry<sup>72</sup> addresses the terms of reference of the inquiry by considering the lack of transparency surrounding Victoria's over policing of vulnerable communities in response to the COVID-19 crisis. This submission considers that transparency, accountability and effective reporting are necessary to prevent any policing bias during this chronic and ongoing issue.

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<sup>72</sup> Parliament of Victoria, 'Parliamentary inquiry begins into COVID-19 response' (Media Release, 05 May 2020).

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