

# INTERIM REPORT 2

SELECT COMMITTEE ON THE COVID-19 PANDEMIC RESPONSE

MAY 2020



# 1 INTERIM RECOMMENDATIONS OF THE COMMITTEE

- 1.1 The Legislative Assembly for the ACT established a select committee to consider and report to the Assembly on any matter relating to the ACT Government's health and financial response and any other matter relating to the COVID-19 Pandemic as it relates to the ACT.
- 1.2 The Committee released its first interim report on 15 May 2020. This interim report draws on public hearings held on 14 and 22 May 2020 and submissions received. A list of witnesses the Committee heard from is available at Appendix A. The Committee intends to publish commentary and recommendations on a rolling basis.

## LEGISLATION

- 1.3 The Committee received a submission provided by the Human Rights Commission focussing on the oversight of delegated legislation, implementation of public health directions and adequacy of safeguards for the use of the COVIDSafe tracing application in the ACT.
- 1.4 The submission acknowledged that the ACT Government had adopted a wide range of legislative measures to respond to the COVID-19 emergency, including the rapid development and passage of new legislation as well as greater reliance on subordinate and delegated laws enacted by the executive.
- 1.5 The submission pointed out that by its nature, emergency legislation, including delegated legislation, is likely to engage human rights. A human rights-based approach in a public emergency context requires that such laws and preventative measures be accountable and responsive to scrutiny mechanisms to ensure that any preventative measures are circumscribed to their purpose, feature adequate safeguards, mitigate against unforeseen consequences and, in turn, warrant public confidence. Human rights scrutiny is especially essential where delegated legislation determines the content of obligations that attract fines or potential imprisonment for non-compliance.
- 1.6 Given the volume of delegated legislation adopted during the COVID-19 pandemic response period, including in the form of Notifiable and Disallowable Instruments, the Human Rights Commission points out the need to ensure these instruments have been appropriately considered and are consistent with human rights. The Submission further points out that the mandate of the Assembly's Scrutiny Committee does not extend to Notifiable Instruments.

## **Recommendation 1**

- 1.7 The Committee recommends the ACT Government direct that all delegated legislation made in response to COVID-19 (including notifiable instruments) include a statement of compatibility outlining whether and how the instrument is compatible with human rights.**

## **Recommendation 2**

- 1.8 The Committee recommends that where emergency measures are introduced by way of delegated legislation, they should be accompanied by a statement of compatibility with human rights.**

## **Recommendation 3**

- 1.9 The Committee recommends that delegated legislation made in response to COVID-19 be in the form of disallowable instruments, rather than notifiable instruments to ensure appropriate and adequate oversight by the Legislative Assembly.**

## **LAW ENFORCEMENT**

- 1.10** The Human Rights Commission's submission commended the approach by ACT Policing in enforcing compliance with public health directions but noted the increase in inquiries to protection of rights services about what behaviours may be reasonably excused or permitted by the directions. Even as restrictions ease, such enquiries suggest that there is still ongoing confusion in the community about their application, especially in view of differing restrictions in neighbouring New South Wales (e.g. essential travel model).
- 1.11** The Human Rights Commission suggests the need for greater public guidance and reporting about enforcement of the CHO's directions.

## Recommendation 4

**1.12 The Committee recommends that ACT Policing make public all guidance or directions it has provided to officers to inform their enforcement of public health directions to enable assessment of whether such guidance is sufficient, updated and accurate while also establishing clear community expectations about compliance.**

1.13 The Human Rights Commission's submission pointed out that care must be taken to ensure that emergency measures facilitate monitoring of vulnerable people in private institutional settings, such as aged care, and are only as restrictive as strictly necessary.

## Recommendation 5

**1.14 The Committee recommends that ACT Policing, ACT Health and Access Canberra publish weekly de-identified data about compliance activities taken under any public health emergency directions, including:**

- the number of infringement notices or formal cautions issued;
- the number of compliance checks conducted; and
- basic socio-demographic indicators of affected individuals or businesses.

## COVID SAFE APP AND ASSOCIATED PRIVACY PROVISIONS

1.15 The Human Rights Commission submitted that while the *Privacy Amendment (Public Health Contact Information) Act 2020* passed in the Commonwealth Parliament on 14 May 2020, implements some important safeguards, some gaps may still remain. As presently defined, restrictions on the use of 'COVID app data' do not appear to extend to information that is derived or transformed from data generated by the application and stored on a mobile device. The explanatory statement to the Commonwealth's Privacy Amendment (Public Health Contact Information) Bill 2020 explicitly recognises that:

State and Territory health authorities will put in place additional controls and procedures to ensure that only approved employees or personnel may access data in the National COVIDSafe Data Store for the purpose of contact tracing.

## **Recommendation 6**

**1.16 The Committee recommends that the ACT Government either:**

- **put in place additional controls and procedures to ensure that only approved employees or personnel may access data in the National COVIDSafe data store and may do so solely for the purpose of contact tracing; or**
- **if the ACT Government believes that data agreements signed with the Commonwealth containing rules governing their usage of COVID app data are legally enforceable, publicly release those agreements.**

## **YOUNG PEOPLE**

1.17 The Human Rights Commission's submission advised that a number of young people have raised concerns about peers who are experiencing vulnerability for the first time as a result of COVID-19, stating that there has been little information specifically adapted to help children and young people understand COVID-19, what is required of them and where they can access support if needed.

## **Recommendation 7**

**1.18 The Committee recommends that the ACT Government ensures that information is specifically adapted to help children and young people understand COVID-19, what is required of them and where they can access support if needed.**

## **EDUCATION**

### **COMMUNICATION WITH TEACHERS**

1.19 The Committee heard evidence that the Education Directorate does not generally communicate with teachers and school staff outside normal work hours. In normal circumstances, the Committee understands and supports this approach. However, when there are exceptional circumstances or a rapidly changing environment like a crisis, it is evident that the more communication that can occur in a quick and timely way - even if that is outside normal work hours - would be useful. The Australian Education Union ACT indicated their support for this.

## Recommendation 8

- 1.20 The Committee recommends that, to enable timely communication when there are exceptional circumstances, the Directorate suspends its usual protocol of not communicating with teachers and school staff out of normal work hours.**

## CHILDREN WITH SPECIAL NEEDS

- 1.21 The Committee heard that children with special needs and their families were finding it exceptionally hard without the normal supports during this period. Carers may have not had respite over the entire lock down period or even before given that many were concerned about the health impact on vulnerable people.

## Recommendation 9

- 1.22 The Committee recommends that if there are further restrictions on face to face schooling that the ACT Government prioritise facilitating normal schooling for children with special needs.**

## Recommendation 10

- 1.23 The Committee recommends that further work be undertaken to support students with special needs, including those in learning support units or with an Individual Learning Plan (ILP), during shut downs.**

## IMPACT ON STUDENTS

- 1.24 The Committee heard from witnesses that 'any inequality will be exacerbated' in educational outcomes 'due to restrictions and changes in the education system.

## Recommendation 11

- 1.25 The Committee recommends that all school systems provide extra support to students who may have been left behind by the changes in education, and in particular those who were struggling before the emergency.**

## **Recommendation 12**

**1.26** The Committee recommends that the ACT Government undertake an independent review of the learning from home period so that improvements can be made for similar future situations. The scope should include but not be limited to:

- preparedness for remote learning;
- resources available for schools and families, including consideration of identification of vulnerable children and additional supports provided;
- communication with school communities and parents; and
- comparison of differences with the responses in other jurisdictions.

## **Recommendation 13**

**1.27** The Committee recommends that the ACT Government undertake an independent longitudinal study to measure the impact of the COVID-19 response on children's education.

## **Recommendation 14**

**1.28** The Committee recommends that, wherever possible, students have access to their local school during any similar shut downs.

## **COORDINATOR-GENERAL, WHOLE OF GOVERNMENT (NON-HEALTH) RESPONSE TO COVID 19**

**1.29** The Committee heard from the Coordinator-General, Whole of Government (Non-Health) Response to COVID 19 about her role.



## **Recommendation 15**

**1.30 The Committee recommends that the ACT Government publish the scope of the Coordinator-General's role.**

Mr Alistair Coe MLA

Chair

28 May 2020

# THE COMMITTEE

## COMMITTEE MEMBERSHIP

Mr Alistair Coe MLA (Chair)

Ms Tara Cheyne MLA (Deputy Chair)

Mrs Vicki Dunne MLA

Mr Michael Pettersson MLA

Ms Caroline Le Couteur MLA

## SECRETARIAT

Hamish Finlay	Committee Secretary
Danton Leary	Assistant Committee Secretary
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## RESOLUTION OF APPOINTMENT

On 2 April 2020 the ACT Legislative Assembly resolved that:

(1) select committee be appointed to consider and report to the Assembly on any matter relating to the ACT Government's health and financial response and any other matter relating to the COVID-19 Pandemic as it relates to the ACT;

(2) the Committee be composed of:

- (a) two Members to be nominated by the Government;
- (b) two Members to be nominated by the Opposition; and
- (c) one Member to be nominated by the Greens;

to be notified in writing to the Speaker within two hours of this motion passing;

(3) an Opposition Member shall be elected chair of the Committee by the Committee;

(4) in conducting public hearings, the Committee shall be mindful of the Public Health Emergency declaration, including that:

(a) all efforts are made to minimise the time witnesses are required to be present by scheduling designated hearing times, advising in advance which witnesses the Committee wishes to call or topics that will be discussed, and other measures that minimise impact on essential government, business or organisational resources;

(b) where a public hearing is scheduled requiring Government ministers and/or officials:

(i) these are to be held no more than once per fortnight for a maximum of two hours, with no directorate to appear for more than an hour;

(ii) the Committee must advise of the directorates and officers required and the Committee's intended lines of inquiry no less than one week prior; and

(iii) hearings are not held at the same time as National Cabinet or a meeting of the ACT Government Cabinet;

(c) hearings are held virtually or via teleconference only; and

(d) the above provisions only apply during the Public Health Emergency declaration; and

(5) for the purposes of this Committee's operation, standing order 254D does not apply.

**On 7 May 2020**—at its meeting, the Assembly agreed the resolution be amended by omitting “paragraph (4)(b)(i)” and substituting by the following:

“(4)(b)(i) these are to be held no more than once a week for a maximum of two hours, with a minister or directorate to appear no more than once per fortnight for a maximum of one hour;”

## APPENDIX A - WITNESSES

### 14 MAY 2020

- Ms Yvette Berry MLA, Minister for Education and Early Childhood Development
- Ms Katy Haire, Director General, Education Directorate
- Ms Deb Efthymiades, Deputy Director General, System Policy and Reform, Education Directorate
- Mr Ross Hawkins, Executive Group Manager, System Design and Delivery, Education Directorate
- Mr Martin Watson, Executive Group Manager Board of Senior Secondary Studies
- Ms Rebecca Cross, Coordinator-General, Whole of Government (Non-Health) Response to COVID 19

### 22 MAY 2020

- Mr Ross Fox, Director, Catholic Education Office, Archdiocese of Canberra and Goulburn
- Ms Jennifer Rickard, Executive Officer, Association of Parents and Friends of ACT Schools
- Australian Education Union ACT Branch
- Glenn Fowler, Secretary, Australian Education Union ACT Branch
- Mr Andrew Wrigley, Executive Director, Association of Independent Schools ACT
- Ms Kristy McGovern-Hooley, President, ACT Council of Parents and Citizens Association
- Mr Andrew Barr MLA, Chief Minister and Treasurer
- Mr Kim Salisbury, Executive Group Manager, Treasury
- Dr Kerry Coleman, Chief Health Officer
- Mr David Nicol, Under Treasurer