



**Victorian Equal Opportunity
& Human Rights Commission**

Affected communities: Multicultural and multifaith communities

**SELECTIONS FROM THE 2020 REPORT ON
THE OPERATION OF THE CHARTER OF
HUMAN RIGHTS AND RESPONSIBILITIES**

While the COVID-19 virus does not discriminate, its impacts have been felt more harshly by people and communities who already experience discrimination and disadvantage.

The pandemic has shone a light on systemic and structural disadvantages that serve to further entrench inequality:

- **Multicultural and multifaith communities:** Multicultural and multifaith communities experienced increased vilification and discrimination. The pandemic also highlighted the broader systemic failure to provide multicultural and multifaith communities with access to the resources and supports to understand and comply with public health directives and remain safe. See discussion in Chapter 8.¹⁴⁷
- **People with disabilities:** People with disabilities and their carers were often more disadvantaged by service closures and lockdowns. People with disabilities also encountered discrimination in shops, clinics and at work from the inflexible application of the requirement to wear masks.¹⁴⁸ See case studies on pages 52-53.
- **People in closed environments:** People in prisons and mental health facilities had little or no face-to-face access to family as a result of measures necessary to protect health and safety. Changes in the management of custodial settings implemented to prevent the spread of the virus also meant that people had less access to fresh air, education and welfare programs. At times, people entering prison were subject to up to 14 days 'protective quarantine'.¹⁴⁹ See discussion in Chapter 7.
- **Young people:** Young people in youth justice facilities and out-of-home care had face-to-face access to family paused for significant periods during the pandemic; however, phone and online contact with family was possible. Educational and vocational activities in youth justice facilities were also disrupted or transferred online. More generally, across Victoria (and particularly in Greater Melbourne and Mitchell Shire) school learning was conducted online for most students for long periods of time during 2020, causing disruption to education. Young people have had their education significantly disrupted, experienced social isolation, experienced changes to their family lives and weekly schedules, and been placed at greater risk of mental ill-health.¹⁵⁰ On 23 July 2021, the Commission for Children and Young People released findings on the impact of COVID-19 following consultations with more than 600 children and young people and more than 170 workers supporting them.¹⁵¹ The findings detail huge impacts on the lives of children and young people in Victoria across safety, mental health and education, revealing a picture of growing uncertainty and isolation, combined with diminished visibility. The findings can be accessed at <https://ccyp.vic.gov.au/upholding-childrens-rights/covid-engagement/>.

- **Older people:** Older Victorians were increasingly isolated, often cut off from family and supports, and at greater risk of hospitalisation and death, causing considerable distress. Between January and December 2020, 655 Victorians in residential aged care died from COVID-19.¹⁵² This accounted for over 95 per cent of Australia's total aged care deaths in 2020.¹⁵³
- **Women:** Women shouldered a disproportionate burden of increased unpaid caring responsibilities during the lockdown.¹⁵⁴ The pandemic, and measures taken in response, also exposed and exacerbated existing workplace gender inequalities, in particular in relation to employment entitlements, pay systems and the value the community places on feminised work and unpaid labour. These effects are discussed in Chapter 9.
- **People with insecure housing or work:** People with insecure housing or work suffered disproportionate economic impacts during 2020.

This is by no means a comprehensive list. Other groups that were disproportionately affected included: people living alone who were more isolated during lockdown; Aboriginal people; people experiencing homelessness or sleeping rough, who had more difficulty complying with Chief Health Officer Orders; small business owners who were forced to close their businesses and their casual employees who lost shifts as a result; people forced to defer surgery as hospitals pivoted to treating COVID-19 patients; pregnant women with limited supports when giving birth; healthcare and frontline workers who were exposed to infection at higher rates; and, of course, the people who contracted the virus and their loved ones.

It is not possible to cover all these issues in the scope of this report. Instead, we focus on three areas that are within the strategic priorities of the Commission and in which the Commission has been more deeply engaged. This section of the report:

- considers the human rights impacts on people in closed environments (Chapter 7)
- draws on research and community engagement by the Commission to understand the impact of COVID-19 on multicultural and multifaith communities (Chapter 8)
- provides the Commission's research findings on flexible work (Chapter 9).

8. Multicultural and multifaith communities

At a glance

- Reports of racial discrimination and vilification increased during the pandemic, significantly impacting on multicultural communities.
- Multicultural communities experienced difficulty in accessing information during the pandemic and there were calls for the government to improve communication and engagement.
- The Commission consulted extensively with multicultural communities during 2020 to promote and protect human rights.
- Despite the challenges presented by COVID-19, Aboriginal and Torres Strait Islander, multicultural and multifaith communities showed significant strength and resilience.
- The Victorian Ombudsman found that DHHS acted wrongly by not providing residents of the public housing tower at 33 Alfred Street with timely and accessible notice of the reasons for the hard lockdown of their building. The government's response indicated it would consider many of the Ombudsman's findings and recommendations, but rejected the Ombudsman's finding regarding the lawfulness of the emergency response, stating that at all times it had acted lawfully and within the applicable legislative framework.²⁶⁰

Rise in racism

The COVID-19 pandemic exposed the underlying inequalities that many multicultural and multifaith communities experience, including profound levels of racism and vilification. Reports of racism and xenophobia have increased throughout the COVID-19 pandemic.²⁶¹

Early in the pandemic, there was an escalation in racially motivated abuse towards people from Asian backgrounds in Australia.²⁶² In April 2020, the Commission had a sharp spike in complaints about racial vilification, receiving almost eight times as many complaints as in the same period in 2019.²⁶³ The ABC also reported that it had been contacted by hundreds of people who had shared experiences of discrimination during the pandemic.²⁶⁴

Multiple surveys conducted during 2020 showed that many people, including young people and international students, were the target of racially motivated discrimination and prejudice:

- A survey by the Centre for Multicultural Youth and Australian National University of more than 3000 people aged between 16 and 25 found that 84.5 per cent of Asian Australians reported at least one instance of discrimination between January and October 2020.²⁶⁵

- A survey conducted by the Migrant Worker Justice Initiative found that international students experienced verbal racist abuse during the COVID-19 crisis and were avoided based on their appearance.²⁶⁶ Of the 6000 surveyed, 1500 reported that they had experienced xenophobic slurs or been treated as though they had COVID-19 due to their Asian appearance. Some also described physical attacks.²⁶⁷
- The Australian Race Discrimination Commissioner acknowledged a resurgence in racism being experienced in Australia during the pandemic.²⁶⁸
- Data from the Australian Human Rights Commission²⁶⁹ and the Asian Australian Alliance²⁷⁰ showed a consistent occurrence of race-related incidents during the pandemic.

Rise in reports of racism and racial vilification to the Commission

The Commission plays a significant role in protecting and promoting the rights of multicultural and multifaith communities in Victoria. While racism and experiences of unfair treatment because of race have always been reported to us, in 2020 the Commission received an increase in enquiries and reports of race discrimination and vilification in the community.

In 2020, the Commission received more than double the number of reports of racial vilification than in 2019. It received a total of 406 enquiries specifically related to racism, of which 38 per cent concerned racial vilification. Members of the public also used the Commission's online community reporting tool to report racist incidents,²⁷¹ with 53 per cent of reports in 2020 related to racial discrimination and vilification.

In June 2020, the Commission received more enquiries about racism through all of our enquiry contact points, including the reporting tool, than at any time over the past 12 months. Around this time the Black Lives Matter movement raised community awareness of racism, which may have contributed to increased reporting of racist incidents to the Commission.

Vilification online and in public places

In particular, people of Chinese or East Asian heritage reported being racially vilified during the early months of the pandemic. Reports included being abused online, in supermarkets, on public transport, in workplaces, at school, in shops and in their local neighbourhoods. The most common areas where race discrimination was experienced included employment, goods and services, and accommodation. Examples of discrimination and vilification experienced included racial profiling, stereotyping, racially targeted verbal abuse, racial insults, verbal and nonverbal microaggressions, and physical assaults causing injury.

We heard of patients declining treatment from doctors because of their racial background. We received many reports about abuse in public or at work. One woman was abused while shopping at her local supermarket. When she picked up some hand sanitiser, a staff member remarked: "All you Asians take everything".²⁷² We heard from a doctor working at one of Melbourne's busiest hospitals that he was abused so aggressively while taking the train to work that he no longer felt safe taking public transport.²⁷³ Many of these racist incidents were directed towards women and most were verbal. Consultation with communities also highlighted the impact of COVID-19-related racism and discrimination on mental health and the need for targeted mental health responses to this.

Several enquiries and complaints related to the use of social media explicitly directed against people based on race. The inadequacies of our current anti-vilification laws were highlighted during this time, with two racial vilification complaints being refused because the respondent could not be identified. This included a matter regarding a social media group which was explicitly racist towards people of Chinese heritage.

The Commission engaged deeply with multicultural and multifaith communities across Victoria to better understand the impacts of COVID-19-related racism and to support individuals who had been treated unfairly based on their race.

CASE STUDIES

Racial vilification

A person rang the Commission and told us that they were out walking when a man shouted at them from his car about how he "can't fly anywhere anymore". The caller believed the man was referring to the travel ban with China due to COVID-19 and described his language as abusive and racially motivated.

Another person told the Commission that on public transport they witnessed another passenger making racist and discriminatory remarks towards two people of Asian appearance. The passenger approached the two people and became increasingly verbally aggressive. Another passenger stepped in to defend them.

A key concern raised by community members in our consultations was the significant barriers to reporting racism. These included:

- a lack of knowledge about where and how to make a report
- limited understanding of Victoria's anti-discrimination and anti-vilification laws
- reduced confidence in public authorities to provide an adequate response, including institutional race discrimination
- the mental health impacts of racism such as trauma and fear of victimisation
- the need for more in-language and culturally appropriate resources in order to understand people's rights.

Better protections from racist abuse

Racial vilification undermines people's right to equality under the Charter. In Victoria, the *Racial and Religious Tolerance Act 2001* prohibits vilification. The instances of racism that have come to light during the pandemic reiterate the need for stronger anti-vilification laws in Victoria. Community leaders have told us that the current threshold for racial vilification is not meeting the needs of communities.²⁷⁴

The report of the parliamentary Inquiry into Anti-Vilification Protections, published in March 2021, recommended a raft of amendments to Victorian's anti-vilification laws and strengthening of Victoria's human rights culture. The Commission welcomes these recommendations and notes the government's response, including support and in-principle support for the majority of the inquiry's recommendations. The Commission encourages implementation of these important reforms in consultation with affected communities.

Media using racist stereotypes

During 2020, the Commission also heard reports of stigmatising portrayals of multicultural communities by the media. Through consultation with the Victorian Multicultural Commission (VMC), we heard that many communities felt that the media's reporting of the second wave of the pandemic blamed multicultural communities for spreading the virus.²⁷⁵

Opinion pieces published throughout the year suggested Victoria's multiculturalism was responsible for weakening the state's response to the pandemic²⁷⁶ and multicultural communities were responsible for outbreaks.²⁷⁷ Racist headlines, phrases and hashtags attributing the outbreak and spread of COVID-19 to multicultural communities were also spread online and on social media platforms.²⁷⁸ The Islamic Council of Victoria expressed concern over media scapegoating and stigmatising of the Muslim community.²⁷⁹ In June 2020, Sky News²⁸⁰ and *The Australian*²⁸¹ portrayed large multicultural families as fuelling the pandemic by breaking social-distancing rules, including to attend Eid celebrations. A number of articles were published on the issue of racist media and the marginalisation of multicultural communities during the pandemic.

"The racist narratives promulgated during the pandemic about certain multicultural communities demonstrated a disgusting new low level of bigotry by media personalities. In particular, remarks made against the South Sudanese community only added salt to injury to a community that was significantly impacted by the pandemic. It felt like a blatant 'anti-immigrant' attack on our community with no facts to back up statements."

Monica Deng, President, South Sudanese Youth United

Disproportionate impacts of lockdown

Evidence provided to the PAEC Inquiry into the Victorian Government's Response to the COVID-19 Pandemic illustrated that while multicultural Victorians experienced many of the same social and financial issues as other Victorians during lockdown, these were compounded by the inequality experienced by these communities.²⁸² In the inquiry, PAEC found that Victoria's second wave of the COVID-19 pandemic disproportionately impacted on areas with high proportions of multicultural and migrant residents.²⁸³

One reason cited for this was employment, with many newly arrived migrants working in low-paying jobs in the service industry and as frontline workers.²⁸⁴ The inquiry found that temporary migrants, refugees and asylum seekers in Victoria were severely impacted on by COVID-19 and at a high risk of financial stress due to a lack of eligibility for Australian Government support.²⁸⁵ While this is undoubtedly a significant issue, we do not have the scope to consider it in this report.

The VMC has acknowledged the disproportionate and exceptional challenges faced by multicultural communities as a result of COVID-19 and that communities have shared with it concerns regarding accessing in-language information and resources, as well as issues in accessing employment, migration services and social security.²⁸⁶

Many community representatives also expressed to the Commission that the disadvantages stemmed in part from not having access to the tools, resources and supports to know about, understand, prepare for or comply with public health directions and remain safe.²⁸⁷

Accessibility of information

Throughout the pandemic, it was reported by media and various multicultural and multifaith community leaders that efforts to communicate important public health messaging with migrant communities was ineffective or that more could have been done.²⁸⁸

Consultations with impacted communities, run jointly by the VMC and our Commission, revealed a lack of translated materials and resources for vulnerable multicultural communities²⁸⁹ and a desire for better communication.

Multicultural communities expressed a desire for the government to co-develop creative and accessible materials together with community organisations to reach less accessible community members. Providing communities with accessible information is vital to ensure that public authorities comply with their obligation to uphold individuals' right to equality under the Charter.

During the second wave, local government areas in Victoria with high migrant populations were overrepresented in new infections, prompting the government to improve its messaging concerning COVID-19 in languages other than English.²⁹⁰ The Chief Health Officer said it was essential for the government to properly engage with multicultural communities.²⁹¹ In August, the government announced the establishment of a multicultural Communities Taskforce to assist multicultural and multifaith communities through the pandemic.²⁹² The taskforce included representatives from VMC as well as representatives of various government departments.²⁹³

Self-determined responses

Alongside much of the hardship of the pandemic, there has been great community organisation and resilience that has protected communities from disease and ameliorated some of the harsher effects of government measures. The following case studies illustrate this.



CASE STUDY

The Aboriginal community-led response to COVID-19

The Victorian Aboriginal Community Controlled Organisations (ACCOs) have had significant success in responding to the COVID-19 pandemic. COVID-19 transmissions within the Aboriginal and Torres Strait Islander community – one of the most at-risk communities in Victoria – were below transmission levels in the broader Victorian community throughout 2020.

A COVID-19 Aboriginal Community Taskforce (Taskforce) was established in March 2020, comprising of leaders from Aboriginal organisations and government departments. The Taskforce was instrumental in driving comprehensive, coordinated and culturally safe responses and recovery efforts.

ACCOs have led the development and dissemination of community-wide communications, outreach and rapid responses to Elders and vulnerable families. The Aboriginal Executive Council also facilitated fortnightly meetings throughout the pandemic to develop urgent responses and share resources. This regular forum has enabled ACCOs to identify emerging issues, respond to gaps, coordinate their efforts and bring systemic issues to the government's Taskforce.

Such a targeted response has protected and promoted the rights of Aboriginal and Torres Strait Islander Peoples under the Charter, including the rights to life and equality, and cultural rights.

These responses were supported by the Victorian Government's \$23 million Aboriginal-specific COVID-19 funding package through the *2020-21 State Budget*. The Package included a \$10 million COVID-19 Aboriginal Community Response and Recovery Fund, funding for ACCOs to support education outreach, homelessness support, IT capability uplift, clinical support and patient transport. Funding was also provided to Registered Aboriginal Parties to support them to undertake their cultural heritage work remotely.

Within 24 hours of the hard lockdown of the public housing estates, ACCOs provided an integrated response for Aboriginal and Torres Strait Islander families living there. This relieved some of the anxiety families were experiencing by providing a single access point for a range of services. As some restrictions eased to allow Aboriginal-led agencies access, ACCOs ensured families had access to the legal, medical, child and family, housing and community care supports that they needed, allowing families to respond to emerging challenges.

Across Melbourne, ACCOs established partnerships with foodbanks and cafes to ensure community members had access to healthy and nutritious meals. This supported people's cultural, social and emotional wellbeing. Connecting in this way enabled ACCOs to disseminate culturally safe COVID-19 updates, along with current government rules and mandates related to the pandemic.

The Victorian Aboriginal Community Controlled Health Organisation CEO, Jill Gallagher, said the low incidence of COVID-19 cases in Victorian Aboriginal communities is testament to Aboriginal communities' control and what can happen when they work meaningfully together.²⁹⁴

Members of the Aboriginal Executive Council advised the Commission that Aboriginal self-determination underpins the success of Victoria's ACCOs in protecting the Victorian Aboriginal community.²⁹⁵

"At the heart of this success is Aboriginal self-determination. When ACCOs are free to use their resources and strengths to take the lead, the best outcomes will be achieved for Aboriginal people. These strengths include inter-generational family and community connections, localised knowledge, common purpose, cultural connections, and Aboriginal ways of caring for family and vulnerable community members.

Self-determination is at the heart of the ACCO sector and is a fundamental right of Aboriginal people. Self-determination needs to be at the heart of Victorian legislation and fundamental to the working relationship between governments and the Aboriginal community."

Esme Bamblett, Chairperson, Aboriginal Executive Council

Hard lockdown of public housing towers

In early July 2020 while Victoria was early in the second wave of COVID-19 infections, 23 residents of nine public housing towers in Flemington and North Melbourne tested positive for COVID-19. The high-density living conditions in the towers meant residents were deemed to be at additional risk of the virus.

In response, on 4 July following meetings of the Crisis Council of Cabinet, the Deputy Chief Health Officer issued a series of directions that effectively detained the 3000 residents of the public housing towers with immediate effect.

The Deputy Chief Health Officer directions ordered people not to leave their home unless: an exception applied; they had been granted permission to receive medical care; because it was necessary for their physical or mental health; on compassionate grounds; or in an emergency situation.²⁹⁶ These exceptions were not immediately communicated to residents but, by contrast, the media reported the Premier advising residents, "There will be no one allowed in ... and no one allowed out".²⁹⁷

In response, Victoria Police immediately established a perimeter around the affected public housing towers, restricting access under the Emergency Management Act.

"Whether that was in detention or jail in their country of origin, the presence of the police as either a trigger or because some residents of the towers [are aware of or] have had difficult experiences with Victoria Police, some felt stigmatised and distressed that for a few days at least, their basic needs were not being well met and there was inadequate communication, which heightened fear."

Dr Joanne Gardiner, Royal Melbourne Hospital²⁹⁸

Testing conducted between 5 July and 8 July 2020 resulted in over 150 cases of COVID-19 within the towers. Of these, more than one-third were located in a single tower at 33 Alfred Street in North Melbourne.²⁹⁹ After five days, eight of the nine towers returned to Stage 3 restrictions – the same level as the rest of Greater Melbourne and the Mitchell Shire. However, residents of 33 Alfred Street remained in hard lockdown for a total of two weeks.

During the lockdown, thousands of people lived in extremely challenging circumstances, many residents going without daily access to fresh air and, in the case of people living alone, without meaningful human contact. The fact that the lockdown was implemented without any official warning left residents with no time to prepare.

"I found out [about the lockdown] when I came down and there were police and they said the building is locked."

Resident's oral submission to the Victorian Ombudsman³⁰⁰

Access to information

The towers are home to people from many cultures and nationalities – 73 per cent of residents spoke a language other than English at home and 21 per cent had self-reported poor or no English proficiency.³⁰¹ During the lockdown, the Commission heard that some people in the towers were struggling to access information about the lockdown in a language and a form that they understood.

In its inquiry, PAEC found that there was no prior communication of the lockdown and that delays in communicating with residents, particularly in languages other than English, led to confusion during the lockdown.³⁰²

"The hard lockdown was disgusting. The government did not listen to our concerns, nor care about our human rights; rather, they treated us like second-class citizens. Just because we come from migrant and refugee backgrounds does not mean we should be treated differently. The whole situation made me feel like I was not Australian ... I felt like an outsider."³⁰³

Barry Berih, Founder, Young Australian People, and resident of public housing towers

Unfortunately, the decision to impose the lockdown was not preceded or informed by consultation with multicultural community leaders.³⁰⁴

"I think it would have been preferable. I think it would've been possible had we had another day to get things up and running."

Prof. Allen Cheng, Then Deputy Chief Health Officer³⁰⁵

Monitoring human rights

The Commission worked closely with community legal centres and other community groups to monitor the human rights situation during the lockdown. We heard that some people in the towers were struggling to get the medical and disability supports that they needed, and to leave their apartments for physical and mental health reasons.

One resident, a mother of seven, struggled to access essential items like nappies and milk.³⁰⁶ Others reported that they received insufficient and culturally inappropriate food, such as a vegetarian family who received meat pies and other residents who received four sausage rolls to last them 48 hours.³⁰⁷ Residents were concerned about the lack of consultation with them before and during the lockdown and an "overwhelming police presence outside their homes".³⁰⁸

Aboriginal support and legal service Djirra told us the effects of the lockdown were felt particularly hard by Aboriginal people:

"When public housing towers in Melbourne were placed into lockdown, the heavy police presence there placed a particular burden on Aboriginal women, many of whom, because of our history, have a profound mistrust of police and authorities."³⁰⁹

Although the residents' rights to liberty and movement were restricted to prevent the spread of the virus, they retained the right to be treated humanely while they were detained. This meant they retained the right to receive accessible information about the lockdown, as well as the rights to access disability and health services, and to receive necessary items and services such as food, legal assistance, electricity, water and heating.

The Commission produced a fact sheet, 'Your rights in full lockdown', which was translated into 11 community languages and distributed in both written form and audio files, providing information to assist residents, community leaders and public authorities to understand the rights of the people being detained.

Community resilience and engagement

During the hard lockdown of the public housing towers, local multicultural and multifaith communities demonstrated incredible strength, resilience and resourcefulness, swiftly grappling with addressing community needs in a crisis:

- Residents within the towers translated information about the restrictions and public health measures into 10 written and five oral community languages within 24 hours and distributed this via text and social media.³¹⁰
- The Asylum Seeker Resource Centre's catering enterprise cooked and delivered thousands of culturally appropriate meals to the towers, teaming up with community organisations including Sikh Volunteers Australia, Moving Feast and others.³¹¹
- The Australian Muslim Social Services Agency (AMSSA) collaborated with a range of organisations including Trades Hall, the Islamic Council of Victoria and others to deliver 5000 food and essential packages. Residents made orders via a 'special order hotline' to enable customised packages to comply with health and religious dietary requirements, enabling 3000 food packages to be delivered.
- AMSSA supported families experiencing extreme financial hardship.
- AMSSA connected with residents via social media, Zoom meetings, surveys and feedback forms to ensure community needs were being met.³¹²

Community organisations can provide vital and timely supports via existing networks in culturally appropriate and respectful ways best fitting the needs of their own communities. Empowering community organisations to be part of decision-making, planning and response in an emergency management response ensures they can bring their networks and expertise.

Although community engagement did not happen prior to the lockdown, significant steps were taken to work with the community during the lockdown itself. Three days after the decision to lock down the towers, DHHS took a number of steps to engage with multicultural and multifaith communities impacted on by the decision. On 7 July 2020, with the assistance of the VMC a Community Working Group was established. Co-chaired by the VMC, it included representatives of DHHS and more than 20 multicultural community organisations.³¹³

The Victorian Ombudsman reported that this was the first time that community representatives had been included in an emergency management structure in such a way in Victoria and that the group appeared to be effective in identifying and resolving issues raised by communities.³¹⁴

"The feedback received on the inclusion of community representatives was extremely positive from all the stakeholders and [showed] that this approach of having the community involved in the decision-making processes on the ground could be replicated in future emergency management responses."

Victorian Multicultural Commission³¹⁵

Following the lockdown, in weekly briefings to the Ombudsman and the Commission, DHHS detailed new measures to mitigate the risks of COVID-19 across Melbourne's high-density public housing estates by engaging more closely with residents and community groups through:

- training and employing residents to provide an ongoing 'health concierge' service at all high-rise public housing towers, including welfare checks and other supports
- continuing community working groups to provide advice on approaches to health promotion, messaging and engagement at each site, and to assist in the identification of local issues and risks
- hosting thematic resident-only forums relating to issues such as infection prevention and control, childcare, employment, education and mental health.³¹⁶

Victorian Ombudsman investigation into the hard lockdown of public housing towers and the Victorian Government response

The Victorian Ombudsman investigated the detention and treatment of the public housing tower residents. The Ombudsman tabled her report in Parliament in December 2020, making conclusions relating to 33 Alfred Street. She formed a clear view that the detention of these people on 4 July 2020, without notice and without sufficient preparation, was not compatible with the right to humane treatment when deprived of liberty protected under the Charter and that proper consideration was not given to human rights when deciding to impose the immediate lockdown.³¹⁷ She also concluded that DHHS had acted wrongly by failing to provide people, including those who did not speak English, with timely and accessible notice of the reasons for and terms of their detention.³³⁸

The Ombudsman further concluded that DHHS had acted wrongly regarding 33 Alfred Street by failing to:

- notify people of their ability to complain about aspects of their treatment under the PHWA
- implement appropriate measures to ensure people had access to fresh air and outdoor exercise
- implement appropriate measures to ensure people were provided with timely and reasonable access to required medication.³¹⁸

Government response to the Ombudsman's investigation

The Victorian Government accepted the Ombudsman's recommendations 3–9, committing to:

- identify and invest more in the COVID-19 response in high-risk accommodation settings
- evaluate the impact of COVID-19 response measures employed in high risk accommodation settings
- develop training and guidelines on issues including Charter obligations and legislative safeguards for those responsible for exercising emergency detention powers
- improve DHHS capability to perform health emergency management functions by appointing staff with emergency management experience, improving surge capacity arrangements for health emergencies and reinforcing partnerships with service providers
- publish information about how to make a complaint, including on the exercise of emergency powers during the COVID-19 pandemic, and
- work with community leaders and public housing residents to strengthen trust.³¹⁹

The Government has also publicly reported on steps taken to implement these recommendations.³²⁰ The Victorian Government rejected the Ombudsman's findings regarding the lawfulness or legitimacy of the emergency response, stating that it had at all times acted lawfully and within the applicable legislative framework.³²¹

The Premier published a statement in response to the report, noting:

"The immediate response was not perfect – particularly in the very beginning when processes were being established – but there were hundreds of people working day and night to ensure residents were safe and had access to food and medical care.

In the days following the lockdown, we implemented lessons we had learnt at Flemington and North Melbourne in other public housing estates and other high-risk accommodation settings including Supported Residential Services."³²²

During the lockdown and in the weeks following, the Commission welcomed briefings from DHHS in relation to the community-based work it was engaged in to alleviate the pressure on residents and learn from the hard lockdown experience. We also welcomed its implementation of lessons learned.

On 30 June 2021, DHHS reported on the steps taken to implement the Ombudsman's recommendations:

"An additional \$6.5 million on top of the \$7.5 million announced in last year's budget has been invested to continue to strengthen the Paving the Way Forward community capacity building program at North Melbourne and Flemington and improve social, economic, education and health outcomes for residents and their families."³²³

Prior to and since the tabling of the Victorian Ombudsman's investigation into 33 Alfred Street in December 2020, the Department of Families, Fairness and Housing (DFFH) and the Department of Health (DH) have made significant improvements to their COVID-19 readiness and response capabilities.

As of 30 June, both departments have either implemented or made strong progress against all of the accepted recommendations in the Ombudsman's report."³²⁴

A detailed response to the recommendations may be found at <https://www.dhhs.vic.gov.au/publications/progress-report-33-alfred-street>.

Endnotes

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- 149 Corrections Victoria, 'Our Response to COVID-19', *Corrections, Prisons and Parole* (Web page, 29 June 2021) <<https://www.corrections.vic.gov.au/covid19#prisons>>.
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- 264 Max Walden, 'More than Eight in 10 Asian Australians Report Discrimination During Coronavirus Pandemic', ABC News (online, 2 November 2020) <<https://www.abc.net.au/news/2020-11-02/asian-australians-suffer-covid-19-discrimination-anu-survey/12834324>>.
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